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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
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Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: WAC-02-082-51036 Office: California Service Center Date: MAY 13 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

PUBLIC COPY

[redacted]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner seeks classification 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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel cites two non-precedent decisions from this office sustaining appeals in the nonimmigrant extraordinary ability classification. While the criteria for the nonimmigrant classification are worded the same, we do not find that non-precedent decisions in a similar nonimmigrant classification are persuasive in this matter. Moreover, we cannot determine from the decisions what evidence may have been in those records of proceedings. Counsel's specific arguments will be addressed below.

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 Bureau regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria, of which a petitioner must meet three, will be addressed below.

The director stated that "even if an alien does fulfill at least three (or more) of the ten regulatory criteria, it does not necessarily establish that the alien has achieved sustained national or international

acclaim and recognition, and does not mandate a finding of eligibility." While we may not agree with the exact wording of this statement, we do not read the director's decision as concluding that the petitioner was eligible under the regulations but that the petition was not approvable. A more rational interpretation of the director's decision is that the petitioner submitted documentation that related to or addressed at least three criteria, but that the evidence itself did not demonstrate national or international acclaim. In fact, a reading of the director's entire decision reveals that the director concluded that the petitioner only met one of the criteria. We concur that a petitioner cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it establishes that the petitioner has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a nematologist. 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 the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, he 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.

The petitioner submitted evidence of a Royal Society fellowship to study with Dr [redacted] at the University of Reading; the Grant Award of "Outstanding Young Faculty Foundation," Ministry of Education; an Excellent Teaching Award from the China International Center for Agricultural Training; an honor certificate verifying that the petitioner presented his paper at the Guangdong Satellite Conference Organizing Committee of the Chinese Society of Science and Technology; a third place excellent academic prize from the Guangdong Provincial Society of Science and Technology; a prize from the New Century Conference on Integration of T.C.M. and W.M. and Research Achievement; honor certificates for "Outstanding Young Faculty," "Excellent Scientist" and "Outstanding Supervisor" from South China Agricultural University; and an invitation for inclusion in the International Biographical Centre's *2000 Outstanding Intellectuals of the 21st Century, First Edition.*

In the request for additional documentation, the director specifically requested evidence as to the significance of these awards. In response, the petitioner submitted evidence that the Royal Fellowship is awarded to "outstanding young Chinese scientists." As such, the most experienced and expert scientists in China did not compete for this fellowship. As the petitioner did not compete with national or international experienced experts in the field, the fellowship cannot be considered evidence of the petitioner's national or international acclaim. Similarly, any "young scientist" or "young faculty" recognition cannot be considered as placing the petitioner at the very top of his field in comparison with the most experienced experts.

Regarding the petitioner's research grants, research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, as stated by the director, a research grant is principally designed to fund future research, and not to honor or recognize past achievement.

The petitioner has not established that a teaching award is within his field of nematology. Moreover, despite the director's request, the petitioner has not submitted evidence regarding the significance of an award from the International Center for Agricultural Training.

Recognition for presenting one's research at a conference is not a nationally or internationally recognized award or prize. Further, regional prizes from Guangdong Province and prizes limited to faculty at a specific academic institution cannot be considered nationally or internationally recognized.

Finally, appearing as one of two thousand successful individuals in a published directory cannot be considered a competitive award or prize and is not evidence of national or international acclaim. We note that the non-precedent nonimmigrant decision submitted by counsel on appeal references an award where the beneficiary was singled out as one of twenty, not one of two thousand. Regardless, we do not know what materials regarding the significance of the awarding organization were contained in that record.

On appeal, the petitioner fails to submit any additional evidence regarding the significance of the above honors. In light of our discussion above, the petitioner has not established that he meets 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.

The petitioner submitted evidence of membership in the following associations: the Society of Nematology, the second young scientist committee of the Chinese Society of Plant Pathology, and the standing committee of the Guangdong Provincial Plant Pathology.

The director specifically requested evidence of the membership requirements for these organizations. In response, the petitioner submitted evidence that the Society of Nematology is an international organization. The information submitted, however, does not address the society's membership requirements. Thus, the director concluded that the record did not reflect that these organizations require outstanding achievements of their general membership. On appeal, counsel simply lists the petitioner's memberships but the petitioner does not provide any additional materials regarding their membership requirements. As such, we must uphold the director's conclusion on this criterion.

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.

