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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

OCT 28 2003

File:  Office: Nebraska Service Center Date:

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: SELF-REPRESENTED

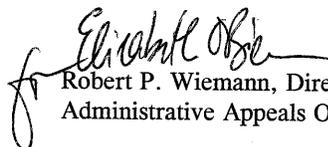
**INSTRUCTIONS:**

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. The director reaffirmed his initial decision on motion. The matter 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. In both decisions, 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 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, 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 initially asserted that he met this criterion based on his student ranking (first) in his Master's degree program, his admission to the Department of Science and Technology (DST) sponsored contact program, his admission to the Indian Institute of Science (IISc), the receipt of a research fellowship from the Council of Scientific and Industrial Research (CSIR), and his successful completion of the Graduate Aptitude Test in Engineering (GATE).

The petitioner submitted a certificate confirming his first ranking in the division of Organic Chemistry at Kakatiya University, 1991-1993. In a "testimonial," Professor P. Lingaiah asserts that the petitioner was ranked first among only 36 students based on his marks on the Master of Science examination. The petitioner also submitted a certificate from the University of Hyderabad confirming his participation in the DST sponsored contact program, 1992-1993. The petitioner did not submit any documentation regarding the significance of this program.

The petitioner asserted that admission to IISc is limited to the "first 15 rank holder students out of 20 nationwide universities." The materials relating to IISc indicate only that the Young Fellowship program is limited to the "first 20 rank holders at the + 2 level." The admission materials for IISc reflect that admission to the Organic Chemistry Department requires a score at or above the 92<sup>nd</sup> percentile on the GATE exam or qualification in one of two other entrance exams. The petitioner, however, scored only in the 83<sup>rd</sup> percentile. Thus, the petitioner's admission must have been based on a qualifying score on one of the other exams, or the standards have increased since the petitioner's admission. The petitioner submitted a letter from the Chairman of the Department of Organic Chemistry at IISc confirming that the petitioner received an Institute Scholarship in 1994 and Junior and Senior Research fellowships in 1996 from CSIR. The admission materials state: "The students are awarded scholarships from the date of their joining." The materials continue that the scholarships are renewable for five years in the case of doctoral students based on a "review of academic performance."

In his initial decision, the director concluded that academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships and student awards cannot be considered prizes or awards in the petitioner's field of endeavor. On motion, the petitioner reiterated the above awards, referring to his class ranking in his Master's program as a "gold medal." In his final decision, the director reaffirmed his initial decision. On appeal, the petitioner no longer argues that he meets this criterion.

We conclude with the director's conclusion and the reasoning behind it. We further note that competition for class ranking, entrance exams and scholarships is limited to other students. Experienced experts in the field are not seeking these benefits. Similarly, experienced experts do not compete for fellowships and competitive postdoctoral appointments. Thus, these accomplishments 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 initially submitted evidence of membership in the American Chemical Society (ACS) and materials indicating that ACS has more than 163,000 members "at all degree levels." The petitioner failed to submit evidence of the membership requirements for this association. In response to the director's request for additional evidence, the petitioner claims to have been "nominated to be a member of the International Union of Pure and Applied Chemistry (IUPAC)." The petitioner submitted a letter from Lucinda Kelly, Administrative Assistant for IUPAC acknowledging the petitioner's "participation in the Affiliate Membership Program for 2002-2003 through the American Chemical Society." The petitioner submitted materials about IUPAC that do not address the society's membership requirements.

The director initially concluded that the petitioner had not demonstrated that these organizations limit membership to those scientists with outstanding achievements in the field. The director further noted that the petitioner did not hold any special rank within the general membership and, thus, could not distinguish himself from other members.

On motion, the petitioner asserted that he is "significantly different from others" based on his membership in ACS and IUPAC, "the world's best largest scientific societies." The director reaffirmed his initial conclusion in his final decision. On appeal, the petitioner does not address this criterion.

The record does not reflect that these organizations require outstanding achievements of their general membership. We note that if they are, in fact, the "largest scientific societies" it appears unlikely that their membership requirements are exclusive.

*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 and in response to the director's request for additional documentation, as evidence to meet this criterion the petitioner referenced the articles that cite his own research. The record contains 28 articles that cite the petitioner's own articles, seven of which are review articles.

The director initially concluded that the record did not establish that the petitioner's work "has been relied upon and cited by other researchers to an unusually high degree." On motion, the petitioner notes that the citations appear in "open literature." In his final decision, the director affirms his reasoning. On appeal, the petitioner reiterates that his work was cited in "open literature" and often "as a detailed model to follow."

