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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

MAR 2 4 2003

File: [redacted] Office: Texas Service Center Date:

IN RE: Petitioner: [redacted]
Beneficiary

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Elizabeth Kazmarek

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined that the petitioner had not established that the beneficiary qualifies for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on May 17, 2001, seeks to classify the beneficiary as an alien with extraordinary ability as a Radiation Oncologist. At the time of filing, the beneficiary was employed as an Assistant Professor in the Department of Radiation Oncology, University of Texas Medical Branch ("UTMB") at Galveston. Counsel describes the beneficiary as "a prominent South African medical scientist, practitioner, and professor." The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to

establish sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, it claims, meets the following criteria.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

In response to the director's request for evidence, the petitioner submitted a letter reflecting the beneficiary's appointment as the "New Investigators representative to the Lung Cancer Committee" for the Radiation Therapy Oncology Group from June 2002 to June 2003. This evidence came into existence subsequent to the petition's filing. *See Matter of Katigbak*, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Further, a committee appointment would not qualify as a nationally recognized prize or award.

The beneficiary received a Certificate of Appreciation from the Cancer Association of South Africa (2000). It is not immediately apparent that a "Certificate of Appreciation" would qualify as a nationally recognized prize or award. The record contains no evidence regarding the number of recipients, the criteria for their selection, or the degree of recognition accorded to those honored.

The beneficiary was appointed as "Honorary Lecturer" by the University of the Witwatersrand, Johannesburg, South Africa (1998). This award reflects institutional, rather than national or international, recognition.

The petitioner submitted evidence showing that the beneficiary received a National Cancer Association Grant at the University of the Witwatersrand (1997). The grant was for the "creation of a computer based tumor registry" in the Department of Radiation Therapy. The receipt of a funding grant is not a national award for excellence in one's field, but, rather, financial support for a particular research project. The funding for the beneficiary's project was awarded not by outside nomination, demonstrating the field's regard for his ability, but upon his application to the organization providing the grant.

The evidence offered by the petitioner fails to satisfy this criterion.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this

criterion because participation, employment, education, experience, test scores and recommendations do not constitute outstanding achievements. In addition, a membership in an association that evaluates its membership applications at the local chapter level would not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

A certificate in the record indicates that the beneficiary was elected an Active Member of the American Society of Therapeutic Radiology and Oncology on October 1, 2001. A memorandum from the Vice President for Research at UTMB, dated June 20, 2002, confirms the beneficiary's agreement to serve as a member of the UTMB Institutional Review Board starting in July 2002. This documentary evidence came into existence subsequent to the petition's filing. *See Matter of Katigbak, supra.*

The petitioner also submits a 1992 certificate confirming the beneficiary's membership in the South African Lymphoma Study Group. No documentary evidence has been submitted to show that this group requires outstanding achievements of its members.

The petitioner claims that the beneficiary holds membership in several other associations, but no first-hand evidence of these memberships was provided. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In this case, the petitioner has offered no evidence showing that the beneficiary's memberships required outstanding medical achievement or that he was judged by national or international experts in consideration of his membership.

> *Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

In general, in order for published material to meet this criterion, it must be primarily about the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but they qualify as major media because of significant national distribution, unlike small local community papers.

The petitioner submitted an article appearing in the Johannesburg Rotary Club Newsletter summarizing a talk given by the beneficiary about prostate cancer. This institutional newsletter

would not qualify as major media. The petitioner has offered no evidence showing that the beneficiary has been the subject of sustained major media coverage.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner submitted several witness letters from the beneficiary's current and former colleagues. These letters detail the beneficiary's education and employment experience and describe him as a skilled radiation oncologist, but they provide no information regarding how the beneficiary's contributions have already influenced the field of oncology. The issue here is not the skill level or educational qualifications of the beneficiary, but, rather, whether any of his past medical accomplishments would qualify as a contribution of major significance in the field of radiation oncology.

Dr. Martin Colman, Professor and Chairman, Department of Radiation Oncology, UTMB, has provided two letters in support of the petition. The letters discuss the beneficiary's educational background and professional experience and describe the shortage of "suitably qualified" individuals available for radiation oncology faculty positions at U.S. universities. Both of Dr. Colman's letters contain the following statement: "[The beneficiary's] specific experience with radiation therapy, treatment planning, and stereotactic radiosurgery closely matches the requirements we have." Simply possessing a certain level of advanced training or medical experience, however, would not satisfy this restrictive criterion.

