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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: **MAR 12 2004**

IN RE:

Petitioner:  
Beneficiary:

[REDACTED]

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.

*Mari Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

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*identifying data deleted to  
prevent disclosure of unwarranted  
invasion of personal privacy*

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. A subsequent motion to reopen was also denied by the director. 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 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 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 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.

As the director correctly pointed out, counsel did not specify which criteria he believed the petitioner had met and reference them to the particular evidence submitted. In a request for evidence (RFE) dated December 20, 2002, the director attempted to solicit from counsel specific evidence as it applied to each applicable criterion. In response, counsel merely expressed disbelief that Citizenship and Immigration Services (CIS) would question the extraordinary ability of a former associate professor with 36 publications in respected journals.

On appeal, counsel assails the adjudicator for failing to consider some of the evidence and for his or her alleged inability to apply the evidence to the law. On appeal, counsel for the first time asserts which evidence should be ascribed weight under which criterion.

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

On appeal, counsel does not allege that the petitioner meets this criterion. However, we note that both in the cover letter accompanying the petition and in his response to the RFE, counsel refers to the petitioner's "awards and honors." The director found that the petitioner did not meet this criterion, as the research grants to which counsel refers are not prizes or awards. The record reflects that in 1993, the petitioner received a research grant from the Sichuan Science and Technology Department to investigate the relationship between structure and property of paint at low temperatures. He also received a 1993 Certificate of Award from the College and University Education Center of China National Education Commission recognizing his "significant contributions" as an expert for the "university organic chemistry test question database program." Counsel asserts that to conclude that a research grant is not an award or prize is absurd. Nonetheless, regardless of the competitive nature of securing research funding, such grants are not prizes or awards within the meaning of this criterion. While grants take into account the achievement of the recipient in order to ensure the ongoing progress and successful outcome of the research, grants are not awards for particular achievement or success in the field. 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 is not an award to honor or recognize past achievement. As no evidence of a nationally or internationally recognized prize or award exists in the record, we concur with the director that the petitioner does not meet 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.*

In his response to the RFE, counsel submitted a copy of a membership certificate and letter from Sigma Xi attesting to the petitioner's full membership in that society effective in 2003, a certificate from the New York Academy of Sciences recognizing the petitioner as an active member, and a certificate from Sichuan University stating that the petitioner was a member of the academic committee of the university from 1993-1996. In his decision, the director noted that counsel submitted no evidence that membership in these associations was based on outstanding achievement as required by the regulation. The director further noted that the certificate from the New York Academy of Sciences bore no date of membership and the petitioner's membership in Sigma Xi became effective after the filing date of the petition. Citing *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), the director stated that even if membership in Sigma Xi met the regulatory requirements, since membership occurred after the filing date of the petition, it could not be used to qualify the petitioner for visa preference.

On motion, counsel again failed to provide the necessary documentation to establish that membership in these associations is based on outstanding achievement.<sup>1</sup> Counsel instead takes issue with two aspects of the director's determination.

First, he challenges the director's reliance on *Katigbak*, in that *Katigbak* involved the alien's qualifying as a member of the professions instead of as an alien of extraordinary ability, and that the *Katigbak* decision establishes an "archaic rule" for modern cases where adjudication of a Form I-140 petition often exceeds one year. While *Katigbak* did involve an application for visa preference classification as a member of the professions, the holding has also been applied to visa preference classification as a skilled worker (*Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977)), an intra-company transferee (*Matter of Michelin Tire Corporation*, 17 I&N Dec. 248 (Reg. Comm. 1978)), a relative (*Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981)), and an alien entrepreneur (*Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998)). The Board in *Bardouille* put it clearly: "The filing date is vital, since under long-standing federal regulations of both the Department of State and the Department of Justice the priority date for issuance of a preference immigrant visa is established by the filing date of an approved preference visa petition . . . Thus, were these petitions to be approved, the beneficiaries would be accorded priority dates as the petitioner's legitimated sons prior to the time they actually would have been legitimated. Such an anomaly cannot be countenanced." Quoting *Katigbak*, the Board further stated, "Congress did not intend that a petition that was properly deni[able] because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts. To do otherwise would make a farce of the preference system and priorities set up by statute and regulation." Thus, the length of time CIS takes to adjudicate a petition is not the issue; rather it is whether the petitioner meets the requirements for visa preference classification at the time of filing his or her petition.

