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

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass., 3/F
425 I Street, N.W.
Washington, D.C. 20536

[Redacted]

File: WAC 02 232 50578 Office: California Service Center

Date: OCT 23 2003

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

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 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
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 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, filed on July 15, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a biomedical 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.

The petitioner submitted evidence of her receipt of a 2002 "Young Investigator Award" from the National Alliance for Research on Schizophrenia and Depression ("NARSAD"). A letter to the petitioner from Audra Moran, Director, Research Grants Program, NARSAD, states:

We selected 168 new Young Investigators this year. Additionally, we selected 14 Distinguished Investigators, and plan to award approximately 45-50 Independent Investigator awards in September. With our awardees from last year, this brings our total active researchers to 402, with over an additional 100 awardees still working on a NARSAD grant through a no-cost extension.

Also contained in the record is information about the three levels of "grant programs" offered by NARSAD:

Young Investigator Award: supports scientists at the advanced postdoctoral or assistant professor level. Awards are up to \$30,000/year...

Independent Investigator Award: supports scientists at the associate professor level. Awards are up to \$50,000/year...

Distinguished Investigator: supports scientists at the full professor level. Awards are up to \$100,000 for one year.

Of the three types of grants awarded by NARSAD, the Young Investigator Award offers the lowest level of funding and is presented to the greatest number of recipients (168 for 2002).

Additional information regarding the Young Investigator Award from NARSAD's website at www.narsad.org states: "Applicant must have an on-site mentor or senior collaborator who is an established investigator in areas relevant to schizophrenia, affective disorders or other serious mental illness."

According to the documentation presented, the receipt of a Young Investigator award does not reflect achievement at the very top of the petitioner's research field. Rather, it represents research funding for "promising investigators" who seek to further their advanced scientific training. We note here that more experienced scientists (such as associate professors and full professors) who have already completed their postdoctoral training are excluded from consideration to receive a Young Investigator award.

The petitioner also submitted documentation reflecting her receipt of postdoctoral research fellowship funding from The Ontario Mental Health Foundation (1998 to 2002). Two form letters from that foundation state that the petitioner was awarded her fellowship based on her "promise as a researcher." The two postdoctoral fellowship grants from The Ontario Mental Health Foundation limited

comparison of the petitioner to other postdoctoral researchers applying for those same grants, thus excluding the most eminent, established and experienced researchers in the field from consideration. Research fellowship grants are not national or international awards for excellence in one's field, but, rather financial support for ongoing research. The disbursement of such grants is a routine practice in the petitioner's field and therefore it would not elevate her to a level above almost all others in her field.

The visa classification sought by the petitioner is intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. The petitioner's "Young Investigator" award and postdoctoral fellowship funding were awarded not by outside nomination, demonstrating the field's regard for the petitioner's ability, but upon the petitioner's application to the organizations providing those grants. We find that the evidence presented fails to establish that the petitioner has earned recognition for excellence in her field at the national or international level.

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.

On appeal, the petitioner states: "I am a member of the Society for Neuroscience and Society for Women's Health Research." The petitioner submits evidence confirming her membership in these organizations.

The record contains a brief letter from Francine Johnson, Membership Department, Society for Neuroscience, stating:

This letter confirms that the petitioner is a Regular member in good standing with the Society for Neuroscience...

Our bylaws define Regular member as, "Any scientific worker residing in Canada, Mexico, or the United States who has done meritorious research relating to the neurosciences." Regular membership applicants are required to submit a current curriculum vitae and bibliography, and must be sponsored by two Regular or Emeritus members of the Society for Neurosciences. [The

petitioner] has met all of these requirements.

The record contains no copy of the bylaws for this Society or further information as to the criteria for determining what constitutes "meritorious research." Nor has it been established that the petitioner's admission to membership was evaluated by experts at the national or international level.

The petitioner states that because she is one of "the few female professionals in the Society for Neuroscience," she qualifies as a member of the Society for Women's Health Research.

The petitioner also states that she has "been invited to join the Society of Biological Psychiatry." The plain wording of this criterion, however, requires the petitioner to submit documentary proof of her individual membership. A solicitation to become a member would carry no evidentiary weight in this matter.

In sum, we find that the documentation presented does not establish that any of the above organizations require outstanding achievements of their members, as judged by recognized experts at the national or international level.

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 petitioner 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 would qualify as major media because of significant national distribution, unlike small local community papers.