In a letter (addressed to Dr. Colman) assessing the beneficiary's research qualifications, Dr. Lester Peters, Director, Department of Radiation Oncology, states:

> [The beneficiary] undertook a research project as part of his Master of Medicine degree which involved the assessment of the prognostic significance of aneuploidy in breast cancer. The results of this work have never been published. When asked the reason for this, [the beneficiary] stated that others had published conclusions similar to his own... Whilst at the Johannesburg Hospital he was involved in some clinical research projects including a trial of adjuvant CMF for stage III breast cancer. However, he was not a primary investigator in this trial. Subsequent to entering private practice he has had no direct involvement in research. He treats some patients who are on medical oncology trials but he does not have any ongoing clinical research of his own. [The beneficiary's] publication record includes six papers in peer reviewed journals but he is not the first or senior author on any of these.

An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. If the beneficiary's medical achievements are not widely praised outside of his current and former colleagues, then it cannot be concluded that he enjoys sustained national or international acclaim as one who has reached the very top of the field. In this case, the beneficiary has not demonstrated any specific scientific or scholarly contributions that have been unusually influential and acclaimed within the medical field. While

the witnesses have stated in general terms that the beneficiary is a respected and highly skilled radiation oncologist, there is no consensus that the beneficiary enjoys a national reputation in the United States, South Africa, Australia or any other country. Rather, the beneficiary appears to have earned a reputation only among his current and former colleagues.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

We withdraw the director's finding that the beneficiary satisfies this criterion. The very existence of published work by the beneficiary is not dispositive. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment."

Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Bureau's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles. When judging the influence and impact that the beneficiary's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the beneficiary's conclusions. Frequent citation by independent researchers would demonstrate more widespread interest in, and reliance on, the beneficiary's work.

The record, however, does not contain citation records or other evidence to establish that the medical research community regards the beneficiary's published work as especially significant. While heavy citation of the beneficiary's published articles would carry considerable weight, the beneficiary has not presented such citations here.

We cannot ignore the assessment from Dr. Peters, stating: "[The beneficiary's] publication record includes six papers in peer reviewed journals but he is not the first or senior author on any of these." We also note Dr. B.J. Cummings' statement that the beneficiary "has maintained a modest but fairly steady out-put of publications, largely as a co-author or in non-peer reviewed formats." These statements support a finding that the beneficiary's publication record has failed earn him national or international acclaim in his field.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

We withdraw the director's finding that the beneficiary satisfies this criterion. The director's decision stated "it appears that the beneficiary's role with [UTMB] can be considered leading and/or critical."

In order to establish that the alien performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of the beneficiary's role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization as a whole.

A letter from Dr. Colman states that the beneficiary "joined the faculty of UTMB on March 3, 2001 at the rank of Assistant Professor." The petition in this case was filed ten weeks later. The petitioner has not shown that the beneficiary performed in a leading or critical role for UTMB during that brief amount of time. We cannot ignore that in UTMB's Department of Radiation Oncology Dr. Colman holds the title of Professor and Chairman, Dr. Peters holds the title of Professor and Director, and Dr. Hatch holds the title of Associate Professor and Vice-Chairman. At the time of filing, the beneficiary held the rank of Assistant Professor and it has not been shown that this role was leading or critical to the entire UTMB organization or within the Department of Radiation Oncology. A simple review of the qualifications of the individuals on the UTMB faculty who submitted letters in the beneficiary's behalf shows that their roles and responsibilities far exceed those of the beneficiary. A review of the documentation provided reveals little or no evidence to establish that the beneficiary has ever supervised other individuals at UTMB or that he consistently exercised substantial control over departmental decisions in the same manner as Drs. Colman, Peters, and Hatch.

It must be emphasized that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. The petitioner cannot demonstrate the beneficiary's eligibility under this criterion by submitting witness letters that offer only brief, vague information about the beneficiary's role.

