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U.S. Citizenship
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Services

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[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

JUN 16 2004

IN RE:

Petitioner:

[Redacted]

Beneficiary:

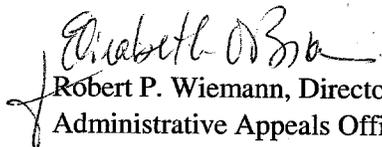
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The petition 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 has 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 October 6, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a pharmacology 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.

In his letter accompanying the petition, counsel states that evidence is included in five listed appendices. Counsel summarizes the evidence he stated to have been included in appendices A through C, including several letters written by pharmacological scientists in support of the petition, publications by the petitioner

and evidence of the petitioner's membership in associations. The record before the AAO contains none of the letters of endorsement indicated in counsel's letter. Counsel was given the opportunity to submit these missing documents. However, as of the date of this decision, the AAO has received no further evidence. Therefore, the record will be considered complete and the decision based on the record as presently constituted.

The record also contains four documents that appear to be scholarly articles, a document that appears to be from a symposium, and two documents that appear to be from print media. None of these documents are accompanied by an English translation as required by the regulation.¹ Other documents, such as those documenting the petitioner's educational achievements and an "Award of excellent article" are accompanied by translations that do not comply with the regulatory requirements in that the translator is not identified, did not certify that the translation was complete and accurate, or did not certify that he or she is competent to translate from the Chinese into English. As such, none of these documents have evidentiary value in these proceedings.

Counsel makes the unwarranted assertion that the director intentionally devalued the letters of recommendation and support written on behalf of the petitioner because the authors had Chinese surnames. As noted, the record does not contain all of the documents that counsel states are submitted as evidence. The director and the AAO must base their decisions on the evidence of record, and nothing in the director's decision implies that he placed less value on any evidence because of its source.

The evidence of record indicates the petitioner has submitted evidence that is meant to address 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.

As noted above, the record contains a document that indicates that in 1999, the petitioner received an award for an "excellent article" from the "Society of the Microbiology [REDACTED]". Also as noted above, the translation accompanying the document does not comply with the provisions of 8 C.F.R. § 103.2(b)(3) in that the translator is not identified, did not certify that the translation was complete and accurate, or did not certify that he or she is competent to translate from the Chinese into English. Further, the record reflects that the award is provincial in nature and not a nationally or internationally recognized award or prize for excellence in the field. The record does not reflect that the petitioner meets this 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.

¹ The regulation at 8 C.F.R. § 103.2(b)(3) requires that documents submitted in a foreign language "shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

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, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The record reflects that the petitioner is a member of the American Society for Microbiology (ASM). The record contains no evidence of the membership requirements of the organization; however, the society's website indicates that full membership is open to anyone interested in the ASM's objectives and has a minimum of a bachelor's degree or its equivalent in microbiology or a related field.² ASM does not require outstanding achievement as a prerequisite for membership in the organization. The record does not reflect that the petitioner meets this criterion.

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.

The record contains two documents that appear to be from print media. However, as they are not accompanied by an English translation, they have no evidentiary value.

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

In his cover letter accompanying the petition, counsel states that the petitioner has made contributions to the field through her research involving thymidylate kinase (TMPK), a "crucial enzyme in the pathway of the synthesis of the DNA precursor thymidine triphosphate." Counsel also states that the petitioner has invented a process, for which she has applied for a patent, to create a synthetic peptide that can be applied to immunotherapy as well as to "mimic the molecular design of IFN."

As evidence of this criterion, the petitioner apparently relies on letters of recommendation and support by others in the field. As noted previously, the record does not contain the nine letters counsel states were included with the petition. In response to the director's request for evidence (RFE) dated March 28, 2003, counsel submitted letters from four additional scientists in the field. It should be noted, however, that opinions of experts in the field, while not without weight, cannot form the only foundation of a successful claim. These letters attesting to the petitioner's achievements, prepared especially for inclusion with the petition for immigrant visa, must be substantiated by other verifiable and objective proof of the petitioner's achievements and acclaim. We note that the statute requires extensive documentation of extraordinary ability. If an alien enjoys a national or international reputation for extraordinary ability, she should be able to provide ample unsolicited evidence of such acclaim.

