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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

**B2**



File:



Office: Nebraska Service Center

Date:

**OCT 23 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, Nebraska 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 she 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 researcher. 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, she 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.*

At no time did the petitioner claim to meet this criterion. The director noted that the petitioner's fellowships and scholarships are not evidence to meet this criterion as academic study is not a field of endeavor and the most experienced experts in the field do not compete for scholarships and postdoctoral fellowships. Counsel does not challenge this conclusion on appeal and we concur with the director's analysis and conclusion.

*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.*

Initially, the petitioner submitted what counsel describes as "published material citing Petitioner's work." The evidence reflects that nine of the petitioner's articles have been cited at least once, with most cited by no more than three or four independent researchers. The most citations for any article is 20, at least three of which are self-citations. The petitioner also submitted a commentary in *The Journal of Nuclear Medicine* reflecting on the petitioner's research published in that issue. In his request for additional documentation, the director stated that citations are not evidence "commensurate" with sustained national or international acclaim.

In response, the petitioner submitted a letter from Dr. Martin P. Sandler, Editor-in-Chief of *The Journal of Nuclear Medicine* asserting that only a small percentage of the 200 articles published annually (26 in 2001) are accompanied by an invited commentary. Dr. Sandler continues: "This is done only with manuscripts that received the highest ranking during the peer-review process in the following categories: scientific merit, presentation, contribution to the field, and whether it represents groundbreaking work that will be of utmost interest to *JNM* readers."

The director concluded that while citations may be sufficient, the petitioner's articles have not been cited to an unusual degree. While we agree that the petitioner's citation history is moderate at best, we question the director's implication that typical citations can serve to meet this criterion if extensive. 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. That said, the invited commentary in *JNM* is not a typical citation. It is a one and a half page article devoted entirely to the petitioner's work. We note that the commentary appeared in the same issue as the petitioner's article and would not cause anyone without access to the petitioner's article to know of her work. Moreover, major breakthroughs in cancer research are frequently reported in the general media. Even if we conclude that the commentary is minimal evidence sufficient to meet this criterion, however, for the reasons above and below we cannot conclude that the petitioner meets two other criteria.

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

Dr. Ralf Janknecht, an assistant professor at the Mayo Clinic, discusses the petitioner's work with Ewing's sarcoma, a gene related to tumor formation that has received little study. Dr. Janknecht asserts that the petitioner "has started to develop a mouse model, in which the EWS gene will be destroyed." Dr. Janknecht concludes that the mouse model "is of the utmost difficulty, which I would entrust only to the most skillful, competent and knowledgeable scientist to conduct." Dr. Janknecht does not identify a specific contribution made by the petitioner at the Mayo Clinic that was already recognized as a contribution of major significance by the field as of the date of filing.

Dr. Samuel Augustine, an associate professor at the University of Nebraska Medical Center (UNMC), discusses his collaboration with the petitioner at that center. At UNMC, the petitioner's research focused on radiolabeled antibodies, specifically monoclonal antibodies (MAb). As background information, Dr. Augustine explains the limitations of radioimmunotherapy, including "slow clearance from the blood, poor diffusion from the vascular circulation to the tumor, and the potential for patients to develop an immune response." Radioimmunotherapy also has had limited success in penetrating solid tumors. Dr. Augustine asserts that newly developed single chain antibody fragments (scFvs) could "circumvent these problems." More specifically, Dr. Augustine suggests that engineered fragments of MAbs may overcome the limitations of radioimmunotherapy in penetrating solid tumors. According to Dr. Augustine, the petitioner contributed to this area of cancer research by researching divalent and trivalent scFvs fragments of tumor specific MAb CC49 on mice with colon tumors. Dr. Augustine states that the petitioner's "work to develop the tetravalent molecule increased its tumor localization to three times that of the divalent form." Dr. August concludes that this study "holds promise for the translation of the tetravalent form into clinical use."

Other professors at UNMC and Dr. David Colcher, a fellow at Corix Corporation who is listed as a co-author on the petitioner's published articles, provide similar assessments of the petitioner's work on MAbs. Dr. Surinder Batra credits the petitioner's data and publication support for the renewal of his own research grant from the U.S. Department of Energy.

The petitioner also provided a letter from Dr. Syed Kashmiri, Group Leader at the Laboratory of Tumor Immunology and Biology, Center for Cancer Research, National Cancer Institute, National Institutes of Health (NIH). Dr. Kashmiri also authored the invited commentary on the petitioner's article published in *JNM*. In his letter, Dr. Kashmiri asserts that the petitioner "has demonstrated that genetically engineered antibody fragments are the carriers of choice for radioisotopic-mediated imaging and therapy of human solid tumors" and that her development of multivalent scFvs "have opened up new avenues for radiation-mediated treatment of human cancers." More specifically, he states that "she developed a safe and efficacious method for generating large amounts of clinical grade purified antibody fragments for diagnostic and therapeutic application." Subsequently, however, he states: "She demonstrated, by preclinical studies, that radiolabeled scFvs are superior to the intact antibodies for tumor therapy and tumor imaging. Her work has set the stage for further research by other investigators."