On appeal, the petitioner asserts that citation of her publications by others in the field would satisfy this criterion. The petitioner submits evidence showing that her work has been referenced by others. However, review of the record shows this evidence to consist solely of published research papers that list the petitioner's co-authored papers as one of a number of cited references. It is the nature of research work to build upon work that has gone before. In some instances, prior work is expanded upon or supported. In other instances, prior work is superseded by the findings in current research work. In either case, the current researcher normally cites the work of the prior researchers. Clearly this is not the same thing as published material written about an individual's work in the field. This type of material does not discuss the merits of an individual's work, the individual's standing in the field, or any significant impact that his or her work has had on work in the field.

In this case, the petitioner has offered no evidence showing that she has been the subject of sustained major media coverage. Citations of the petitioner's work will be addressed under a separate 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.

In an occupation where “judging” the work of others is an inherent duty of the occupation, such as an instructor, teacher, or professor, simply performing one’s job related duties demonstrates competency, and is not evidence of national or international acclaim.¹ Instead, a petitioner must demonstrate that her sustained national or international acclaim resulted in her selection to serve as a judge of the work of others in her field. Similarly, the judging must be on a national or international level and involve other accomplished professionals in the research field.

The petitioner did not initially claim to satisfy this criterion. In response to the director’s request for evidence (“RFE”), the petitioner submitted two letters from editors of *Biochimica et Biophysica Acta*, the first thanking the petitioner for completing a review (dated September 2002) of a manuscript entitled “The G protein-coupled 5-HT1A receptor causes suppression of caspase-3 through MAPK and protein kinase C-alpha” and the second (dated December 4, 2002) requesting that she evaluate a revision of that same paper.

On appeal, the petitioner submits a letter (dated February 19, 2003) from a Managing Editor of *Biochimica et Biophysica Acta* confirming that the petitioner has provided the journal “with services as a skilled reviewer of a manuscript relating to a specialized area of biochemistry.” The petitioner’s review and reevaluation of the single manuscript cited above occurred subsequent to the petition’s filing date. See *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which CIS held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date.

Aside from the issue of the filing date, it is apparent to CIS that peer review of manuscripts is a routine element of the process by which articles are selected for publication in scholarly journals. Occasional participation in peer review of the petitioner’s kind does not demonstrate that she has earned sustained national or international acclaim at the very top of her field.

The petitioner also claims to have served as “a judge a few years ago in Canada.” A letter submitted in response to the director’s RFE from Dr. Qian Lee, Assistant Professor of Medicine and Biochemistry, University of Ottawa, states:

[The petitioner] helped to review several papers on which I am a major reviewer because I am a coordinator in the neuroscience network program, most reviewed papers need me to transfer [sic]. Then, she started to review many papers on her won. Her astute commends and dedicated work always appreciated greatly by Editorial Office [sic].

¹ This is true with all duties inherent to an occupation. For example, publication is inherent to researchers. Thus, the mere publication of scholarly articles would not demonstrate national acclaim. The petitioner must demonstrate that the articles have garnered national attention, for example, by being widely cited.

A letter submitted on appeal from Dr. Antoine Hakim, Professor of Neurology, University of Ottawa, states:

[The petitioner] is a qualified reviewer and judge [sic]. She has been selected as a judge to review other people's articles and research projects because her strong background in biological chemistry and neuroscience, her scientific criticize and brilliant thinking won her reputation to be a judge [sic]. Her astute commends and hard work always appreciated greatly by Editorial Offices [sic].

We note here that the final sentence in the passages cited above contain the same wording and typographical error ("commends" versus "comments"). We find it highly improbable that both Dr. Lee and Dr. Hakim independently formulated the exact same wording. It is acknowledged that these individuals have lent their support to this petition, but it remains that at least one of these individuals did not independently choose the wording of this part of his letter.

The record contains no contemporaneous first-hand documentation to support the claims of the petitioner's former colleagues from the University of Ottawa. Further, their letters offer no details of the petitioner's specific involvement such as identifying the papers she reviewed and indicating the dates of their completion. Vague statements from witnesses selected by the petitioner fail to satisfy the statutory demand for "extensive documentation" set forth in Section 203(b)(1)(A)(i) of the Act. Finally, it has not been shown how reviewing the "articles and research projects" of one's colleagues at the University of Ottawa constitutes judging the work of others at the national or international level.

Without evidence that sets the petitioner apart from others in her field, such as evidence that she 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. We find that the petitioner's evidence fails to demonstrate that she has judged the work of others at the national or international level or that she was selected as a judge based on her national or international reputation.

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 in support of the petition.

