

U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, N.W.
Washington, DC 20536



File:  Office: California Service Center

Date: **NOV 18 2003**

IN RE: Petitioner:
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:



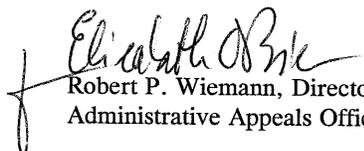
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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.

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 CIS 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 he 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 scientist. 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 submits evidence that he received a Universitywide AIDS Research Program (UARP) grant from the University of California at San Francisco (UCSF) to study the design of zinc fingers to inhibit the Rev-RRE interaction. In addition, the petitioner received a Guanghua Graduate Fellowship from the Guanghua Education Funding Committee in 1992 and 1993. In response to the director's request for additional documentation, the petitioner submitted additional information about UARP grants. The grants are research grants available to researchers at nonprofit research institutions in California. In addition, Shuyu Chen, a professor of Chemistry at the University of Science and Technology of China, asserts that the Guanghua Scholarship honors students "with outstanding academic performance."

The director concluded that the research awards were designed to fund future research, not to honor or recognize past achievements and that the fellowships were local and based on academic achievements. On appeal, the petitioner argues that the regulations do not specifically preclude academic or research awards. The petitioner further asserts that peer review panels decide the UARP research grants and that the fellowships are based on past achievements.

The regulation requires that the awards be nationally or internationally recognized. The evidence submitted to meet each criterion must be evaluated as to whether it is indicative of or at least consistent with national or international acclaim.

We concur with the director that 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, a research grant is principally designed to fund future research, and not to honor or recognize past achievement.

In addition, academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships, fellowships and student awards cannot be considered prizes or awards in the petitioner's field of endeavor. Moreover, competition for scholarships and academic fellowships is limited to other students. Experienced experts in the field are not seeking scholarships or academic fellowships. Thus, the fellowships cannot establish that a petitioner is one of the very few at the top of his field.

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 International Union of Pure and Applied Chemistry (IUPAC), the American Chemical Society (ACS), the Protein Society, and the Federation of American Societies for Experimental Biology (FASEB). In response to the

director's request for additional documentation relating to the membership requirements for these associations, the petitioner submitted a letter from Dr. Robert W. Newburgh, the Executive Officer for the Protein Society, stating:

In order to become a member it is necessary to provide evidence of significant contributions to protein science. I am pleased to confirm that you met these requirements as evidenced from publications and qualifications.

The Internet materials submitted, however, indicate that Protein Society membership is open to "scholars and researchers in the analysis, chemistry, folding, structure, function, and regulation of proteins." The materials further indicate that full membership requires an academic degree. In addition, membership in the Protein Society includes membership in FASEB. The petitioner also submitted evidence that ACS requires a degree in the field *or* significant achievements in the field. The materials for IUPAC do not reflect the organization's membership requirements.

The director concluded that the record did not establish that outstanding achievements were required for membership in any of the above associations. On appeal, the petitioner references Dr. Newburgh's letter. Dr. Newburgh does not identify any specific achievements required for membership other than publications. As will be discussed in more detail below, authoring a published article is not an outstanding achievement for a researcher. The Internet materials submitted by the petitioner reflect that the Protein Society requires no more than an academic degree. Obtaining a degree in one's field is not an outstanding achievement. In light of the above, the record does not reflect that the above organizations require outstanding achievements of their general membership.¹

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 petitioner relied on citations of his published articles as evidence to meet this criterion. Initially, he submitted evidence that three of his articles had been cited once, twice and four times by independent researchers. In response to the director's request for additional documentation, the petitioner submitted eight review articles that cite his work. In these articles, the petitioner's article was one citation of between 12 and 280 citations. Even in the articles with as few as 12 cites, the petitioner's work was cited as support of only one or two sentences in a multiple page article.

The director concluded that the citations were not "about" the work they cited. On appeal, the petitioner asserts that his work has been cited in reviews published in the top scientific journals and that the authors of the review articles find his work to be useful.

¹ The website for IUPAC, www.iupac.org, indicates that IUPAC is an association for countries. Individuals can join as affiliate members. The downloaded application for affiliate membership appears to require nothing other than the dues associated with the applicant's age category.

We concur with the director. Non-review articles which cite the petitioner's work are primarily about the author's own work, not the petitioner. Review articles reporting original results in several areas are primarily about new directions in the field generally, and not specifically the work of one researcher or research group. As such, they cannot be considered published material about the petitioner and cannot meet the plain language requirements of this criterion.

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.

The petitioner submitted two e-mail notices reviewing articles for the American Chemistry Society. Dr. Sidney Hecht, the petitioner's supervisor, is listed as the editor for both articles. The petitioner also submitted e-mail requests to edit articles from Carolyn Esau at the University of Virginia where the petitioner obtained his Ph.D. The director concluded that the petitioner met this criterion. We disagree.

The record suggests that the journals requested reviews from faculty at the University of Virginia who then assigned the duty to the petitioner. Being requested to review an article by one's own professor is not evidence of national or international acclaim. Moreover, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys sustained national or international acclaim. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner meets this criterion. Significantly, several of the petitioner's references serve on the editorial boards of top journals, suggesting that the top of the petitioner's field is significantly higher than the level he has attained.

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

Dr. James Whitehead, president of Vector Lab, states that the company is a leading supplier of labeling/detection systems widely used to study cancers as they are necessary tools for biomedical and life science research. Dr. Whitehead asserts that since joining Vector Lab, the petitioner "initiated a project to create a new labeling/detection system by using his cutting edge technique of incorporating unnatural amino acid acids and the new concept of super molecular chemistry." While Dr. Whitehead asserts that the project could not be completed without the petitioner's participation, he does not state that the petitioner has already completed a contribution of major significance while working at Vector Lab.