Counsel next asserts that the petitioner's membership in these honorary societies constitutes recognition of previous achievements, "and as such are not qualifying factors, but rather proof that what happened previously was significant . . . The fact that this occurred after the filing date is insignificant . . . Recognition which occurs after the filing date certainly can and should be considered." Counsel's argument is not persuasive. This criterion requires that at the time of filing his petition for a visa preference classification, the petitioner was a member of an association that selected him as member based on his outstanding achievement. The petitioner has not established that he 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.*

In order to meet this criterion, published materials must be primarily about the petitioner and be printed in

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<sup>1</sup> The New York Academy of Sciences website indicates that membership is "open to all active professional scientists, physicians, engineers, students and other individuals who share the Academy's interests." [www.nyas.org](http://www.nyas.org). The Sigma Xi website indicates that membership is open to those who are nominated by any active dues paying member. Associate membership is conferred upon those who have demonstrated noteworthy achievements in research. Each year, the society initiates more than 5000 new members, and there are currently more than 70,000 members. [www.sigmaxi.org](http://www.sigmaxi.org). "Noteworthy achievements in research" does not equate to "outstanding achievements" as required by the regulation. The petitioner's membership in Sigma Xi does not qualify him for eligibility as an alien of extraordinary ability under this criterion.

professional or major trade publications or other major media. The plain language of the regulation requires that the published material be about the alien, relating to his or her work.

Counsel asserts that the petitioner meets this criterion based on the comments on his work in nine different scientific reviews. The record reflects that the petitioner's work has been highlighted in articles that reviewed research in a given area. The petitioner's work is cited as part of that research and is referenced along with others who contributed to the particular research under review. Attributions to the petitioner appear in endnotes to the published material along with all others whose work was reviewed. While such citations in review articles may be exemplary, none of the reviews are primarily about the petitioner or his work, and do not satisfy the requirements 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.*

Counsel submitted evidence that the petitioner reviewed one manuscript prior to its publication in the *Journal of Lanzhou University*, and received an invitation to review another for *Chemical Research*, although no evidence of that review appears in the record. 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 his 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. The evidence of record reflects that the petitioner has participated in the peer review process only once. Such occasional participation does not substantiate that the petitioner has earned such sustained national or international acclaim that his opinions and insight are regularly sought as a valued element of that process. The petitioner has not established that he meets this criterion.

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

As evidence that he meets this criterion, the petitioner relies upon his many letters of reference and recommendation, a patent, his publication record and the citations to his various articles, his presentations at international forums, and reviews of his research by others.

The petitioner's letters of reference, as counsel notes, speak in "glowing" terms of his achievements and contributions to the field of chemical research.

Dr. [REDACTED] Distinguished University Professor, Department of Chemistry, Ohio State University, writes of the petitioner:

His doctoral work . . . involved significant advances in the structural characterization and reactivity of planar chiral compounds . . . Thus, he found it possible to devise pathways that effectively led to the ultimate generation of a number of important ferrocenyl systems . . . In our department, he is expanding his expertise in heterocyclic chemistry by pursuing the synthesis of imidazopyridines, bisbenzimidazoles, and porphyrin analogs, which are anticipated to be important asymmetric catalysts, biochemical probes, and sensors. As seen in his publications, these accomplishments required [the petitioner] to use sophisticated laboratory techniques, advanced nuclear magnetic resonance spectroscopy, and mass spectrometry, as practiced

extensively in the very best pharmaceutical companies. The developments realized by him constitute a scientific first of some importance. The adaptations currently being made of [the petitioner's] work show that it is now possible to prepare these powerful classes of compounds with greater speed and precision than ever before. This could represent a boon to the U.S. pharmaceutical industry.

Dr. [REDACTED] Associate Professor, Departments of Chemistry and Biochemistry, Ohio State University, states:

[The petitioner] has taken on three projects, and in each case has made major breakthroughs that have pushed each project forward significantly. [His] first project was to synthesize a new class of chiral bis(benzimidazole) ligands for the preparation of asymmetric trans epoxidation catalysts. This work has been funded by the National Science Foundation because while such a catalyst would be useful in the synthesis of drugs and other pharmaceuticals for which no highly efficient catalyst has been obtained to date. [The petitioner] has succeeded in preparing the target ligands on a large scale, thus overcoming a major hurdle to this project.

The second project that [the petitioner] has undertaken is the preparation of ligands for the synthesis of a model of the nitrogenase FeMo-cofactor used in nature. While the current commercial process involves reactions at 550°C and 1000 atm, the FeMo-cofactor catalyzes the reduction of dinitrogen to ammonia at 37°C and 1 atm. Thus nature is dramatically better at performing this reaction. The preparation of a model of the FeMo-cofactor would be an important step in understanding the mechanism by which nature promotes this reaction.

