U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

PUBLIC COPY

identifying [illegible] deleted to prevent clearly unwarranted invasion of personal privacy

B2

U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 02 242 51782 Office: NEBRASKA SERVICE CENTER Date: MAR 17 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.

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. 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, particularly in the field of plant biochemistry. 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 submits evidence that he claims meets the following criteria.

> *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.*

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.

As evidence that he meets this criterion, the petitioner submitted a letter from the executive secretary of the American Society for Photobiology (ASP) certifying that he is a member of the society. In response to the director's request for evidence (RFE) dated February 3, 2003, counsel indicated that the petitioner was an "invited" member of the ASP. As evidence, she pointed to the letter from Dr. [redacted] Professor of Plant Biochemistry and Associate Department Head of Natural Resources and Environmental Science, at the University of Illinois at Urbana-Champaign. Dr [redacted] indicates that the petitioner's "many honors" included being an "invited member" of the ASP. Counsel also included a membership application from the ASP to verify its membership requirements. Contrary to counsel's suggestions, however, membership in the organization is not based on specific invitation. The application simply states, "Individuals interested in any aspect of photobiology are invited to become members of the ASP." The application requires that two members of the ASP sign the application, but requires no evidence of achievement as a prerequisite for membership.

The petitioner submitted a membership card showing that he is a member of the American Association for the Advancement of Science (AAAS). The petitioner stated that the AAAS is the "first multidisciplinary scientific society in the United States," and that its membership included "about 75 Nobel laureates." The petitioner submitted no other evidence about the AAAS and no evidence of the membership requirements for the organization. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

On appeal, counsel states that Dr [redacted] confirmed that membership in these organizations was an honor in the field and that they were by invitation. Given Dr. [redacted] credentials, counsel argues, his statements provided enough evidence to establish that membership in these organizations meets the requirements of this criterion. Counsel also argues that by "demanding the membership requirements," CIS has "reduced the petition process to that of a checklist procedure." These arguments are without merit. This criterion specifically requires that membership be based on outstanding achievement. The burden is on the petitioner to satisfactorily prove eligibility under the criterion. Dr [redacted] does not address the membership requirements of either organization, and does not state that he himself is a member of the organizations and is thus familiar with their membership requirements. Further, as noted above, the "invitation" to join the ASP is a general invitation to anyone interested in joining the organization.

The petitioner submitted letters from the International Biographical Centre (IBC), inviting him to take a seat as a "vice consul" of the IBC and notifying him of his selection for inclusion in a book entitled *2000 Outstanding Scientists of the 21st Century*. There is no evidence that the IBC is a scientific organization in the petitioner's field. Information contained at the bottom of the letters indicates that the IBC is not an organization at all but a symbol ("an imprint") used by a publishing company. Additionally, a biography of the petitioner in a book is not evidence of membership in an association.

The petitioner stated he was a past member of the Belarusian Society for Photobiology and Biophysics. However, he submitted no further information regarding that organization. He also stated that he has participated in the national meeting of the American Chemical Society, but does not state that he was a member of that organization. The petitioner submits no evidence to establish that he meets 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.

To establish that he meets this criterion, the petitioner submitted a letter from Dr. [redacted] Director of the Laboratory of Plant Biochemistry and Photobiology at the University of Illinois at Urbana-Champaign, and a member of the Editorial Board of the journal *Analytical Biochemistry*. Dr. [redacted] states that he selected the petitioner to "help with the review process of papers submitted to [Dr [redacted] attention." It appears that Dr [redacted] selected the petitioner, who worked in his laboratory, to assist him in the editorial process. The petitioner submitted no independent evidence that the *Analytical Biochemistry* invited him personally to review manuscripts based on his national or international reputation in the field. The journal's requests to review the manuscripts were made of Dr. [redacted] who in turn passed the manuscripts on to the petitioner for review. While such selection indicates that the petitioner is a respected member of his research team, it falls short of establishing that the petitioner enjoys national or international acclaim under this criterion.

The petitioner also submitted a copy of e-mail correspondence from the editor-in-chief of the journal *Plant Physiology and Biochemistry*, requesting his review of a manuscript prior to publication in the journal. Dr. [redacted] states that in his capacity as Associate Editor-in-Chief of the North American Office of *Plant Physiology and Biochemistry*, he has "frequently" asked the petitioner to review manuscripts for publication in the journal. Neither Dr [redacted] nor Dr. [redacted] state how often the petitioner performed reviews for the journals.