The director concluded that the petitioner had not demonstrated that the articles citing his work were published in major media. Counsel does not appear to contest this conclusion. We uphold the director's conclusion that the petitioner does not meet this criterion for a different reason. Articles which cite the petitioner's work are primarily about the author's own work, not the petitioner. As such, they cannot be considered published material about the petitioner as required by the plain language of the criterion. While not argued by counsel, we note that the record contains evidence that the petitioner was invited to appear in the International Biographical Centre's *2000 Outstanding Intellectuals of the 21st Century, First Edition*. As stated above, appearing as one of two thousand entries in a published volume is not evidence of national or international acclaim.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

As evidence for this criterion, the petitioner submitted letters proposing a collaboration with the Institute of Biology and Soil Science of the Russian Academy of Sciences, a request for assistance locating nematode samples in China, an invitation to register a course on-line with Limu.com, and evidence that the petitioner presented a seminar. None of this evidence meets the plain language requirements of this criterion as it does not reflect that the petitioner judged the work of others. Further, the petitioner submitted evidence that he supervises a work-study assistant. As implied by the director, supervising one's students and assistants is inherent in the job of university faculty and cannot be considered evidence of national or international acclaim. Counsel does not continue to claim that this evidence is sufficient to meet this criterion on appeal.

The petitioner, however, also submitted evidence more related to this criterion. Specifically, the petitioner submitted evidence that his offer to serve on the editorial board for the *International Journal of Nematology* was accepted. In response to the director's request for additional documentation, the petitioner submitted evidence that the journal has an international twenty-five member editorial board. In addition, the petitioner co-chaired a "pest management" section of a conference sponsored by the University of California, Riverside, where the petitioner works. Further, the petitioner co-chaired a session at the Third RSN International Nematology Symposium in St. Petersburg. Finally, the petitioner edited a book in a series of text books organized in 1995 by the China International Center for Agricultural Training, alleged by the coordinator to be "one of the most important international training centers in agriculture in the world."

The director concluded that ascertaining the suitability for publication was not "judging" the work of others. We disagree. Nevertheless, not every editor or referee has national or international acclaim. The *International Journal of Nematology* is the "official English language publication of the Afro-Asian Society of Nematologists produced biannually." While the managing editor asserts that the journal is a "core publication" and has a "worldwide distribution," the petitioner did not submit evidence of the journal's ranking or actual circulation. Even if we determined that the petitioner

minimally meets this criterion, however, it is just one criterion. A petitioner must meet at least three. As discussed above and below, the petitioner has not established that he meets any of the other criteria.

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

Dr. [redacted] in whose laboratory the petitioner works at the University of California, Riverside (UC Riverside), asserts that he has a "very positive impression" of the petitioner and that his curriculum vitae is "remarkable." Dr. [redacted] does not, however, assert that the petitioner is nationally or internationally acclaimed. Regarding the petitioner's contributions, Dr. [redacted] states:

> We have made good progress in understanding the epidemiology of the nematode pest suppression. The research has demonstrated that fungal parasitism of the developing females *Heterodera schachtii* is likely to be one of the crucial factors in the population regulation. A strong reduction in the adult male population, perhaps due to different parasitic microorganisms, may also contribute to the suppressive effect as mating is necessary with this nematode. Although this has been previously hypothesized in various review articles as a possible mode of action in biological cyst nematode control, experimentally this has never been shown. These results testify [to the petitioner's] diligence and research skills.

Dr. [redacted] concludes that the petitioner has contributed all the data and writing of a recently submitted manuscript. Dr. [redacted] a professor at UC Davis, provides similar information, adding that the petitioner was "the first person to observe red eggs of the beet cyst nematode resulting from parasitism of suppressive microbes suggesting that microbial metabolites could be involved." [redacted] a professor emeritus at UC Riverside provides general praise of the petitioner. We note that most, if not all, research, in order to receive funding and be accepted for publication, must present some benefit to the general pool of scientific knowledge. We cannot conclude that every original result is evidence of the researcher's national or international acclaim.

Dr. [redacted] a research geneticist at the United States Department of Agriculture and former colleague of the petitioner's at UC Riverside, asserts that the petitioner has made "numerous contributions to nematology." As an example of these contributions, Dr. [redacted] asserts that the petitioner "developed a new integrated pest management (IPM) technology of [the] rice root nematode." Dr. [redacted] further reiterates Dr. [redacted] discussion of the petitioner's work in that laboratory.

