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U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 02 131 54041 Office: VERMONT SERVICE CENTER Date: MAR 18 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: SELF-REPRESENTED

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, Vermont 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.

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 pertinent regulations 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.

The petitioner is a research fellow, studying "aspects of HIV infection and AIDS disease," at the National Institute of Mental Health (NIMH).

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 which, he 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 claims two qualifying awards: the Norman P. Salzman Award in Virology in 2001, and the Canadian Graduate Student Microbiologist of the Year, 1998. The record shows that the petitioner did not actually receive either of these awards.

One of the award certificates indicates that the petitioner received "honorable mention" for the Salzman Award, rather than the award itself. Even then, the petitioner has not established that the Salzman Award is a nationally or internationally recognized award. The certificate refers to the Foundation for the National Institutes of Health (NIH) and the Virology Interest Group. There is no evidence that this award is available to anyone who is not researching virology at NIH. Rather, the award appears to be an internal recognition that compares the winner to others in the same group, rather than throughout the field as a whole at a national or international level.

Regarding the Canadian Graduate Student Microbiologist of the Year, the record shows that the petitioner received only a "commendation certificate" as a "runner-up" for the award. The record does not discuss the significance of this award, but from its name, it is apparent that the award is restricted to graduate students. Graduate study is not a field of endeavor in its own right; rather, it is preparatory training for eventual entry into a field of endeavor. An award that is limited to students necessarily excludes the most experienced and accomplished researchers, and thus such an award cannot show that the petitioner is at the top of his field. At most, the award shows that the petitioner was among the top graduate students training for the field.

Witnesses at NIH refer to other awards, but these second-hand references do not constitute documentation of the petitioner's receipt of the awards, and there is no reason to believe that the unsubstantiated awards are more significant than the two documented by the petitioner.

> *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 documents his membership in the American Society for Virology (ASV), but he provides no evidence to show that the society requires outstanding achievements of its members, as judged by recognized national or international experts.

> *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 asserts that his "research discovery on HIV infection of T cells was reported both by professional publications such as Science and Lancet, as well as major media such as Reuters and United Press International." The petitioner has met this criterion. Various national outlets reported on the publication in *Science* of a discovery by the petitioner and a collaborator.

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

The petitioner submits letters regarding his work, all from witnesses at NIMH.

Dr. David M. Neville, chief of the Section of Biophysical Chemistry at NIMH, states:

> [The petitioner's] original research work on HIV infection of helper T cells has found a previously unknown step in the process by which HIV breaks bodily barriers, infects human cells, and eventually causes AIDS. . . . It has puzzled many investigators how HIV can replicate in T cells when most T cells are in a resting state that resists replication. [The petitioner's]

> research found that HIV infection of resting T cells can lead to production of two viral factors called Nef and Tat before the HIV enters the cell nucleus and integrates into the cell genome. These proteins awaken T cells out of their resting states. Once the T cells are activated, their genome becomes vulnerable to invasion by the HIV gene. These discoveries have significantly contributed to our current understanding of HIV pathogenesis.

Another NIMH researcher, Dr. S. Harvey Mudd, has described the petitioner's work in similar terms, including some language that is identical to passages in Dr. Neville's letter. While these letters establish the petitioner's colleagues' esteem for his abilities, they are not *prima facie* evidence of acclaim outside of NIMH. To qualify for the extremely restrictive immigrant classification he seeks, the petitioner must show sustained acclaim at a national or international level, not merely within one institution (however prestigious it may be). While one of the petitioner's journal articles has attracted attention in the field, the record does not show that this work has already significantly affected the course of HIV/AIDS research. The petitioner's expectation that his work will eventually have such an effect is speculative and conjectural.

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

The record shows that the petitioner has co-authored articles in *Science*, *Virology*, and the *Journal of Virology*. The *Science* article, in particular, has attracted attention within the scientific community. We find that the petitioner has satisfied this criterion.

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

The petitioner asserts that his present employment at NIMH satisfies this criterion. The distinguished reputation of the various components of the National Institutes of Health is beyond dispute, but the petitioner must show that his work as a postdoctoral research associate amounts to a leading or critical role.

