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**U.S. Citizenship  
and Immigration  
Services**



FILE:



Office: NEBRASKA SERVICE CENTER

Date: **MAR 09 2004**

IN RE:

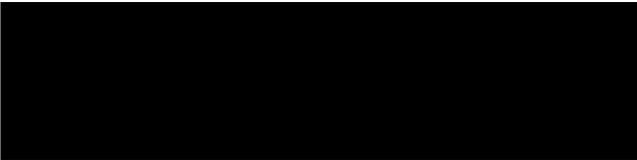
Petitioner:



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 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.

*Mari Johnson*  
for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska 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.

On appeal, the petitioner notes the following statement by the director:

Lacking a patent *or* the petitioner's receipt of significant recognition, it is difficult for [Citizenship and Immigration Service (CIS)] to conclude that the petitioner possesses the requisite national acclaim that is required for this classification.

(Emphasis added.) The petitioner asserts that she has since filed a patent application. If, by use of the conjunction "or," the director meant to imply that a patent is sufficient evidence of national acclaim without additional evidence of "recognition," we cannot concur with that implication. We note that this office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm. 1998). If a patent is not sufficient to establish eligibility for a lesser classification, the national interest waiver for aliens with exceptional ability or advanced degree professionals, it is certainly not evidence of national or international acclaim. Moreover, the petitioner's patent application was filed after the date of filing and cannot be considered evidence of her eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). While the petitioner makes few other arguments on appeal, we will consider all of the evidence submitted below.

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 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 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. 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 claimed to have received a postdoctoral fellowship and an award from the Chinese Natural Sciences Foundation. Dr. Guangmei Yan, Vice-President of Sun Yat-Sen University of Medical Sciences (SUMS), China, asserts that the petitioner worked at SUMS pursuant to a postdoctoral fellowship program that only accepts one percent of applicants. Dr. Hongya Gu, Head of the Postdoctoral Foundation of China and a professor at the Life Sciences Institute of Beijing University, asserts that the foundation grants four fellowships from approximately 10,000 "young scientists." Dr. Gu does not mention the petitioner by name.

Dr. Yan also asserts that the petitioner received an "academic grant" from the Chinese Natural Science Foundation in 1999 and an "excellence award" from the same foundation in 1996. Dr. Depi Liu, Director of the Chinese Natural Sciences Foundation, confirms that the petitioner received "an award" for signal pathways, the same subject Dr. Yan asserts resulted in an "academic grant." Dr. Liu further asserts that 10 of these awards are issued annually and result in a \$1,500 "bonus."

In response to the director's request for additional documentation, the petitioner submitted a letter from Dr. Chen Zhou, Vice Director of the Chinese Science and Technology Agency (CAST). Dr. Zhou asserts that the petitioner was one of two persons in the biomedicine field in South China selected to present her research at the 3<sup>rd</sup> Academic Conference of Young Scientists in China.

The director concluded that the awards were local. The petitioner does not specifically challenge this conclusion.

First, the petitioner has not submitted the awards themselves. Regarding the petitioner's fellowship, experienced experts do not compete for fellowships and competitive postdoctoral appointments. Thus, they cannot establish that a petitioner is one of the very few at the top of her field.

The letters are ambiguous as to whether the petitioner received a research grant, scholarship, award or all three from the Chinese Natural Sciences Foundation. 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. Moreover, competition for scholarships is limited to other students. Experienced experts in the field are not seeking scholarships.

If the petitioner merely received a research grant, such grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere.

Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement.

Assuming the petitioner received an award from the foundation, the record contains no evidence regarding the prestige of such awards in China. Specifically, the petitioner has not established that the award is one to which the most experienced experts in China aspire.

That the petitioner was selected to present her work at a regional conference for young scientists is not persuasive. As stated by the director, the petitioner does not appear to have competed nationally for this opportunity. Moreover, it was a conference for young scientists. Thus, the most experienced experts in China were not considered.

Finally, on appeal the petitioner submits a patent application she filed January 24, 2003, several months after she filed the petition. As stated above, we cannot consider accomplishments after the date of filing as evidence of the petitioner's eligibility as of that date. Moreover, the filing of a patent is not evidence that it has or will be approved. Regardless, patents are issued to the inventors of original processes or devices that are useful. No evaluation as to the significance of the invention is made.<sup>1</sup> It is a property right, not an award for excellence.