Dr. Alan Frankel, the petitioner's postdoctoral research advisor at UCSF, discusses the petitioner's work with the HIV virus. The petitioner worked towards developing zinc fingers that bind to an RNA site called RRE. The RRE site is vital to HIV viral replication. Thus, zinc fingers that bind to that site would inhibit replication. According to Dr. Frankel, the petitioner "cleverly designed a set of combinatorial zinc finger libraries, expressed them in bacteria, and used

them in a genetic reporter screen to identify particularly tight RRE binders, as well as those with altered RNA-binding specificities, a holy grail in the field of RNA-protein recognition.” Dr. Frankel continues, however, that the petitioner “will be” a key author on the publications reporting these results, suggesting that the results had yet to be peer-reviewed and disseminated to the field. Thus, as of the date of filing, this work had not yet been recognized in the field as a contribution of major significance nor had it garnered the petitioner any national or international acclaim.

Dr. Sidney M. Hecht, a professor at the University of Virginia, discusses the petitioner’s work at that institution. Dr. Hecht explains that his laboratory was “the first to develop a general methodology for the elaboration of misacylated tRNAs which was extended later into a general technique to incorporate unnatural amino acids into proteins.” Dr. Hecht does not assert that the petitioner was involved in this development. Dr. Hecht further explains the importance of cleavage reagents that can cleave proteins at predetermined sites. Dr. Hecht asserts that the petitioner “developed a novel strategy, which, for the first time, permitted site-specific cleavage of proteins by using a simple chemical treatment.” According to Dr. Hecht, the petitioner then expanded on this work, discovering “that the unnatural amino acid allylglycine can be used as a molecular trigger to ‘turn on’ or ‘turn off’ enzyme function in a controllable manner.” Dr. Hecht asserts that this work is original and that the petitioner is “recognized” for it. In addition, the petitioner developed a method to “prepare” newly discovered amino acids carried by aminoacyl-tRNAs, a key intermediary in protein biosynthesis. The petitioner also provided insight into how firefly luciferase produces light from chemical energy and helped develop a methodology for site-specific incorporation of carbohydrate moieties into proteins. Finally, the petitioner “initiated a project which eventually led to a new strategy to kinetically study NDA cleavage mediated by Fe(ii)-bleomycins.”

The petitioner has also claimed that the application to patent the technique he developed at the University of Virginia is evidence to meet this criterion. This office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep’t. of Transp., supra*, at 221 n. 7. Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* The petitioner’s U.S. pending patent is assigned to the University of Virginia. Dr. Hecht does not indicate that the university has licensed or marketed the petitioner’s technique. Thus, the impact of the technique is not documented in the record.

The petitioner also submitted letters from other professors at the University of Virginia, UCSF, members of his thesis committee, and former collaborators who provide similar information to that discussed above. They also assert generally that the petitioner’s work is useful and has far reaching implications. The reference letters are all from the petitioner’s collaborators and immediate circle of 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.

On appeal, the petitioner refers to exhibit 7 as evidence of his notoriety beyond his immediate circle of colleagues. Exhibit 7 includes the comments of the reviewers who recommended approval of the petitioner's UARP grant. The reviewers assert that the petitioner is "very productive and well-trained" and that the proposal is promising and "an excellent training vehicle." These comments, based on a review of a submitted application, do not demonstrate that the petitioner is recognized in the field as having made contributions of major significance. Moreover, those at the top of their field can be expected to have progressed beyond participating in a project deemed to be a "training vehicle" for their careers.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every published researcher who is working with a government grant has made a contribution of major significance. The record does not establish that the petitioner's work represented a groundbreaking advance in biochemistry.

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

The petitioner claimed to have authored 12 published articles as of the date of filing. The director concluded that the petitioner's publication history was not indicative of national or international acclaim. On appeal, the petitioner argues that the articles were published in top journals.

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 are 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 CIS'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.

The record contains evidence that no more than four independent experts have cited any one of the petitioner's articles. This number of citations is not evidence that the petitioner's work is widely cited.

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 UCSF and Vector Lab. The director concluded that while UCSF and Vector Lab may have distinguished reputations, the petitioner had not established his leading or critical role for either one. On appeal, the petitioner argues that he is the lead

researcher on a UARP funded project at a top AIDS research institution. He notes that three scientists at UCSF are Nobel Laureates. The petitioner further reiterates his claim to play a critical role for Vector Lab and asserts for the first time that he also played a critical role at the University of Virginia.

As stated above, Dr. Whitehead asserts that the labeling/detection system on which the petitioner is working could not be completed without the petitioner's participation. The petitioner submitted promotional materials for Vector Lab discussing their innovative labeling and detection systems. In addition, the letters from the petitioner's academic and postdoctoral colleagues attest to the importance of his role on various projects at the University of Virginia and UCSF.

We have already considered the petitioner's alleged contributions to the field while working at the University of Virginia, UCSF and Vector Lab. The issue for this criterion is the nature of the petitioner's position itself, and whether it is indicative of national or international acclaim. While UCSF and the University may have distinguished reputations, we cannot conclude that every postdoctoral researcher who plays an important role in a distinguished university's laboratory plays a leading or critical role for the university as a whole.

Similarly, the petitioner has not established that every leading scientist at Vector Lab plays a critical role for the company beyond the obvious necessity of having competent researchers at a private research company. Vector Lab is in the business of developing and marketing labeling and detection systems. We cannot conclude that every scientist developing new products at the company plays a leading or critical role for the company above and beyond his or her colleagues. Moreover, the promotional materials prepared by Vector Lab itself cannot establish its national reputation. The record contains no media coverage of Vector Lab or its products or other objective evidence indicating that it has a distinguished reputation nationwide.

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 scientist 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 scientist, 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.