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U.S. Citizenship and Immigration Services

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APR 07 2004

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Marie Johnson
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 pertinent regulations 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.

The petitioner seeks employment as a research scientist at D&A Tools and Environment, Inc. The petitioner states that he plans to research "non-traditional plants as nutritional supplements for the functional foods associated with the prevention and treatment of the leading causes of death in the country: infections, cancer, diabetes, cardiovascular disease, and hypertension." Counsel states:

> [The petitioner's] specialty is in research and commercialization of amaranth which is an agricultural crop that comprises 60 species of plants. More specifically, [the petitioner] has investigated the biochemical and biophysical properties of amaranth oil, dye, and some nutritional products from amaranth grains. He developed the technology to extract seed oils from four species of amaranths and established its physical and chemical characteristics. [The petitioner] also developed the technology of amaranth dye (Amaranthin) extraction.

In discussing the various uses of amaranth extracts, counsel states that amaranth plants contain significant amounts of the amino acid L-lysine, "an excellent herbal cure for herpes." Counsel cites no source for this

assertion, which conflicts with the common understanding that no cure exists for herpes infection (although some drugs can suppress outbreaks).

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 which, he claims, meets the following criteria.

> *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.*

A certificate in the record indicates that the petitioner "participated in activities of the Scientific Council of Botanical Gardens at Kazan State University from February 11, 1993 to August 15, 1997," during which time "he has reviewed six abstracts of dissertations." The certificate does not indicate how the review of the work of graduate students falls outside the routine duties of university faculty.

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

The petitioner submits six letters discussing elements of his work. David Brenner, former president of the Amaranth Institute, summarizes the petitioner's five chief contributions to amaranth research:

1) Extraction of amaranth seed oil and investigation of its pharmacological properties.
2) Developing a new technology of extraction of amaranth dye from inflorescences.
3) Investigation of pharmacological aspects of the water instant fraction of amaranth.
4) Silage of plain and combined amaranth foliage.
5) Amaranth as a nutritional supplement for modern human diets.

Mr. Brenner elaborates on the above, and states that the petitioner "is the world leader in the investigation of amaranth oil and its pharmacological properties." Other witness letters contain this exact phrase, or variations thereof with omitted words, although most of the witnesses claim no particular ties to the petitioner. The witnesses all discuss the five points listed above, with different emphases and in varying degrees of detail.

The director found that the petitioner's evidence is sufficient to satisfy this particular criterion, and upon consideration of the materials presented, we find the director's conclusion to be reasonable.

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

The petitioner claims to have written 33 published papers, as well as conference presentations. Counsel repeatedly refers to the petitioner's "presentations at scientific conferences" as though such presentations fall under a separate criterion, but the regulations at 8 C.F.R. § 204.5(h)(3) establish no distinct criterion for conference presentations. We consider such presentations to be akin to publication of scholarly articles, as they represent the dissemination of highly technical information to a specialized audience.

The petitioner submits copies of some, but not all, of his articles. Some of the submissions are in manuscript form, with no evidence of publication. Among the petitioner's claimed publications are student papers, again

with no evidence of publication. Of the published articles, some appeared in newsletters, which appear to be internal publications of specific organizations, rather than publications circulated throughout the field.

Some degree of publication is usually expected in academia, hence the familiar phrase "publish or perish." The petitioner has not shown how his published work stands out in a way that demonstrates sustained national or international acclaim. For instance, the petitioner has not demonstrated that other researchers have heavily cited his work, thereby establishing its influence.

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. In response, the petitioner has submitted information regarding new articles, new conference presentations, and other developments which had not yet taken place as of the petition's November 2002 filing date. The petitioner must already have been eligible at the time of filing; subsequent developments cannot confer eligibility on a previously ineligible alien. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). In any event, the petitioner has not shown that these new developments are intrinsically indicative of sustained national or international acclaim. The petitioner has amply shown that he is an expert in his field, but expertise and competence are not synonymous with sustained acclaim.

The director denied the petition, acknowledging that the petitioner has made original scientific contributions of major significance, but stating that the petitioner has submitted no objective evidence to meet any other regulatory criteria. By regulation, contributions alone cannot suffice to establish eligibility. The director also noted that, according to information provided by the petitioner himself on an immigration form dated October 2002, the petitioner has been unemployed since October 2001. The director stated that the petitioner's period of unemployment, lasting at least a year, does not readily suggest the heavy demand for the petitioner's services that would be expected of an alien of extraordinary ability.