Counsel asserts that the petitioner is a scientist, "not a reviewer," and "does not kept track of the number of articles he reviews." Counsel also argues that there is no "legal basis" for CIS to request such "minute evidence." Citing *Buletini v INS*, 860 F. Supp. 1222 (E.D. Mich. 1994), counsel asserts that the director applied an inappropriate and higher standard to this criterion than that required by caselaw. In *Buletini*, the court stated that the director abused his discretion in requiring the alien to demonstrate that his participation as a judge of the work of others required or involved extraordinary ability. In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Peer review of published work is common and expected in the scientific community. It does not follow that everyone who is selected to review a paper or article prior to publication has achieved the level of acclaim required for visa preference classification under the statute. The evidence submitted in support of this criterion must reflect that the alien was selected to perform reviews because of his or her expertise in the field or is otherwise indicative of sustained national or international acclaim. Further, because the statute requires extensive documentation, the AAO will look at the frequency and the regularity of invitations to perform peer review. The petitioner provided evidence of one request to review a manuscript but provided no evidence that

he actually performed the review. Simply supplying evidence of a request to conduct a review is not evidence that the review was ever performed.

The petitioner submitted evidence that he has twice been asked to serve as "external" examiner for the doctoral thesis of PhD candidates. Occasional participation in the peer review process does not substantiate that the petitioner has earned sustained national or international acclaim. The statute requires extensive documentation. The petitioner's evidence is not sufficient to establish 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.

The petitioner submits a list of seven of his "important" scientific contributions: investigation of the rye and wheat chloroplast genome organization; cloning, nucleotide sequences and comprehensive analysis of the rye chloroplast genes coding for Photosystem I and II polypeptides; development of a cell-free system capable of the net synthesis of chlorophyll b; proposal of a unified multibranched chlorophyll a/b biosynthetic pathway; detailed research of a new class [4-Vinyl] Reductase enzymes; development and research of the chloroplast bioengineering technology; and detection and investigation of the energy transfer between intermediates of the chlorophyll biosynthetic pathway and chlorophyll a.

As evidence attesting to the significance of these contributions, he submits letters of support from an international array of "leading specialists." They write of the petitioner's innovative and original research and contributions to the field, and of his publication record. Several write that his work improved the understanding of those in the field. Dr [redacted] states that he considers the petitioner's "approach to be very innovative and has resulted in important contributions toward our understanding of the greening process of plants." Dr [redacted] Professor of Molecular Biology, University of Central Florida, writes that the petitioner's "ground-breaking research" contributed to the "basic understanding of the chlorophyll biosynthetic pathway and its application in biotechnology." Neither scientist offers specifics of the petitioner's contributions and neither state how this deepening understanding was of major significance in subsequent research.

In addition to writing about the petitioner's contribution in helping to understand the greening process, Dr. [redacted] Chief, Laboratory of Mechanisms of Gene Expression, Shemyakin-Ovchinnikov Institute of Bioorganic Chemistry, Russian Academy of Sciences, Moscow, also states:

> [The petitioner's] work on chloroplast genome organization of cereals . . . attracted the attention of the international scientific community because of its immediate applicability to the problem of productivity in agriculture . . . One of [his] greatest accomplishments is creativity, and his discovery of a new [4-Vinyl] Chlorophyllide a Reductase Enzyme is a clear manifestation of the excellent achievements attained by him thus far . . . His efforts, published in many major reports, represent seminal contributions to the field and have already provided the groundwork to guide the further development of chloroplast biogenesis studies.

Dr [redacted] Head of the Laboratory of Physiology of Photosynthetic Apparatus, Institute of Photobiology, National Academy of Sciences of Belarus, states:

> [The petitioner's] papers on cloning and sequence of the rye chloroplast genes coding for Photosystem I and Photosystem II polypeptides helped to elucidate the nature of the organization of photosynthetic apparatus and were published in very highly ranked scientific journals and are of the considerable interest for worldwide scientific community [sic] . . . One of the most remarkable contributions to the chloroplast biogenesis done by [the petitioner] was the partial purification of a novel enzyme from the chlorophyll biosynthetic pathway . . . [4-Vinyl] Chlorophyllide *a* Reductase is a key enzyme of the chlorophyll biosynthetic pathway.

D[redacted] Professor of Life Science, University of Limerick, Ireland, writes of the petitioner:

> I can confirm that [the petitioner's] record and original contributions in the fields of plant molecular biology, biophysics and biochemistry of chloroplast biogenesis are novel, significant and his current work is at the cutting edge of this research . . . While at the Institute of Photobiology, [the petitioner] held a lead and critical position in research on the chloroplast genome organization and chlorophyll biosynthesis. Indeed, the enormous value of his original contributions is reflected by his many articles in scientific journals of international reputation . . . Now he has come up with a blue print of how the process of chlorophyll and photosynthetic protein formation are integrated in the formation of functional photosynthetic membranes. Looking 50 or more years into the future, this finding could lead to food production without plants.