*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 submitted evidence that she is an associate member of the American Association for Cancer Research (AACR), a member of the American Society for Gene Therapy (ASGT), and a member of the American Association for the Advancement of Science (AAAS). According to the materials submitted, associate membership in AACR is open to graduate and medical students, residents and postdoctoral fellows. ASGT is open to "any person with a doctoral degree or its equivalent who has manifested an interest in gene therapy, as well as anyone with extensive experience in the practice or management in any discipline important to gene therapy." AAAS is "open to all."

In response to the director's request for additional evidence regarding the membership requirements for the above organizations, the petitioner submitted a new letter from Dr. Richard Duke of GlobeImmune, Inc. Dr. Duke states that AACR admits only distinguished individuals because members must have conducted two years of research resulting in peer-reviewed publications *or* who have made substantial contributions.

The director concluded that the above organizations do not require outstanding achievements of their general membership. The petitioner does not challenge this conclusion on appeal and we concur with the director. As stated above, the petitioner is only an associate member of AACR, a classification of membership open to graduate students. Regardless, a specific number of years of experience and published articles are not outstanding

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<sup>1</sup> While the U.S. requires that the invention be "useful," the Merriam-Webster Dictionary 759 (1974) defines "useful" as "capable of being put to use: advantageous." The same dictionary defines "excellence" as "the quality of being excellent," defined as "very good of its kind: first-class." *Id.* at 250. Thus, recognition of the development of a novel and useful process is not a competitive award for excellence in the field.

achievements. Regarding the membership requirements for ASGT, obtaining a degree is the normal and expected outcome of pursuing a course of study and is not an outstanding achievement in the field.

*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 petitioner submitted an article entitled "Yeast may hold key to AIDS vaccination" published in the *Rocky Mountain News*. The article reports an article published in *Nature Medicine* authored by scientists at GlobeImmune, the petitioner's employer. The article quotes Dr. Richard Duke but does not mention the petitioner by name. The petitioner also submitted an article entitled "GlobeImmune hits road to raise venture capital," published in *The Denver Business Journal*. This article also references the article in *Nature Medicine* by GlobeImmune employees. Once again, while the article quotes Dr. Duke and mentions Dr. Alex Franzusoff and Dr. Donald Bellgrau, the article does not mention the petitioner. The petitioner submitted similar articles in *New Scientist* and *Front Range Techbiz*.

In his request for additional documentation, the director noted that the above articles do not mention the petitioner by name. In response, the petitioner submitted a letter from Dr. Duke addressing that concern. Specifically, Dr. Duke states that it is "naïve" to assume that every critical researcher involved in a project will be mentioned by name in an article about that project. Dr. Duke further questions the director's concern that the article does not specifically identify the project as extraordinary or groundbreaking.

The director concluded that the petitioner had not submitted "published material in professional and/or worldly publications written by others that specifically identify [the petitioner] and her work as being extraordinarily innovative, groundbreaking, and significant." The director also concluded that references to the petitioner's work in footnotes of articles about other topics were insufficient.

The petitioner does not specifically address this criterion on appeal. While we concur with the director's ultimate conclusion, some of the director's phrasing is problematic. First, the published material need not appear in "worldly publications," the petitioner's acclaim need only be national. As such, published material in national publications is sufficient. Second, we agree with Dr. Duke that the published material need not specifically characterize the work as extraordinary; media attention in and of itself can be significant.<sup>2</sup>

Nevertheless, the articles submitted do not meet the plain language of the regulation. 8 C.F.R. § 204.5(h)(3)(iii) does not require material about the petitioner *or* her work, but rather material about the petitioner relating to her work. Thus, the published material must be about the petitioner. We cannot conclude that articles that do not mention the petitioner by name are about her. This requirement is consistent with the overall regulatory requirement that the evidence be indicative of national or international acclaim. An article that does not mention the petitioner by name cannot garner her any acclaim.

Moreover, the articles are not even about projects with which the petitioner was directly involved. The articles appear to be written in response to a peer-reviewed scientific article published in *Nature Medicine*. The article is

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<sup>2</sup> While not at issue in this case, however, we obviously could not consider derogatory published material as persuasive.

listed on the curriculum vitae of Dr. Duke and another of the petitioner's references.<sup>3</sup> The petitioner is not listed as a co-author of the article. Thus, we cannot consider the articles to be "about" the petitioner under any construction of the word. Moreover, they do not even appear to relate to her work in the field.

While the petitioner has never claimed that the professional articles that cite her work can serve to meet this criterion, we concur with the director that they cannot. Articles 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.

*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.*

Dr. Yan affirms that the petitioner served on the dissertation committees for two doctoral students at SUMS. The director concluded that the petitioner had not demonstrated that this service distinguishes her from others in the field.