The final project that [the petitioner] is working on is the synthesis of a new amino acid . . . Recently, my laboratory discovered a new amino acid that is incorporated into a protein. This amino acid had not been previously synthesized or isolated, and thus I assigned [the petitioner] to synthesize it. He recently succeeded in overcoming the major barrier to the synthesis of this amino acid, and is currently working to complete the final steps.

Dr. [REDACTED] Assistant Professor of Chemistry, University of Illinois at Chicago, writes:

[The petitioner] and I are sharing a common research interest in the study of asymmetric catalysis. [The petitioner] has made tremendous contributions to a variety of research topics in chemistry, ranging from natural products synthesis, materials synthesis, and synthetic methods development . . . I am familiar with[] the asymmetric catalysis.

[The petitioner's] research efforts are of immense benefit to our nation's scientific and medical communities. He is currently engaged in research efforts to develop synthetic anti-cancer drugs using chiral technology . . . Chiral technology, which is responsible for the synthesis of chiral drugs, is the subject of recent FDA regulations and has become very critical in drug development.

[The petitioner's] specific research impacts on the field as a whole. He has published his research in leading journals. These publications have been referred to by others in our field to

advance their research in developing anti-cancer drugs as well as in other areas of research. His novel asymmetric catalytic reactions are studied by other scientists and these methods and catalysts have wide applications in the anti-cancer drug development area. These new methods will enable drug manufacturers to bring drugs to the market more quickly, more efficiently and with less environmental waste than ever before. It is also thought that these methods will help contain costs associated with drug development.

His ability to produce solid results leading to important discoveries makes him an essential part of the research endeavors taking place in this field. His findings have been published in the best scientific journals, and used regularly by other scientists in the field. I am one of these who used his research methods and results in my research laboratory. Experts in the scientific community have commented on his research as "groundbreaking."

Dr. [REDACTED] Research Director at the Institut de Chimie des Substances Naturelles, Centre National de la Recherche Scientifique in France, writes:

[The petitioner's] track record includes the development of efficient and practical syntheses of bioactive natural product-like and drug-like heterocycles. The synthesis of oxazole has attracted great interest as a result of its presence in a number of bioactive marine natural products. However, none of the existing methods could satisfy the goal aimed at using oxazole as a scaffold-generating template in a diversity-oriented synthetic program. [The petitioner] was the first to report a multicomponent synthesis of 2,4,5-trisubstituted oxazole. His work allows the quick preparation from simple and readily available inputs, of highly functionalized compounds not easily accessed by other methods. The technology was soon recognized to be extremely valuable to produce drug-like compounds in a time- and cost-effective manner and have gained a special place in drug discovery paradigm.

[The petitioner] has also developed a new concept for the construction of macrocyclopeptides from simple and readily available starting materials. A large number of bioactive cyclopeptides and cyclodepsipeptides have been found in nature. Their reduced conformational flexibility, bioavailability, and metabolic stability make them important leads for drug discovery. With increased economical pressure on the pharmaceutical and agrochemical industries, [the petitioner's] methodology has highly practical and economical consequence [sic] in the discovery of new biologically active molecules.

Although the petitioner submitted other letters of support and recommendation, we quote these four authors at length, as they are the most specific when discussing the petitioner's achievements and contributions. As the director noted, opinions of experts in the field, while not without weight, cannot form the only foundation of a successful claim. These letters are prepared especially for inclusion with the petition for immigrant visa. We note that the statute requires extensive documentation of extraordinary ability. If an alien enjoys a national or international reputation for extraordinary ability, he should be able to provide ample unsolicited evidence of such acclaim.

While it appears that the petitioner has made contributions to the field, none of the statements of his supporters is supported by independent evidence (with the exception of the petitioner's publication record).

The record does not, for example, contain evidence from the pharmaceutical industry of the use to which it has put the petitioner's discoveries, or testimonials from those involved in researching anti-cancer drugs that attest to the impact that the petitioner's work has had on their own research. We note that with the exception of Dr. ██████ in whose lab the petitioner works, and Dr. ██████ none of the petitioner's supporters of record state affirmatively that they use the petitioner's research and methods in their own research. Dr. ██████ comments that he has used the petitioner's research methods and results but does not indicate how significant its use was to his own research projects and results. Dr. ██████ writes of the petitioner's breakthroughs that have pushed his projects forward, but both he and Dr. ██████ speak of the potential for the petitioner's research to contribute significantly to the field. A review of the citations to the petitioner's published articles does not reveal that any of the authors of his letters of support have cited the petitioner in his or her own research independent of working with the petitioner.