Dr[redacted] also writes that the "enormous value of [the petitioner's] original contributions is reflected by his many articles in scientific journals of international reputation." While the petitioner may have made original contributions to the field and his work may have added to the overall body of knowledge in his field, such is the goal of all research.

Dr[redacted] Head of Cereal Biotechnology in Lochow-Petkus GmbH, Germany, states that the petitioner was the "principal author of the first description of rye chloroplast DNA organization and unified multibranched chlorophyll *a/b* biosynthetic pathway." Dr[redacted] Research Assistant, Center for Advanced Research in Biotechnology, University of Maryland Biotechnology Institute, writes:

> [The petitioner] solved several problematic issues that were stumbling stones in plant molecular biology, specifically in chloroplast genome isolation from cereals. The problems under investigation were cloning and nucleotide sequence of the rye chloroplast genes coding for Photosystem II. These problems were dealing with important agriculture cereal but were difficult to solve due to the rye chloroplast DNA isolation. [He] was able to elucidate the localization of the rye chloroplast genes for Photosystem II and the comparative and comprehensive structural analysis of these genes.

While it appears that the petitioner has made contributions to the field, the petitioner submitted no independent evidence beyond the letters written in specific support of his petition. 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 opinions of the experts must be supported by

objective and verifiable evidence, such as contemporaneous media coverage of the major scientific contributions, a history of citations, published material about the petitioner or his work, or other indicia measuring the impact of the petitioner's work on the field. The record does not contain independent evidence corroborating the opinions of the experts.

Dr. [redacted] writes that the petitioner's "continued research in this area will be highly beneficial to U.S. agriculture," but does not state how the petitioner's previous research is currently beneficial to agriculture. Dr. [redacted] also writes of the potential impact of the petitioner's research, stating, "Through his early findings and the further related research already underway, major progress toward understanding the specific mechanism of chloroplast biogenesis can be anticipated." The assertion that the petitioner's findings may eventually be of benefit does not establish that these contributions are of major significance to the field. This criterion requires the petitioner to show that his work has already been a contribution of major significance to the field. The 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).

The petitioner and the authors of the letters of support point to his published work as an indication that he has made major contributions to the field. Dr. [redacted] states:

> [The petitioner] has contributed significantly to a major research undertaking entitled "CHLOROPLAST BIOGENESIS: MULTIPLE BIOSYNTHETIC ROUTES AND BIOLOGICAL SPIN-OFF" which is appearing in the Handbook of Photochemistry and Photobiology . . . Although this is a significant achievement, [the petitioner] has had a number of other publications in other equally important publications.

Counsel asserts that the peer-reviewed articles the petitioner has published evidence his contribution to the field. Publication of a peer-reviewed article is not, by itself, indicative of a contribution of major significance to the field. In order to be accepted for publication in a scientific journal, an article 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. 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 by others in the field. The petitioner submitted a list that he states contains citations to his published articles by other researchers. He also states that the Institute of Scientific Information created the list; however, no evidence of record establishes the source of the information provided. Citations to the petitioner's published articles, which will also be discussed in a separate criterion, can evidence that one'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.

The totality of the evidence submitted with this petition, while establishing that the petitioner has made contributions to the field, does not establish that he has made a contribution 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.

With his petition, the petitioner submitted a list of 19 publications that he states he co-authored and which have appeared in peer reviewed journals since 1988. As evidence, he submitted corroboration of only four of these articles, three of which were published in *Photosynthetica* and one in *Analytical Biochemistry*. The petitioner's references refer to these as international journals with significant prestige in the field. The petitioner also submitted a copy of a chapter for a book that was in publication on the date that he filed his visa preference classification petition. In response to the RFE, counsel submitted an updated list of the petitioner's publications to include articles submitted for publication in 2003. As noted above, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California, supra*. Further, evidence that comes into existence after the date the petition was filed cannot be used to establish eligibility for visa classification preference. *See Matter of Katigbak, supra*. The evidence presented falls far short of the extensive documentation necessary to establish that the petitioner meets this criterion.

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 his 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. As previously stated, 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 provides a better gauge of the importance and impact of the petitioner's publications to those in the field. The petitioner provides no corroborative evidence that his work has been cited and relied upon by independent researchers in the field. The evidence does not establish 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 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 is a talented 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.