First, we cannot concur with the director's implication that typical citations can meet this criterion if extensive. Articles other than reviews 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. Further, the record does not support the petitioner's characterization of the citations of his work. The vast majority of citations are by other researchers reporting their own results and citing the petitioner's articles as examples of prior work in the area, or even for general propositions reported by the petitioner as background information for his own research. With one exception, the review articles report the petitioner's results as one of hundreds of other citations. The remaining review article cites 60 articles and devotes only a single sentence to the petitioner's work. Such articles, while about innovations in the field, report so many new findings that they cannot be said to be "about" the petitioner. Thus, the citations in the record do not meet the plain language 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 record contains a letter from Peter J. Sang, Editor-in-Chief of the *Journal of Organic Chemistry*, requesting that the petitioner complete a questionnaire regarding his area of expertise in order for the journal to be able to assign him appropriate articles to review. The petitioner also submitted similar letters from the *Journal of the American Chemical Society* and the Royal Society of Chemistry (RSC) in the United Kingdom. The letter from the RSC specifically references the petitioner's own inquiry into serving as a reviewer, suggesting that the society did not specifically solicit him as a reviewer.

The director stated that the record did not establish that the petitioner had reviewed an unusually large number of articles and that review is commonplace in the field. On motion, the petitioner argues that the number of reviewed articles is irrelevant as only the top scientists are requested to review articles at all. The director reaffirmed his previous conclusions in his final decision. On appeal, the petitioner reiterates that he has reviewed articles for four journals.

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.

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

Dr. A. Srikrishna, a professor at IISc, asserts that the petitioner performed "pioneering" work on the "development" of the cancer drug Taxol and the synthesis of complex compounds from natural products that have "commercial potency" in the pharmaceutical industry. In addition, according to Dr. Srikrishna, the petitioner "worked on the synthesis of [the] bronchial asthma drug[s] Salbutamol and Salmeterol" from commercially available and inexpensive starting materials. Dr. Marvin Miller, a professor at the University of Notre Dame, asserts that the petitioner "synthesized A-ring, C-ring and B-*seco* derivatives of Taxol." Dr. Haiqin Yuan, who worked with the petitioner in the U.S. and has no apparent first hand knowledge of the petitioner's work in India, asserts that the asthma drug project was in collaboration with Sumitra

Pharmaceuticals and that the petitioner's "process" is used in commercial operations. The record contains no confirmation from Sumitra Pharmaceuticals that they use the petitioner's synthesis process in the manufacture of asthma drugs.

Dr. Gary Sulikowski, a professor of chemistry at Texas A&M University, asserts that while the petitioner was a postdoctoral researcher at that university, he "developed methods for the glycosylation of amino acids and synthesized various constrained peptides and glycopeptides" in the laboratory of Professor Eric E. Simanek. The record does not include a letter from Professor Simanek detailing the petitioner's role in his laboratory. According to other references, glycopeptides are significant because they serve as the basis for antibiotics and cancer drugs.

Dr. Richard E. Taylor, an associate professor at the University of Notre Dame, discusses the petitioner's work in his laboratory. Specifically, Dr. Taylor states that the petitioner synthesized an analogue of epothilone, another anti-cancer agent, in six months. Dr. Taylor concedes, however, that the analogue was inactive *in vitro* and in cancer cell lines and that the petitioner has begun work on a second analogue. Dr. Marvin Miller, another professor at the University of Notre Dame, states that the petitioner has also determined confirmational assignments of the analogues by various NMR spectroscopies. Dr. Paul Helquist, another professor at the University of Notre Dame, provides similar information, asserting that epothilones are more effective against cancer than Taxol because cancer cells do not develop a resistance to epothilones.

According to Dr. Miller, the petitioner's research at the University of Notre Dame was a collaboration with Bristol-Myers Squibb. Dr. Gabriel M. Galvin, a scientist at Bristol-Myers Squibb, praises the petitioner's experience and skills but does not identify a specific contribution or explain how it constitutes a contribution of major significance. Dr. Galvin does not assert that Bristol-Myers Squibb has developed or marketed any drugs synthesized by the petitioner or even that such drugs are in clinical trials.

The record contains several other letters from the petitioner's professors, co-authors, colleagues and fellow students who provide similar information to that discussed above. Some of the language in the letters is nearly identical. Two of these references, Dr. Sambaiiah Thota and Dr. Azhwarsamy Jeganathan, assert that they know of the petitioner through his publications or met him at a conference. A review of their resumes, however, reveals that Dr. Jeganathan was a postdoctoral researcher at the University of Notre Dame under Professor Miller at the time he wrote his letter and Dr. Thota was a research associate at the University of Hyderabad while the petitioner was a graduate student there.

The director concluded that the subjective opinions of the petitioner's references were insufficient to establish that the petitioner's "contributions are recognized as having major significance to the field." On motion, the petitioner asserts that the acceptance of his articles for publication, the requests to review other articles, and his current job offers are objective evidence of his contributions. The director noted that the job offers were dated after the date of filing and reaffirmed his initial conclusion. On appeal, the petitioner references the comments of his references, discussed above.

