



U.S. Citizenship  
and Immigration  
Services

B2

[REDACTED]

FILE: WAC 03 016 55383 Office: CALIFORNIA SERVICE CENTER Date: NOV 05 2004

IN RE: Petitioner: [REDACTED]  
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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment based immigrant visa petition was denied by the Director, California 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 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 earned sustained national or international acclaim at the very top level.

This petition, filed on October 22, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a researcher in the biological chemistry field. At the time of filing, the petitioner was working as a Postgraduate Researcher in the Department of Biological Chemistry at the University of California, Irvine.

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, 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.*

On appeal, the petitioner does not contest the director's finding regarding this criterion. Nevertheless, we will address the evidence submitted under this criterion.

In order 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, a fixed minimum of education or experience, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, and recommendations do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local. Therefore, membership in an association that evaluates its membership applications at the local chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence of his membership in the American Society for Microbiology (ASM). According to ASM's bylaws, "[e]ligibility to become a Full Member of the Society is open to any person who is interested in microbiology and holds at least a bachelor's degree or equivalent experience in microbiology or related field."

In response to the director's request for evidence, the petitioner submitted a letter, dated December 30, 2002, informing him of his "election to postdoctoral membership" in the American Society for Cell Biology (ASCB). This evidence came into existence subsequent to the petition's filing date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Subsequent developments in the petitioner's career cannot retroactively establish that he was already eligible for the classification sought as of the filing date.

Also submitted was a copy of ASCB's membership application, which states:

Membership in the Society is open to scientists who share the Society's purposes to promote and develop the field of cell biology and who have educational or research experience in cell biology or an allied field. The maximum duration of post-doctoral membership is four years.

Qualifications for Regular or Postdoctoral Membership: The applicants must be sponsored by a regular or post-doctoral member in good standing and must hold a Ph.D., M.D., or an equivalent degree, or must have equivalent experience.

The ASM and ASCB membership requirements presented by the petitioner are not adequate to demonstrate that the petitioner's membership in either society required outstanding scientific achievement or that he was evaluated by national or international experts in consideration of his membership. The record contains no evidence to establish that these two societies require outstanding achievement of their members in the same manner as highly exclusive associations such as (for example) the U.S. National Academy of Sciences.

*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 general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. On appeal, the petitioner argues that cited references to articles he authored would satisfy this criterion. Articles which cite the petitioner's work are primarily about the author's own work, not the petitioner's work. As such, they cannot be considered qualifying published material about the petitioner's work. We cannot ignore that the articles citing the petitioner's work similarly referenced scores of other authors. In the petitioner's field, it is the nature of research work to build upon work that has gone before. In some instances, prior work is expanded upon or supported. In other instances, prior work is superseded by the findings in current research work. In either case, the current researcher normally cites the work of the prior researchers. Clearly this is not the same thing as published material written about an individual's work in the field. This type of material does not discuss the merits of an individual's work, the individual's standing in the field, or any significant impact that his or her work has had on work in the field. Citations of the petitioner's work will be addressed under a separate criterion.

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

The petitioner provided several witness letters in support of the petition. We cite representative examples here.

Dr. Erica Johnson, Assistant Professor, Department of Biochemistry and Molecular Pharmacology, Thomas Jefferson University, states:

I am familiar with several of [the petitioner's] articles, which have produced important contributions to the field of cellular protein degradation.

\* \* \*

In previous work..., [the petitioner] demonstrated that the factors responsible for identifying which proteins should be degraded are associated with the machinery that actually degrades the proteins, suggesting that these two processes may be coupled to each other. Most recently, his work showed that a protein previously thought to serve an entirely different function, import of proteins into the cell nucleus, also plays a role in protein destruction.... The link between the protein import pathway and the protein degradation pathway was completely unexpected and promises to open up important new areas of investigation. In addition to his work on the mechanisms of protein degradation, [the petitioner] has developed new techniques that have seen significant use by other investigators.

Dr. Roderick Hori, Assistant Professor, Department of Molecular Sciences, University of Tennessee, states that the petitioner's work has established "a novel role for the importin-alpha, the protein that binds and helps to carry proteins from the cytoplasm to the nucleus, in the protein pathway involving proteasomes."

Dr. Hori also credits the petitioner with following contributions:

1. He and his colleagues were among the first to establish a link between DNA repair and ubiquitination. This was an essential breakthrough in understanding the regulation of DNA repair.
2. He and his colleagues established the existence of a physical interaction between ubiquitin conjugating enzymes and the proteasome, which is a complex responsible for protein degradation. [The petitioner's] studies are very important in understanding the mechanism by which ubiquitinylation facilitates protein trafficking to the proteasome.
3. He and his colleagues characterized how Rad 23, a protein involved in DNA repair, regulates ubiquitinylation.

Dr. Kiran Madura, Associate Professor and Director of the Program in Biochemistry and Molecular Biology, Robert Wood Johnson Medical School, University of Medicine and Dentistry of New Jersey, states:

[The petitioner] was instrumental in reconstituting a complex enzymatic pathway in a test tube, and these fundamental observations were published several years ago. In addition, [the petitioner] made the highly original discovery that components of the ubiquitin targeting system are physically in contact with a multicatalytic protease called the proteasome. Several other investigators, including the laboratories of Dr. Alexander Varshavsky and Dr. Raymond Deshaies, have confirmed this remarkable discovery. This is an important discovery because it establishes, for the first time, that the capture of proteolytic substrates is mechanistically different than had been previously believed. Specifically, it was thought that the attachment of the small protein ubiquitin, to proteolytic substrates, served to target them to the proteasome for degradation. However, [the petitioner's] seminal discovery established that the targeting factors that recognize proteolytic substrates are actually already associated with the proteasome, demonstrating that the capture of substrates and their degradation is a coupled reaction that occurs on the proteasome. Because the ubiquitin/proteasome pathway is implicated in cancer, aging, neurodegeneration, and various other human disabilities, it is evident that a precise understanding of the biochemical events that occur in this pathway will make a significant contribution towards therapies in human medicine.

