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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 22 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

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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 sustained and the petition will be approved.

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 that he qualifies as an alien of extraordinary ability in his field of endeavor. Specifically, the director concluded that the petitioner had demonstrated his contributions of major significance to the field, but had not established that he meets at least two of the remaining criteria.

On appeal, counsel asserts that the director went beyond the plain language of the regulations. While we find few of counsel's arguments persuasive and much of the director's analysis to be valid, for the reasons below we find that the petitioner has overcome the director's concerns regarding two of the regulatory criteria: awards and scholarly articles.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in Citizenship and Immigration Services (CIS) regulations at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary 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 an organic chemist. The regulation at 8 C.F.R. § 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met three of the necessary 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 submitted awards issued by the Chinese central government in May 1995 and January 1999. The petitioner also submitted a chart from a Chinese website indicating the number of awards issued in 1995 and 1999. Subsequently, the petitioner also submitted the Provisional Regulations of the award indicating that awardees must be nominated by universities.

The petitioner also submitted evidence of two research fellowships granted to the petitioner by the German Academic Exchange Service (DAAD). The fellowships are designed to support "the specialist and personal qualification of the young international academic elite at Germany's higher education and research institutions by awarding scholarships and grants." Dr. asserts that he proposed the petitioner for the DAAD "stipend" based on his familiarity with the petitioner's articles. Dr. later references the exchange program as a postdoctoral fellowship.

The director concluded that the Chinese government awards were not sufficient to meet this criterion since they only recognize research being conducted by universities. The director also rejected the petitioner's DAAD fellowship, concluding that it is not an award for excellence in the field.

On appeal, counsel argues that universities are the main force of scientific research in China. The petitioner submits a letter from the Chinese entity that issued the award confirming counsel's assertion. Specifically, more than 70 percent of the projects supported by the National Science Foundation of China are being conducted at universities.

We find that the petitioner has overcome the director's concern. To qualify, an award should be national in scope and the most experienced experts in the field should aspire to win the award.

The provisional regulations reveal that the award is open to "scientific and technological researchers and institutions." Projects are recommended by affiliated and non-affiliated universities and are then reviewed by a national committee. Award in the grade issued to the petitioner are for projects that "possessed [a] high degree of technological difficulty, and had [a] significant role in pushing science and technology forward, [and/or] achieved significant economic and social benefits." The regulations do not limit awardees to any age or stage of one's career. Rather, universities appear able to nominate the most significant research projects regardless of the status of the person conducting the research.[1]

We find that the record adequately establishes the significance of the award won by the petitioner. Thus, we need not consider counsel's far less persuasive arguments regarding the DAAD fellowship.

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[1] While we acknowledge that neither the law nor the regulations preclude young aliens from qualifying for this classification, we categorically reject counsel's argument on appeal that we must consider evidence "in the context of the Petitioner's age and stage of career." A young alien bears the same burden of establishing that he is at the top of the field, including in comparison with the most experienced experts in the field.

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

Dr. a professor at Lanzhou University, asserts that the petitioner made "highly significant original contributions to organic and natural product chemistry" while obtaining his Ph.D. at that university. Specifically, using chromatographic separation methodology and the latest technology, the petitioner "isolated and identified more than 100 compounds, 35 of which were new natural products" derived from Chinese medicinal plants. According to Dr this work not only enriched the field, but enabled further analysis for future development of therapeutic drugs. In addition, the petitioner isolated and identified standard samples of the antioxidant phenylpropanoid glycoside. According to Dr this work has served as the foundation of other scientists' work. Further, the university adopted as standard protocol the petitioner's methodology for isolating and identifying structurally diverse active molecules from plant extract complexes. Finally, Dr. asserts that the petitioner continued this area of research during his time at the Peking Union Medical College, discovering another 15 new natural products.

Dr. an honorary professor at the University of Halle, Germany, and member of the U.S. National Academy of Sciences, discusses the petitioner's work in his laboratory in Munich under the DAAD postdoctoral fellowship program. During this time, the petitioner worked on biosynthesis of "pharmaceutically interesting compounds." Specifically:

> Using uniformly carbon 13 isotope-labeled glucose, the universal and ultimate source of food for plants, he was able to clarify the total pathway for [amarogentin]. Using a retro-biosynthetic approach, which has been developed by both Universities at Munich, Germany, [the petitioner] could trace every single carbon atom of this complex organic molecule to its origin. He synthesized with carbon label several intermediates of this biosynthetic grid.

According to Dr the petitioner performed similar work with Xanthone and his papers on this work were well received. In addition, Dr. asserts that the petitioner worked on isolating "camptotheca alkaloids, which are prominent anticancer drugs whose sales are increasing constantly." Dr continues:

> These complex compounds are produced only in rare tropical plants. He isolated major and minor alkaloids from these plants and elegantly clarified their structures. He also isolated during his stay in Munich lepidium alkaloids, alkamides, and transformed the anticancer compound taxol. Finally, he engaged in the synthesis of phytochelatin peptides. . . . These are compounds which detoxify heavy metals as they enter plants through the roots and were discovered by my group.

Dr. concludes that the petitioner's research in Munich "was of high impact."

The petitioner also submitted a letter from Dr a distinguished professor at Washington State University (WSU) and a member of the National Academy of Sciences. Dr states that the petitioner's work with synthesizing lignan products (conducted at WSU according to other references) allows compounds from rare Chinese plants to be synthesized for future enzyme research. Dr. concludes that the petitioner's work "has contributed to our understanding of biosynthetic chemistry in a profound manner."

Dr a professor at the Medical College of Wisconsin, discusses the petitioner's current work at that college. Specifically, the petitioner is working to elucidate the structure and function of HMG-COA synthase, a protein related to an inherited metabolic disease and a potential target for cholesterol lowering drugs. According to Dr. the petitioner has already successfully expressed a synthase using synthetic medium and has developed a new methodology using nuclear magnetic resonance spectroscopy. Dr another professor at the Medical College of Wisconsin, asserts that, according to Dr. the petitioner's synthesis methods have achieved greater yields of previously synthesized substrates.

The director concluded that the petitioner meets this criterion. We do not contest that conclusion.

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, at the time of filing, he had authored 23 published articles. The petitioner also submitted evidence initially and in response to the director's request for additional documentation that the petitioner's articles have been consistently cited. The director concluded that "the actual impact of the articles in the field has not been sufficiently demonstrated." On appeal, counsel challenges the director's assessment of the evidence, asserting that the regulations merely require the authorship of scholarly articles. Counsel further argues that the Scientific Citation Index Impact Factors of the journals that have published the petitioner's work and the referee's comments on the petitioner's articles sufficiently establish their impact. Finally, counsel notes that the petitioner's work has been widely cited.

Many of counsel's arguments are not persuasive. This office consistently holds that we are not limited to counting exhibits that relate to a given criterion. Rather, evidence submitted to meet any criterion must be analyzed as to whether it is indicative of or uniquely consistent with national or international acclaim.

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 our position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

Further, the impact of a given journal is not persuasive evidence of the impact of every article published in that journal. Nevertheless, as noted by counsel, the record contains evidence that independent experts have consistently cited the petitioner's work. Evidence that the petitioner's work is widely cited can serve to establish the impact of this work. Thus, we find that the petitioner meets this criterion.

As we find that the petitioner has met the three regulatory criteria discussed above, we need not consider counsel's far less persuasive arguments regarding the remaining criteria the petitioner claims to meet.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.