Citations to the petitioner's published articles, which will be discussed in a separate criterion, can be considered as evidence when evaluating whether the petitioner's work has made a significant contribution to the field. Simply listing the names of articles that cite to the petitioner's work is insufficient, however, to establish that he has had a major and positive impact on the field. No evidence of record indicates the degree to which that research relied favorably on the petitioner's prior findings. Additionally, as noted above, the reviews that reference the petitioner's work are overviews of the research in the areas analyzed by the authors. The reviews report the results of his research, along with the research of others, and indicate that the petitioner has made contributions to the field. These reviews do not establish that his work has made major contributions to the field as required by this criterion. The petitioner's work is not singled out as being more important than the other cited research, or that it constituted the scientific breakthrough that led to other advances in the areas under review.

As the director noted, the petitioner's presentations at various conferences and symposia, are, for purposes of evaluating his petition, akin to scholarly articles, and will be further addressed below. As with scholarly articles, such presentations may be evidence that a beneficiary has made a contribution to the field, but simply including the abstracts or the papers presented does not, in and of itself, indicate that the information imparted is a major contribution to the field. Not every researcher who is selected to give scientific presentations will qualify as an alien of extraordinary ability. The scientific community's reaction to the presentations would be the best evidence that the research presentations constituted contributions of major significance.

Although counsel states that the petitioner has an "important patent," no evidence of this patent exists in the record. Moreover, the United States Patent and Trademark Office grants over 100,000 patents a year. The simple grant of a patent does not signify that the petitioner has made an original contribution to his field of endeavor, or that if the invention was an original contribution, that it was one of major significance.

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

The director determined that the petitioner had met this criterion. The petitioner submitted evidence of publication of 35 articles that he co-authored in scientific journals of international circulation and prestige, including the *Journal of the American Chemical Society* and *Organometallics*. 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. The petitioner submitted evidence that others have frequently cited his work in the field. He also

submitted evidence that his work has been included as papers or abstracts at conferences internationally. We concur with the director that the petitioner meets this criterion.

*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 his degree and years of research, his publication record and record of presentations at international conferences and symposia, references to his work in review articles, his position as an associate professor at a "major" university, his membership in Sigma Xi and the New York Academy of Sciences, and his letters of reference. These assertions are without merit.

That the petitioner may have earned his doctoral degree and has been performing research for 20 years does not establish that he played a leading or critical role for any organization. Further, the fact that he was an assistant or associate professor at Sichuan University does not, in and of itself, establish that he played a leading or critical role there, and counsel submits no other evidence of his role at Sichuan University beyond the facts that he taught at the university and was the recipient of a research grant. The petitioner's research position at Ohio State University also does not, without more, satisfy this criterion. The evidence of record indicates that the petitioner is working on several research projects at Ohio State. However, a research project is not an organization or establishment within the meaning of the regulation. The petitioner is also one of several scientists currently working on a project funded by the National Science Foundation. 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. No evidence of record establishes the petitioner as a leader within or for Sichuan University or Ohio State University.

Counsel and several of the petitioner's supporters imply that if the "experts" say that the petitioner is at the top of his profession, then there is no other issue, and CIS must approve the visa petition. Dr. [REDACTED] Titular Professor of Organic Chemistry, University of Barcelona; Dr. [REDACTED] Institut für Organische Chemie der RWTH Aachen in Germany; and Alexander Dömling, Morphochem, in Germany all make the same statement: "Those of us in the field of Organic Chemistry are the best qualified to judge the work of our peers." They also state that the petitioner's "achievements are well-documented by his publications in the top journals. There is no question that he is at the top of his profession." Nonetheless, as with all opinions, expert opinions must be based on objective and verifiable facts. It appears that the opinions of the experts in this case rely primarily upon the petitioner's record of publications and the number of citations to those publications. We agree that the petitioner's publication record demonstrates extraordinary ability; however, his is just one criterion. The record does not contain sufficient specific objective evidence to support the conclusions of those "in the field of Organic Chemistry" that the petitioner meets three of the criteria and is an alien of extraordinary ability.

Counsel asserts that by failing to "defer" to the opinions of the "experts," the director violated the law. No legal precedent, regulation or statute requires CIS to abrogate its statutory obligation to make a determination that the alien is a person of extraordinary ability as evidenced by sustained national or international acclaim. Expert opinions are necessary to aid the adjudicator or any fact finder in understanding and evaluating the evidence that is presented; it is never used as a substitute for other objective evidence.

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 his field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a research scientist 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 research scientist, 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.