There is no evidence that counsel participated in the preparation or submission of the appeal. On appeal, the petitioner states "at the end of 2001, I found a job at D&A, Tools and Environment Inc." and has worked there since that time, under contract until late 2005. The petitioner had earlier indicated that he had worked for this same employer from March 1999 to September 2001. On appeal, the petitioner does not mention this earlier employment, nor does he explain the one-year interruption. Employment is not evidence of sustained acclaim, and the fact that the petitioner had once again secured employment does not erase the director's concerns regarding the year of unemployment disclosed by the petitioner himself. Because section 203(b)(1)(A)(ii) of the Act, and 8 C.F.R. § 204.5(h)(5) both require a showing that the petitioner seeks to come to the United States to continue working in the field of claimed extraordinary ability, lengthy disruptions in the petitioner's work are of legitimate concern.

Adding to these concerns is a transcript from Christ for the Nations Institute, Dallas, Texas, submitted among various academic credentials offered on appeal. This transcript lists such courses as "Divine Guidance," "Lectures in Contemporary Theology," and "Acts of the Apostles." The petitioner studied at this institute from 1997 to 1998, a period of time during which he has, elsewhere, indicated that he was not employed. The petitioner does not explain how his theology studies relate to his claimed extraordinary ability as a researcher specializing in the study of amaranth. Even if this transcript is not evidence that the petitioner plans to pursue a career in the ministry, it adds nothing relevant to the petitioner's claim of extraordinary ability in the sciences.

In a lengthy appellate brief, the petitioner addresses several of the regulatory standards listed at 8 C.F.R. § 204.5(h)(3). The petitioner discusses his original contributions at length, although the director had

acknowledged that the petitioner has satisfied this criterion. Further discussion of the subject is, therefore, not necessary here.

The petitioner again lists his publications and presentations, and quotes from witness letters regarding the usefulness of these materials. The comments cited do not objectively demonstrate that the petitioner's published work has earned the petitioner sustained national or international acclaim.

Regarding work as a judge, the director determined that the petitioner's review of dissertation abstracts was consistent with university employment, rather than a sign that the petitioner is at the top of his field. The petitioner had, at the time of the director's decision, claimed no other activity as a judge of the work of others. On appeal, the petitioner lists several previously unclaimed activities which, he contends, amount to judging the work of others. Professor Eduard S. Sekoyan, vice president of the S.R. Institute of Spa Treatment and Physical Medicine of the Armenian Ministry of Health, states without elaboration that the petitioner "participates on a panel as well as individually as a judge of the work of others four research scientists in our Institute [sic]." It is not clear whether Prof. Sekoyan means that the petitioner, and the other four researchers at the institute, collectively represent a panel of judges, or rather, that the petitioner has judged the work of the other four researchers at the institute. The petitioner has not shown that this represents judging at a national or international level, rather than routine supervisory duties.

Professor Ischan M. Magomedov, general secretary of the European Amaranth Association, states that the petitioner "is a curator of amaranth research work in [the] Republic of Armenia and Tatarstan, Russia." The petitioner asserts that his work as a curator amounts to judging the work of others, but he does not explain how. An October 2003 letter from Professor Sinerik N. Ayrapetyan indicates that the petitioner "has [been] elected as a member of [the] International Advisory Board of [the Life Sciences International Educational Center] and member of [the] Council of All-Armenian Research Foundation." Once again, there is no explanation of how this amounts to judging the work of others. Furthermore, there is no evidence that the petitioner held the positions listed by Prof. Ayrapetyan as of the petition's November 2002 filing date. The petitioner's prior submissions make no mention of them.

The petitioner claims to have satisfied a previously unclaimed criterion:

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The petitioner lists various letters and certificates in the record. Some of these letters do not appear to relate to associations in the field at all. The petitioner has not shown that any of the associations require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. Professional experience, recommendation letters, and university degrees are not outstanding achievements.

Taken as a whole, the record establishes that the petitioner has made significant contributions in the study of amaranth and its useful properties, but the record does not persuasively demonstrate that the petitioner has earned sustained acclaim, at a national or international level, at the very top of his field. We note also that the study of amaranth is not a self-contained "field," but rather a specialized area of study within a larger field. To call the study of amaranth its own "field" is to define the term "field" so narrowly as to arbitrarily exclude the great majority of individuals with similar training to the petitioner.

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 an agricultural 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a 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.