In his published commentary, however, Dr. Kashmiri notes several other studies involving multivalent antibodies. While he points out that prior to the petitioner's study there was skepticism regarding the stability of radiolabeled scFvs, he notes several studies where scFvs were used for radioimmunosciintigraphy. Dr. Kashmiri also notes in his published commentary: "The serum concentration tested [by the petitioner] is significantly lower than the physiologic concentration. Thus, the in vivo stability of the radioimmunoconjugates remains to be shown." Dr. Kashmiri concludes: "Lastly, one hopes that the preclinical studies will be corroborated by the clinical trials." While Dr. Kashmiri's initial statements in his letter are quite complimentary, his actual discussion of her work and his published commentary suggest that while the petitioner's work has promise, it is premature to conclude that her research represents a contribution of major significance.

Dr. Grish Varshney, Head of Cell Biology and Immunology at the Institute of Microbial Technology (IMT) in India, discusses the petitioner's doctoral research. At IMT, the petitioner developed a "unique strategy" to generate antibodies against a group of parasitic diseases known as Leishmaniasis. Dr. Varshney discusses the limitations of conventional methods of generating antibodies from whole parasites, and asserts that "the antigens identified by [the petitioner] can have significant potential in diagnosis, vaccine development and in clinical and epidemiological studies." Dr. Varshney does not provide examples of how the diagnosis or treatment of Leishmaniasis has already changed due to the petitioner's work or provide examples of clinical trials using the petitioner's antigens.

The director concluded that the record lacked objective documentary evidence of the widespread acceptance and adoption of the petitioner's work in the field. On appeal, counsel references the statement from Dr. Augustine relating to the petitioner's authorship of review articles. Counsel further references Dr. Batra's statement that the petitioner's work has resulted in new studies by other researchers.

With the exception of the letter from Dr. Kashmiri, 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. Moreover, 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 stated by counsel, Dr. Augustine notes that the petitioner has authored review articles, asserting that such articles are usually requested from those who have significant contributions and experience in a field. The record, however, contains no evidence that the editorial board of the journals that published the review articles specifically requested that the petitioner personally prepare the review articles, or evidence of these boards' criteria for inviting review articles from specific individuals.

The record lacks evidence of clinical trials based on the petitioner's work, any preliminary results from those trials, and letters from those conducting the trials explaining the significance of the petitioner's research on their trials.

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 research, in order to be accepted for publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who is published or 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 cancer research.

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

The petitioner submitted evidence that she has authored several published articles. The petitioner also attests to having co-authored a book chapter. 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 petitioner submits evidence that her 2001 article in *JNM*, her 2001 article in *Clinical Cancer Research*, her 2001 article in *Teratogenesis Carcinogenesis and Mutagenesis*, and her 1999 article in *Parasitology Research*, have been cited once each. In addition, her 2000 article in *Cancer Research* has been cited five times (four times by independent researchers), her 2000 article in *Cancer Immunology Immunotherapy* has been cited five times (twice by independent researchers), her 2000 article in *Biochimica et Biophysica Acta* has been cited four times (twice by independent researchers), her 2000 article has been cited 10 times (four times by independent researchers), and her 1997 article in *Parasitology Research* has been cited four times (three times by independent researchers). Her article with the most citations as of the date of filing, her 1999 review article in the *Quarterly Journal of Nuclear Medicine*, has been cited 20 times. Of the first ten articles, seven are by independent researchers. The petitioner did not submit the list of the remaining 10 articles.

The director concluded that the petitioner met this criterion based on her authorship of a book article and her conference presentations. We note that the petitioner's citation history is moderate at best. While the editors of *JNM* invited a commentary on the petitioner's article in that journal,

the actual influence of the article could not be demonstrated as of the date of filing, when it had not been cited by a single researcher other than in the commentary that appeared in the same issue. Even if we concurred with the director on this criterion, the evidence falls far short of establishing that the petitioner meets a third criterion in addition to this one and 8 C.F.R. § 204.5(h)(3)(iii) relating to published material about the petitioner.

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

In response to the director's request for additional documentation, counsel asserts that the petitioner meets this criterion through her work at the Mayo Clinic. In a new letter, Dr. Janknecht asserts that the petitioner has been named as "key personnel" on his research grant.

The director concluded that the record did not distinguish the petitioner from others holding similar appointments or more senior staff. Counsel does not directly address this criterion on appeal.

All claims of contributions made in a given position have already been considered above. What is significant for this criterion is the nature of the position held. The record does not establish that the petitioner was already "key personnel" in Dr. Janknecht's laboratory at the time of filing. As such, it is not evidence of the petitioner's eligibility at that time. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Moreover, while the Mayo Clinic may have a distinguished reputation, we cannot conclude that every postdoctoral researcher who plays an important role in a distinguished clinic's laboratory plays a leading or critical role for the clinic 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 herself as a researcher to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a researcher, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.