Dr. [REDACTED] Professor of Pharmacology, University of Antwerp, was the petitioner's Ph.D. program advisor. He states:

[The petitioner] was the first to demonstrate that neuronal cells release their classical transmitter (Noradrenaline) together with peptides from large dense cored vesicles, a finding of capital importance in the field of neurotransmission and which might, amongst others, also lead to new insights in the development of novel drugs for mental diseases.

Dr. [REDACTED] Professor of Cellular and Molecular Medicine, University of Ottawa, and the petitioner's former research supervisor, credits the petitioner with "successfully identifying DNA elements in serotonin 1A (5-HT1A) receptor gene, characterizing a novel protein that binds to the receptor element of 5-HT1A, and identifying a second DNA element for hormone response in 5-HT1A."

The fact that the petitioner was among the first to make these discoveries carries little weight in this matter. Of far greater significance is the importance to the field of the petitioner's discoveries. The petitioner has not provided sufficient evidence that her research, to date, has consistently attracted widespread attention from the greater scientific community. The petitioner must show not only that her discoveries are important to the institutions where she has worked, but throughout the neuroscience field.

Dr. [REDACTED] Professor, Department of Molecular Pharmacology and Toxicology, University of Southern California, is one of the petitioner's current research supervisors. She states:

During the past five months, [the petitioner] has contributed to the project of the regulation of the Monoamine Oxidase B gene. She has well exceeded my expectations and has made new findings [such as] successfully demonstrating that the signal from outside of cells could enhance Monoamine Oxidase B expression and successfully demonstrating that two proteins affect Monoamine Oxidase B activity.

These results [were] published in the *Journal of Biological Chemistry* last month.

Many of the individuals offering letters of support for the petitioner mention her authorship of articles published in scientific journals. The publication of one's findings, however, is an inherent duty of postdoctoral researchers. The petitioner's co-authorship of published articles may demonstrate that her research efforts yielded some useful and valid results; however, it is apparent that any article, in order to be accepted in a scientific journal for publication, must offer new and useful information to the pool of knowledge. It does not follow that every scientist whose scholarly research is accepted for publication has made a major contribution to her field. We will further address the petitioner's published works under a separate criterion.

We cannot ignore that many of the petitioner's witnesses, such as Drs. [REDACTED] appear to have earned considerably more prestige and authority in the scientific community. A simple comparison of their achievements with those of the petitioner shows that the petitioner has not yet amassed a record of accomplishment placing her at or near the top of her field. For example, their publication records far exceed that of the petitioner's and they hold positions of much greater responsibility.

Clearly, the petitioner's research supervisors have a high opinion of the petitioner and her work, as does Dr. [REDACTED] of the University of Oklahoma, who knows the petitioner from encounters at scientific conferences. The petitioner's findings, however, do not appear to have yet had a

measurable influence in the larger field. While numerous witnesses discuss the potential applications of these findings, there is no indication that these applications have yet been realized. The petitioner's work has added to the overall body of knowledge in her field, but this is the goal of all such research; the assertion that the petitioner's findings may eventually have practical applications would not elevate her to a level above almost all others in her field at the national or international level.

We therefore withdraw the director's finding that the petitioner's evidence satisfies this criterion. If the petitioner's work is not widely praised outside of her personal acquaintances and research institutions, then it cannot be concluded that she has earned sustained national or international acclaim for contributions of major significance in her field. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. While the witnesses have stated in general terms that the petitioner is a respected and highly skilled researcher, there is no consensus that the petitioner enjoys a national reputation in the United States or any other country. Rather, the petitioner appears to have earned a reputation mostly among her current and former colleagues. The absence of substantial independent testimony raises doubt as to the extent of the petitioner's acclaim.

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

The petitioner submits evidence of her published research articles. However, the very existence of published work by the petitioner 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 CIS's position that the publication of scholarly articles is not automatic evidence of sustained acclaim; we must consider the research community's reaction to those articles. When judging the influence and impact that the petitioner'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 petitioner's conclusions. Frequent citation by independent researchers would demonstrate more widespread interest in, and reliance on, the petitioner's work. In this case, the limited number of independent citations presented (less than ten over a research career spanning well over a decade) does not elevate the petitioner to a level above almost all other researchers in the neuroscience field.

The fundamental nature of this highly restrictive visa classification demands comparison between the petitioner and others in the field. The regulatory criteria describe types of evidence that the

petitioner may submit, but it does not follow that every researcher who has published the results of her work, or who has earned the respect of a handful of her 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 she 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 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 is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at the national or international level. 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.