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Citizenship and Immigration Services

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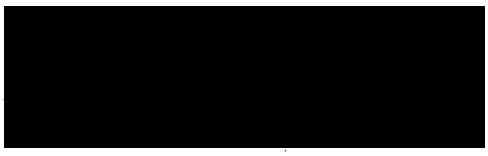

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JAN 27 2004

FILE: WAC 02 233 53181 Office: California 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:

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.

for Mari Johnson
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 (AAO) 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 seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized

award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

On appeal, counsel asserts that the regulation does not require that "each individual criteria [must] establish that the petitioner or applicant has reached the top of the particular field within that particular criteria." Counsel states he makes this point because the director's "apparent view is that the petitioner must establish that each individual criteria must be seen as proving achieved international acclaim." We agree with the director that the evidence submitted in support of each criterion must be indicative of national or international acclaim. Nothing in the record reflects that the director applied an incorrect or higher standard than required by the regulation in evaluating the petitioner's achievements under each of the regulatory criteria.

The director's decision states incorrectly that "[e]ven if an alien does fulfill at least 3 (or more) of the ten regulatory criteria, it does not necessarily establish that the alien has achieved sustained national or international acclaim and recognition." This statement of the director will be withdrawn. Clearly, if the petitioner satisfies three of the regulatory criteria, she will qualify for the visa classification. The director did not find, however, that the petitioner met at least three of the criteria, and his decision will be upheld.

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 two-year American Heart Association Western States Affiliate Postdoctoral Fellowship. As noted by the director, research fellowships are generally awarded to provide financial support for ongoing research and are not prizes or awards in recognition of past excellence in a particular field of endeavor. It is noted that petitioner's grant was a postdoctoral fellowship awarded by the Western States Affiliate of the American Heart Association, a regional award limited to research in California, Nevada, and Utah.[1] Thus the competition for the fellowship is limited to postdoctoral researchers and considerably narrows the field, eliminating those who have reached the pinnacle of the field from consideration. Further, the award is limited to the tri-state area, and does not appear to be a nationally or internationally recognized award for excellence in the field of endeavor.

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[1] See the American Heart Association website at www.americanheart.org.

> *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 to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media.

In his response to the director's request for evidence (RFE), counsel argues that the regulation does not require that published work "must primarily be 'about the petitioner or her work'" and that "[c]itations are by their very definition a direct reference to an alien's published work and precisely relate to the alien's work." As support, he cites a July 30, 1992 letter by then Acting Assistant Commissioner for Adjudications Lawrence Weining reprinted in Vol. 69, No. 32 *Interpreter Releases* 1037 (August 24, 1992). It is noted that the Weining letter generally discussed acceptable evidence under the regulatory criteria for outstanding professors and researchers, not for aliens of extraordinary ability. Furthermore, Mr. [redacted] did not specifically address acceptable forms of evidence for a similar criterion under the visa category for outstanding professors or researchers. The AAO has consistently held that this criterion is not satisfied by citations to a petitioner's work by others in the field. The plain language of the regulation requires that the published material be about the alien, relating to his or her work. Citations of the petitioner's work are the subject of a separate criterion.

It is the nature of research to build upon work that has gone before. In some instances, prior work is expanded upon or supported. In others, prior work is superseded by the findings of current research. In either case, the current researcher normally cites the work of prior researchers. Clearly citations are not the same thing as published material written *about* an individual's work in the field. Citations do 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 published material about her in satisfaction 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 director found that the petitioner had met this criterion. The AAO withdraws this finding of the director.

It is noted that although Dr. [redacted] in his January 15, 2003 letter states that he used the petitioner several times as a reviewer of papers published in the *Biophysical Journal*, the record does not contain independent evidence from the *Biophysical Journal* requesting the petitioner to perform editorial reviews, or evidence that she was selected by the *Biophysical Journal* because of her expertise in the field. It appears that Dr. [redacted] who indicated that he sits on the editorial board of the journal, selected the petitioner, who worked in his laboratory, to assist him in the editorial process. Peer review is an integral part of the scientific publication process; it does not follow that every person who is selected to review papers for publication is an extraordinary research scientist. Evidence submitted in support of this criterion must reflect that the alien was selected to perform reviews because of her expertise in the field. Further, because the statute requires extensive documentation, the AAO will look at the frequency and the regularity of invitations to perform peer review.

With her petition, the petitioner submitted evidence that she had been requested to review five papers over a six-year period, one of which was addressed to Dr. [redacted] who then passed it on to the petitioner to do the review. Occasional participation in the peer review process does not substantiate that the petitioner has earned such sustained national or international acclaim that her opinions and insight are regularly sought as a valued element of that process.

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

On appeal, counsel states the petitioner demonstrated she met this criterion by the "overall strength of her publications," the "quality and quantity of her considerable citation record" and "testimonial letters." It is an axiom of postdoctoral research that one must publish the results of his or her research. 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 his or her field. We will further address the petitioner's published works and her citation record under a separate criterion.