The petitioner does not specifically address this concern and we concur with the director. According to her curriculum vitae, the petitioner not only worked as a fellow at SUMS, she also worked as an associate professor. It is inherent in the job of a professor to review the work of students. We cannot conclude that every professor who reviews graduate dissertations has national or international acclaim.

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

Dr. Richard Duke, Chairman of the Board and Chief Scientific Officer at GlobeImmune, discusses the petitioner's work at that company. Dr. Duke asserts that the petitioner is working to develop a vaccine for HIV and that this research is also applicable for developing vaccines to combat bioterrorism. Dr. Duke continues that the petitioner has "developed a novel Baker's yeast-based delivery vehicle which serves as our vaccine against HIV." Dr. Duke further asserts that the petitioner's process has proven effective in animals and that GlobeImmune has submitted a request to the U.S. Food and Drug Administration (FDA) to conduct clinical trials.

Dr. Donald Bellgrau, a professor at the University of Colorado Cancer Center and a founding scientist of GlobeImmune, provides general praise of the petitioner's work based on his collaboration with her. Dr. Alex J. Franzusoff, also a professor at the university and a founder of GlobeImmune, asserts that the petitioner's "efforts have been key to moving this ground-breaking vaccine technology forward." The record includes similar generalizations from other professors at the university.

The above letters are all from the petitioner's collaborators and immediate 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. Furthermore, none of these letters explain how the petitioner's work on yeast vaccine technology patented by others at GlobeImmune (U.S. Patent 5,830,463) constitutes a contribution of major significance. While we do not reject contributions resulting from

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<sup>3</sup> The article is also available for viewing on GlobeImmune's website.

collaborations with others in the field, we cannot conclude that the petitioner's contributions are of major significance simply because she is associated with a promising technology developed by others.

The petitioner also submitted a letter from Dr. J. Scott Cairns, Program Officer for the Targeted Interventions Branch of the Division of AIDS of the National Institute of Allergy and Infectious Disease, National Institutes of Health (NIH). Dr. Cairns asserts that he is acquainted with the petitioner's work at GlobeImmune where she is "leading" the research into the development of an AIDS vaccine. Dr. Zixu Mao, an assistant professor at Brown Medical School, asserts that the petitioner has "made significant progress in the research of finding a vaccine for this obtrusive disease that causes AIDS." He concludes that the petitioner's contributions in this area are "astounding." Neither Dr. Cairns nor Dr. Mao identify a specific contribution or explain how the field has already been changed by this contribution.

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. In this case, the unsolicited materials do not support the witness letters. Moreover, the record contains no evidence from high-level officials involved with the clinical trials of GlobeImmune's vaccine confirming the significance of the petitioner's personal contribution to the vaccine, and not merely the developments reported in *Nature Medicine* and GlobeImmune's U.S. Patent number 5,830,463,<sup>4</sup> neither of which list the petitioner as a co-author or co-inventor.

*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 that she has authored 17 published articles. 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 director concluded that the petitioner had not submitted evidence that set apart the petitioner's publication history from that of others in her field, noting the lack of evidence of editorial standards. We cannot concur. We are not convinced that the editorial standards for a particular journal are sufficient to demonstrate the influence of every article published in that journal. What is relevant is the amount of interest the alien's article has generated. In this case, the petitioner's citation history sufficiently demonstrates the interest her articles have generated.

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<sup>4</sup> GlobeImmune's website, [www.globeimmune.com](http://www.globeimmune.com), includes a section on its technology. This section focuses exclusively on the yeast vaccine technique reported in U.S. Patent 5,830,463.

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

In response to the director's request for additional documentation, the petitioner claims to have played a leading or critical role for SUMS and GlobeImmune. The director concluded that the petitioner had not demonstrated that she had significant responsibilities relative to other scientists at SUMS and GlobeImmune. The petitioner does not challenge this conclusion on appeal.

We concur with the director. We have already considered above the petitioner's claimed contributions to her field while working for SUMS and GlobeImmune. What is relevant in examining this criterion is the specific position the petitioner was hired to fill. While SUMS may have a distinguished reputation, we cannot conclude that every postdoctoral researcher and associate professor who plays an important role in a distinguished university's laboratory plays a leading or critical role for the university as a whole. We accept that GlobeImmune has a distinguished reputation nationally and acknowledge Dr. Duke's assertion that the petitioner's absence would result in a delay of the company's AIDS vaccine. Without evidence of GlobeImmune's organization and the nature of the petitioner's position at GlobeImmune, however, we cannot conclude that the petitioner has established that she played a leading or critical role for GlobeImmune.

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 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 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.