Dr. [redacted] a fellow doctoral student of the petitioner's at Nanjing Agricultural University, asserts that the petitioner "found and reconfirmed several new diseases caused by lesion nematodes in the country and that there were two peaks in the dynamics of the population of walnut lesion nematode for the first time" while a student. In addition, Dr. [redacted] asserts that the petitioner's IPM was utilized in "nearly ten provinces" throughout China. The record does not contain confirmation of this assertion from government officials or agricultural experts in those ten provinces. Finally, Dr. [redacted] asserts that while studying in the United Kingdom, the petitioner "successfully established a monoxenic culture of

root-knot nematodes and a standard method to study the attachments of a bacterial biocontrol agent with great potential to control nematodes and examined its attachment ability on root-knot nematodes."

[redacted] a nematologist with Entomos, LLC, has worked with the petitioner on workshops and conferences, and corresponds with the petitioner. He states that the petitioner's expertise in nematology is needed in the United States. Shortages in a field are not a consideration for the classification sought by the petitioner and can be addressed by the labor certification process. The value of a petitioner's field alone is never a basis of eligibility. Mr [redacted] does not assert that the petitioner is one of the very few at the top of his field or that he has national acclaim. Nor does Mr. [redacted] identify a specific contribution by the petitioner or explain its significance and how it has impacted the field.

The above letters are all from the petitioner's collaborators and immediate colleagues. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's national or international acclaim.

The petitioner also submitted more independent evaluations. Professor [redacted] of the Scottish Crop Research Institution asserts that the petitioner "has made significant contributions" while a guest researcher in foreign laboratories. While Professor [redacted] asserts that the petitioner has received "several international Fellowships" the record includes evidence of only one.

Dr [redacted], a professor emeritus at Simon Fraser University in Canada, asserts that he met the petitioner while lecturing in China and felt at the time that the petitioner was a bright student. Dr. [redacted] asserts that he has continued to meet the petitioner in professional settings, suggesting that the petitioner is "an active and successful researcher." Dr. [redacted] concludes that the petitioner has a strong background in nematology and works in an important area.

On appeal, counsel asserts that the director ignored the above letters or failed to give them due weight. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. As will be discussed below, the petitioner did not submit evidence that independent researchers have extensively cited his articles. Such citation evidence would be more objective evidence of the significance of the petitioner's contributions.

Moreover, the two independent references, Professor [redacted] and Professor [redacted], do not discuss any specific contributions, explain their significance, or provide examples of how these contributions have already made an impact in the field. Neither professor suggests that the petitioner is one of the very few at the top of the field or that he has national or international acclaim.

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

On appeal, counsel asserts that the director ignored the petitioner's publication history. In fact, the director concluded that the petitioner met this criterion. Upon review, however, we disagree.

The petitioner submitted evidence that he has authored 23 published articles, some book and encyclopedia chapters and several abstracts. 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.

As evidence that the petitioner's work has been cited, the petitioner initially submitted an AGRIS 1989-1990 printout listing four articles authored by the petitioner. This list does not include any information on how many times these four articles were cited, if at all. The petitioner also included several abstracts. Abstracts authored by the petitioner are not citations of his work. Finally, the petitioner submitted a single article that cites his work. The citing article is authored by one of the petitioner's co-authors. Thus, the article is not a citation by an independent researcher. While self-citation is normal and expected, it is not evidence of national or international acclaim. The petitioner also submitted three requests for reprints. Requests for reprints, while demonstrating an interest in the petitioner's work, do not demonstrate that the requestor ultimately relied upon the work. As such, they carry less weight than citations.

On appeal, counsel alleges that the petitioner is submitting additional evidence of his citation history. The petitioner submits the results of a search for the petitioner's name as author on www.webofscience.com. The results include ten articles, nine of which are authored by the petitioner. At best, this list suggests that a single article by an independent researcher has cited the petitioner's work, although the list does not indicate what article was cited. The petitioner also submitted one list of three articles authored by him and another list of a single article authored by him obtained as a result of searches for his name on the California Digital Library. These lists do not appear to represent the petitioner's citation history. Finally, the petitioner submitted one additional request for a reprint.

The petitioner's demonstrated citation history is not evidence that the petitioner's work is widely cited and, thus, is not evidence of his national or international acclaim. In light of the above, we reverse the director's finding that the petitioner meets this criterion.

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

The petitioner claims to have played a leading or critical role for the *International Journal of Nematology*. Even assuming that the journal has a distinguished reputation, we cannot conclude that every member of the 25-member editorial board plays a leading or critical role for the journal as a whole.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a nematologist 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 indicates that the petitioner shows talent as a nematologist, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established 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.