With her petition, the petitioner submitted letters of recommendation or reference attesting to the significance of her contributions to the scientific community. Dr. [redacted] Assistant Professor in the Department of Cell Biology MB21 at Scripps Research Institute, states the petitioner was involved in a project to understand, at the molecular level, structural details that relate to water transport property of the protein.

He writes:

> [The petitioner's] unique and most important contribution to the project and to the field is the discovery of a novel, in plane, pseudo 2-fold axis of symmetry within the aquaporin-1 molecule. By relating this symmetry with the tandem repeat in the amino acid sequence of the protein, a novel motif for the topology and design of membrane protein channels has emerged furnishing a simple and elegant solution to the problem of bi-directional transport across the bilayer. In addition, she also derived possible models for the threading of the aquaporin-1 polypeptide chain in the bilayer based on her observations, the symmetry and simple assumptions. The criteria she derived enabled the elimination of all (1440 in total) but the two preferred topology models, a remarkable reduction.

Dr. [redacted] Assistant Professor in Yale's Department of Molecular Biophysics and Biochemistry, writes:

> [The petitioner] has distinguished herself by solving the structure of the channel protein that allows water to freely pass the membranes of red blood cells. [The petitioner's] work provided the first picture of this important class of channel proteins and thereby made an important contribution towards understanding the mystery how water can cross water-repelling cell membranes.

Dr. [redacted] Principal Investigator with the Advanced Photon Source at the Argonne National Laboratory, writes that the petitioner's work on the impact of x-radiation on biological systems in a systematic way "has a significant bearing on radiation-related damage in cells and how radiation might compromise[] cell membrane integrity and culminate[] in cell death."

On appeal, counsel decries the director's "almost cavalier dismissal of these supporting letters" and finds it "disturbing when considering the reputation of the parties who wrote the letters." Far from a cavalier dismissal of the petitioner's supporting letters, the director merely points out that the letters submitted by the petitioner are from collaborators, co-workers or acquaintances and do not by themselves establish the petitioner's national or international acclaim. While it appears that the petitioner has made contributions to the field, the petitioner submitted no independent evidence beyond the letters written by those who have or have had a working relationship with her. While not without weight, the opinions of experts in the field cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition would carry 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.

The letters submitted in support of the petition do not indicate that the petitioner's findings have been adopted in the authors' own research, or state specifically how that research has made significant contributions. Furthermore, the petitioner's references do not establish her as one of the top research scientists. Dr. [redacted] Professor in the Department of Cell Biology, with whom the petitioner works, ranks her in the top 5% of *postdoctoral* scientists with whom he has worked. Dr. [redacted] compares her favorably with applicants for junior faculty positions at a major college or university. To qualify for visa preference based on extraordinary ability, the petitioner must show she is at the very top of her profession and not just of a discrete subsection of the field.

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 of publication of 14 articles that she co-authored in scientific journals of international circulation and prestige, including *Nature* and *Proceedings of the National Academy of Science*. As stated above, publication of one's findings is an inherent duty of postdoctoral researchers. However, publication alone is insufficient to establish the importance or influence of the published research. The frequency of citation to the articles by independent researchers would tend to demonstrate the interest in and reliance on the published research. Additionally, as noted by counsel, the status of the medium in which the published article is written and cited reflects the importance and influence of the published research. The petitioner's article in *Nature* had been cited over 130 times at the time of filing the petition. Further, other articles that she co-authored had been cited approximately 40 times, excluding self-citations. While noting that Dr. Unger puts her citation record "at par with the citation records of the cadre of scientists competing for junior faculty appointments at top ranking US universities such as Harvard or Yale," we find that the petitioner has met this criterion.

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

Counsel argues unpersuasively that the petitioner's appearances as a paid guest speaker at international conferences satisfy this criterion. The plain wording of the criterion indicates that it is intended for visual artists, such as painters or sculptors. The ten criteria in the regulation are designed to cover different areas, and not every criterion will apply to every occupation. As noted by the director, presentations at conferences are more comparable to scholarly publication as both serve to bring the results of one's research to the attention of

others in the field.

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

Counsel asserts that the petitioner meets this criterion based on her work at the Scripps Research Institute. The Scripps Research Institute is an internationally renowned bio-medical research institution and boasts three Nobel laureates. The petitioner must show she has a leading or critical role at this institution. The evidence presented by the petitioner shows that she played a significant role in one research project that led to a "breakthrough" article in *Nature*. However, a research project is not an organization or establishment within the meaning of the regulation. She is also one of several named scientists currently working on a project funded by the National Institute of Health. Similarly, working on a project funded by a distinguished research organization is not performing a leading role for an organization or establishment with a distinguished reputation. The petitioner does not head either project and has not shown that her work was crucial to the success of either project. No evidence of record establishes her as a leader within or for the Scripps Research Institute.

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 research scientist 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 research scientist, 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.