Dr. Jon W. Marsh, chief of the Unit on Lymphocyte Function at NIMH's Laboratory of Molecular Biology, identifies himself as the petitioner's "immediate supervisor" and states that the petitioner "has been employed in a critical and essential capacity." This attestation is not sufficient to establish that the petitioner's role as a research fellow is critical to NIMH (as opposed to an individual laboratory within NIMH). The record does not show that the highest officials of NIMH or NIH consider the petitioner to fulfill a critical role, or that top experts outside of NIH share a similar opinion of the significance of the petitioner's role there.

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. In response, the petitioner submits copies of previously submitted documents, as well as new materials. The petitioner states "Dr. Robert Gallo, one of the discoverers of HIV/AIDS, has accredited my research as a major highlight of the year on HIV/AIDS research." The source for this claim is an issue of *Discovery – From Laboratory to Clinic*, described as "The Newsletter of the Institute of Human Virology." The front page of the newsletter includes Dr. Gallo's message, "Highlights of the 2001 International Meeting of the IHV." Dr. Gallo states "[m]any presentations throughout the week were especially interesting," and lists ten such presentations, the ninth being the petitioner's. Dr. Gallo states that the petitioner "showed data suggesting that, contrary to current concepts, HIV genes can be expressed prior to integration into the host chromosomes." Contrary to the petitioner's claim, Dr. Gallo does not describe the petitioner's work as "a major highlight of the year," but rather as an "especially interesting" presentation at a professional conference.

Other documents show that the petitioner and his collaborator have been invited to write a review article and lecture notes, and have entered into an agreement to write a 200-page book. We have already determined that the petitioner satisfies the criterion pertaining to scholarly articles. Invitations to write additional materials, which did not exist at the time of filing, do not satisfy additional criteria or otherwise enhance the petitioner's claim of eligibility.

The director denied the petition, concluding that, while the petitioner "appears to be an excellent researcher, extremely well-qualified for the work he is doing at NIH . . . the record does not establish that . . . he has received sustained national or international acclaim."

On appeal, the petitioner argues that his claimed awards satisfy 8 C.F.R. § 204.5(h)(3)(i). The petitioner asserts that his student award "was the result of a national competition," but he does not rebut the director's prior finding that the scope of this award is limited to students, thereby excluding established researchers. Because the petitioner cannot arbitrarily limit his "field" to include only students, a student-only prize carries diminished weight. The petitioner's other award is limited to researchers at one institution, and thus does not constitute a national prize or award. Furthermore, as noted above, the petitioner was only a runner-up for the first award, and received "honorable mention" for the second.

The petitioner maintains on appeal that the ASV "requires outstanding achievements and recommendations of nationally and internationally recognized virologists," but he submits nothing to substantiate this claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The membership letter in the record lists ASV's web site as http://www.mcw.edu.asv. According to information at that site, "[m]embership is open to qualified investigators residing in the Americas, or elsewhere, who have published original investigations in virology and who are actively involved in virology research. To qualify for regular (full) membership, an individual should be at least three years past his/her professional degree." Membership applications must also include "a letter of nomination from a full member." Publication, experience, degrees and references are not outstanding achievements. The fact that some virologists are ineligible for membership does not demonstrate that ASV's membership criteria are sufficiently restrictive to qualify under the regulations.

The petitioner repeats other previous arguments, and submits copies of previously submitted documents. The only new documentation submitted on appeal consists of third-party journal articles that cite the petitioner's *Science* article. Whatever recognition the petitioner has earned outside of NIMH derives from this single article in the prestigious journal *Science*, and the accompanying burst of attention over the span of a few months in 2001, rather than a sustained pattern of acclaim at a national or international level. The statute calls for "extensive documentation" of acclaim, and the regulations reflect this by requiring several different kinds of documentary evidence. It is contrary to the intent of these requirements to confer eligibility based on a single article by the petitioner, a press release announcing that article, and statements from the petitioner's co-author and other NIMH collaborators regarding the significance of that article.

While the petitioner's work has certainly captured some interest, the evidence of record is not sufficient to show that the petitioner is nationally or internationally acclaimed as being at the very top of his field of endeavor. At best, the petition was filed prematurely at an early stage of a promising career.

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 himself as a virologist 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. 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.