The above 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. Moreover, while the petitioner's references provide their subjective opinion that the petitioner is a researcher with extraordinary ability, they fail to provide examples of how the petitioner's work has been recognized beyond his immediate circle of colleagues as a contribution of major significance. Specifically, the record contains no evidence that drugs synthesized by the petitioner have been successfully marketed or even that such drugs were in clinical trials at the date of filing.

Finally, 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. Job offers, even at distinguished research institutions, are not evidence of national or international acclaim.

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 graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who obtains a Ph.D. is published, or is working with a government grant is one of the very few at the top of his field. 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 initially submitted evidence that he has authored 16 published articles. The director concluded that the petitioner had met this criterion. We find further discussion is warranted. 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 28 independent experts have cited the petitioner's work, with no one article receiving more than seven citations. Notwithstanding the petitioner's assertions to the contrary, we do not find that this number of citations is evidence that the petitioner's work is widely cited.

*Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*

The petitioner initially relied on his oral and poster presentations at scientific conferences to meet this criterion. The director concluded that this criterion is not applicable to the petitioner's field. On motion, the petitioner purports to be confused by the director's conclusion that this criterion relates to the visual arts, noting that he has presented his work at "national and international conferences, symposiums and exhibitions." The director reaffirms his reasoning in his final decision. On appeal, the petitioner does not discuss this criterion and we concur with the director that this criterion is not applicable to the petitioner's field. Further, we find that oral and poster presentations at scientific presentations are not comparable evidence that might serve to meet this criterion. As stated by the director, such presentations are best considered as comparable to scholarly articles and evaluated as such.

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

The petitioner initially claimed to have played a leading or critical role for the University of Notre Dame and the Indian Institute of Science (IISc).

The director concluded that this criterion applies to the performing arts and that the record did not contain comparable evidence to meet this criterion. The petitioner did not address this criterion on motion or on appeal.

We do not agree with the director that this criterion only applies to the performing arts. Nevertheless, we concur that the petitioner does not meet this criterion. While Notre Dame University and Texas A&M 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.

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

The petitioner initially asserted that his NIH fellowship at the University of Notre Dame, his Welsh Foundation fellowship at Texas A&M University, and his CSIR fellowship serve to meet this criterion.

The petitioner submitted a letter from James Powell, Associate Dean of the University of Notre Dame, offering the petitioner a postdoctoral research position from August 7, 2000 through August 6, 2001 with a stipend of \$25,000 and another letter from Mr. Powell offering to extend that position through November 1, 2001 with a stipend of \$6,276. A letter from Dr. Taylor extends that appointment through December 31, 2002 for a salary of \$28,000.

In addition, the petitioner submitted a statement of earnings reflecting that Texas A&M University paid the petitioner \$2,000 on each of the following dates: November 1, 1999, December 1, 1999, and

January 3, 2000. This documentation cannot establish that the petitioner earns more than \$2,000 per month at Texas A&M University, which would amount to only \$24,000 per year.

Finally, the petitioner submitted the above-mentioned letter from Mr. Chandrasekaran, confirming that the petitioner's scholarships amounted to 2,200 rupees from August 1, 1994 to July 31, 1996 and 2,700 rupees from August 1, 1996 to August 1, 1999. The promotional materials for IISc, however, reflect that 1999 scholarships amounted to as much as 6,400 rupees.

The director concluded that the petitioner had not established that his salary was "high relative to other scientists in the field, whether engaged as tenured professors in academia or conducting research in behalf of private corporations." On motion, the petitioner reiterated his previous arguments. The petitioner also submitted job offers from Lexicon for \$85,000 per year and from CRL for \$80,000. The director concluded that these job offers were not evidence of the petitioner's eligibility as of the date of filing and reaffirmed his initial decision.

On appeal, the petitioner reiterates his previous arguments. It remains, the petitioner has not demonstrated what the most experienced experts in the field receive as compensation. The petitioner may not establish eligibility by comparing himself with other students or postdoctoral researchers. Moreover, the petitioner has not even established the high-end amount for postdoctoral stipends. Finally, as stated by the director, the petitioner's post-filing salary is not evidence of his eligibility as of the date of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Nor has the petitioner established that \$85,000 is a comparatively high salary including the most experienced experts in the field of research.

Finally, on motion, the petitioner referenced other petitions allegedly approved in this classification. The director concluded that those cases were not relevant to the instant petition. The petitioner does not raise this argument again on appeal. We concur with the director. Each petition must be adjudicated on a case-by-case basis. Whatever the facts in the other cases, we find that the evidence in the record before us does not support the petitioner's claim of eligibility for the classification sought.

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 researcher 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 researcher, 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.