² See the ASM website at www.asm.org/joinrenew/index.asp.

██████████ an assistant professor in the Department of Surgery at ██████████ states that the petitioner's research "focuses on ways to solve some key problems of anti-HIV and anti-HBV drugs which are being used in clinical chemotherapy of AIDS . . . [Her] research indicated that overexpression of the recombinant human TMPK in the cells can enhance anti-HIV drug efficiency and decrease the cell toxicity." Although ██████████ states that the petitioner's work has been of "monumental importance," no other evidence in the record substantiates his assessment. ██████████ a biomedical research scientist at the National Eye Institute of the National Institutes of Health, states that the petitioner's discovery "should have strong implications in clinical applications for anti-HIV therapy."

██████████ a professor of neurobiology at the Washington University School of Medicine, Washington University Medical Center in St. Louis, MO, states that the petitioner's investigations are "important and significant for understanding the mechanism of anti-HIV and HBV and for improving the design and efficiency of anti-tumor drugs." However, all research is designed to progress understanding in the field. Merely aiding the understanding of the field, without more, does not constitute a contribution of major significance to the field.

██████████ an assistant professor in the Department of Radiology/Division of Nuclear Medicine at the University of Massachusetts Medical School, writes of the potential of the petitioner's research. He states that the petitioner was the "first to identify 6 proteins that showed great impact on TMPK expression and activity. Her findings could provide a linkage among TMPK, medial molecules and uncontrolled proliferation of tumor cells, which might provide valuable tools to inhibit or even kill tumor cells." Research that may prove to be valuable in the future does not satisfy this criterion, which requires the alien to have made a contribution of major significance to the field.

On appeal, counsel submits two additional letters of support. ██████████ a professor of molecular biophysics and biochemistry at Yale University, also writes of the potential of the petitioner's research, stating her work is "innovative and brilliantly executed, and it promises to significantly advance the understanding and treatment of cancer."

██████████ a professor of medicine and pharmacology at the Yale University School of Medicine, and director of the Department of Veterans Affairs Connecticut Cancer Center, states:

[The petitioner] has developed a number of innovative molecular biology techniques that she and other researchers around this country have been able to apply for studying the mechanisms by which antiviral compounds are activated. Thus far, her novel research has identified and characterized the enzyme thymidine kinase which plays the critical role in activation of various antiviral compounds already used in the clinic. Her work has identified in more detail the kinetics and catalytic properties of this enzyme and she has also recently shown that this enzyme can interact with a number of other cellular proteins, some of which may adversely impact on its function. Thus, her work appears to have broad implications for understanding mechanisms of action as well as mechanisms of resistance to these agents. Moreover, this research should yield new insights in the design and development of new antiviral agents directed against the hepatitis B virus as well as the HIV virus.

while enumerating the petitioner's successes in research, does not state that the achievements made by the petitioner have been of major significance to the field. He further appears to indicate that the potential of her work has yet to be realized. As noted above, this criterion requires that the petitioner establish that she has made a contribution of major significance to the field, and cannot be satisfied by an event yet to occur. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Counsel also states that the petitioner has two patents, one in the United States and one in China. However, no evidence of these patents appears in the record.

While it appears that the petitioner has made contributions to the field, none of the statements of her supporters is supported by independent evidence and none of them establish that the petitioner has made contributions of major significance to the field. The record does not establish that the petitioner meets this criterion.

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

The record contains three apparent articles that appear to have been published in scientific journals. None of the documents is accompanied by an English translation, although one has an English abstract attached. That document appears to have been published in the March 1998 edition of the *Chinese Journal of Virology*. The petitioner is listed as one of the co-authors of the document. However, the documents submitted lack evidentiary value, as they do not comply with the regulation requiring a full English translation of documents submitted in a foreign language. No other proof of publication of these articles in professional or major trade publications was submitted. On appeal, the petitioner also submits evidence that a paper she has co-authored has been submitted for publication to the American Association of Cancer Research. The evidence does not establish that the paper has been published. A paper submitted for publication, that does not have a publication date does not satisfy the requirements of this criterion. *See Matter of Katigbak, supra.*

The record does not contain evidence that the petitioner meets this criterion.

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 her field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as researcher to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner is a talented and skilled researcher, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.