The petitioner submitted a letter dated July 16, 2001 from the Radiation Therapy Oncology Group, a multi-institutional cooperative organization, welcoming the beneficiary to the organization as the principal investigator for UTMB. The petitioner provides no evidence of the beneficiary's role with this organization prior to the petition's filing. *See Matter of Katigbak, supra.*

The petitioner submitted a letter from Dr. Selma Browde, Founder and Medical Director, Palliative Medicine Institute, South Africa. Dr. Browde states that the beneficiary served as a "senior consultant" in her department when she headed the Department of Radiation Oncology at the University of Witwatersrand. Her letter further states that the beneficiary "developed and

directed the data capture, retrieval, and statistical analysis in the department" and "was active in the teaching of medical students." While the beneficiary may have influenced some activities in his department at the University of Witwatersrand, his impact on the entire organization appears negligible.

We note here that the burden is on the petitioner to establish that the University of Witwatersrand and UTMB's Radiation Oncology departments have distinguished themselves when compared to Radiation Oncology departments at other major universities.

In sum, we find that the petitioner's evidence falls short of establishing that the beneficiary has performed in a leading or critical role for a distinguished organization, or that his involvement attracted sustained national or international attention.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

On appeal, the petitioner submits a letter from Dr. Colman stating that the beneficiary's "total annualized compensation for FY 2001 was $195,000." The plain wording of the regulation requires evidence that the alien "has commanded" a high salary or other significantly high remuneration. Therefore, the petitioner must demonstrate that the beneficiary had actually earned such compensation prior to the petition's filing date. Dr. Colman's statement regarding the beneficiary's total compensation for fiscal year 2001 and his projections regarding the beneficiary's remuneration for 2002 and 2003 do not establish the beneficiary's eligibility at the time of the petition's filing. *See Matter of Katigbak, supra*. In this matter, the petitioner has provided no first-hand documentation (such as income tax forms) of the beneficiary's remuneration prior to the filing date.

Also submitted was an "Academic Practice Compensation and Production Survey for Faculty and Management" table published by the Medical Group Management Association. Compensation Table 7A showed total compensation earned by "Assistant Professors" of Radiation Oncology based on 2001 data:

25th percentile	Median	75th percentile	90th percentile
$190,000	$205,320	$233,623	$267,361

Based on Dr. Colman's statement that the beneficiary's "total annualized compensation for FY 2001 was $195,000," we find that the beneficiary's earnings for 2001 placed him slightly above the 25th percentile, but below the median for total compensation for assistant professors of radiation oncology. Therefore, the beneficiary has clearly failed to satisfy this criterion.

Notwithstanding the above, the plain wording of the regulation requires the alien to submit evidence of a high salary "in relation to others in the field." Beyond assistant professorships, there are full professorships and associate professorships. In comparing the beneficiary's

compensation to others in the field, the petitioner cannot simply exclude full and associate professors of radiation oncology from consideration.

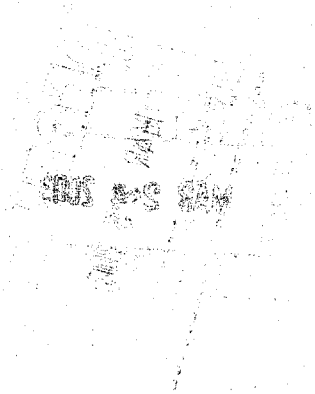
The petitioner submits a copy of the approval notice for the beneficiary's O-1 nonimmigrant visa petition. The approval of an O-1 nonimmigrant visa petition on behalf of a given alien does not in any way compel the Service to approve a subsequent visa petition under section 203(b)(1)(A) of the Act on behalf of that same alien. Each petition must be adjudicated on its own merits based on the evidence submitted to support that petition. Furthermore, there is no statute, regulation, or case law that requires the approval of an immigrant visa petition under section 203(b)(1)(A) of the Act when the alien already holds an O-1 nonimmigrant visa.

The evidence offered by the petitioner does not establish that the beneficiary has earned international acclaim, or national acclaim in the United States, Australia, or South Africa.

The fundamental nature of this highly restrictive visa classification demands comparison between the beneficiary and others in his field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every medical practitioner whose research has been published, or who has taught at the university level and earned the respect of his colleagues, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from well-known figures in the field, without reaching the top of that field.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate that the beneficiary meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the beneficiary has distinguished himself as a radiation oncologist to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established the beneficiary's eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.