Dr. Herbert Tschochner, Professor of Biochemistry, University of Heidelberg, Germany, states:

In my opinion, [the petitioner] is indeed an outstanding researcher and has already made several major breakthroughs to [sic] the field of gene expression, DNA repair and protein degradation. Particularly, his recent research direction of regulation [sic] and mechanisms of rDNA transcription is [sic] at the forefront of modern research.

Dr. Giorgio Camilloni, Associate Professor of Molecular Biology, University of Rome, Italy, also offers a letter discussing the significance of the petitioner's research findings. Dr. Camilloni states that he became aware of the petitioner's work through scientific conferences and publications.

Several witnesses assert that the petitioner's publication record shows that he has significantly impacted his field. Publication, by itself, is not a strong indication of impact, because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the petitioner's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner himself has cited dozens of sources in his own articles. Numerous independent citations would provide firm evidence that other researchers have been influenced by the petitioner's work and are familiar with it.

The record contains a citation history showing that eight of the petitioner's published articles have been cited an aggregate total of 278 times. In this case, the large number of citations of the petitioner's published work bolsters the witnesses' claims that the petitioner's findings are of major significance to the biological chemistry field. The record adequately demonstrates the petitioner's contributions are important not only to the research institutions where he has worked, but throughout the greater field. Scientific experts from throughout the world have acknowledged the value of the petitioner's work and its significance to the biological chemistry field. Therefore, we find that the petitioner's evidence satisfies this criterion.

*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 of his authorship of several articles appearing in publications such as *Nature*, *Nature Cell Biology*, *Molecular and Cellular Biology*, *Genes to Cells*, and *Analytical Chemistry*. The petitioner also submitted evidence showing that eight of his published articles have garnered an aggregate total of almost 300 citations.

As previously observed, when judging the influence and impact that the petitioner's published work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. In this case, however, the large number of citations of the petitioner's published articles demonstrates widespread international interest in, and reliance on, his work. These citations show that many other researchers have acknowledged the petitioner's influence and found his work to be significant.

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

On appeal, the petitioner does not contest the director's finding regarding this criterion. However, because counsel, in response to the director's request for evidence, argued that the evidence presented satisfies this criterion, her arguments will be addressed below.

In order to establish that he performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

Counsel cites the letters of support from Professors Camilloni and Tschochner as evidence under this criterion. While these letters discuss the petitioner's research findings, they do not evaluate the importance of the petitioner's role in relation to other researchers at the University of California at Irvine (UCI) or the Robert Wood Johnson Medical School.

We cannot ignore that the petitioner's role at his research institutions was that of a graduate student or postdoctoral researcher. Such roles represent training for a future professional career in a field of endeavor. A letter from Dr. Suzanne Sandmeyer, Professor and Chair, Department of Biological Chemistry, UCI, where the petitioner now works, states that the petitioner "was accepted [there] for his postdoctoral training." Similarly, a letter from Dr. Masayasu Nomura, Professor, Department of Biological Chemistry, UCI, states: "[The petitioner] has worked in my laboratory as a postdoctoral researcher for about three years."<sup>1</sup> The record contains no evidence showing the extent to which the petitioner has exercised substantial control over personnel or research decisions executed on behalf of the Robert Wood Johnson Medical School or the Department of Biological Chemistry at UCI. Nor is there evidence showing that the petitioner has directly secured significant amounts of research funding as a principal investigator (in the same manner as many of his witnesses). We note here that the majority of witnesses in this case hold higher positions of authority as research supervisors, directors, and heads in their respective divisions or departments. This criterion, like all of the criteria, is intended to separate the petitioner from the majority of his colleagues in the biological chemistry field. Therefore, when determining the petitioner's eligibility, it is entirely appropriate to compare the petitioner's role to that of his witnesses. In this case, it is immediately apparent that the importance of the role of individuals such as Professors Sandmeyer, Nomura and Madura far exceeds that of the petitioner. While we accept that the petitioner has contributed to research projects overseen by his superiors at the Robert Wood Johnson Medical School and UCI, it has not been shown that his role is any more significant than that of other researchers employed by those institutions. For the above reasons, we find that the petitioner's evidence falls short of establishing that he has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

In this case, we find that the evidence presented satisfies only two of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

The fundamental nature of this highly restrictive visa classification demands comparison between the petitioner and others in his field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every scientific researcher who has published the results of his work, or who has trained under prominent researchers, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant

---

<sup>1</sup> On appeal, the petitioner notes that his position was recently upgraded from "Postgraduate Researcher" to "Assistant Specialist Step 2" in the Department of Biological Chemistry, UCI. This event, which occurred in 2004, came into existence subsequent to the petition's filing date. See *Matter of Katigbak*. Regardless, it has not been shown that holding an "Assistant Specialist" position is tantamount to a leading or critical role at UCI.

to be easy to obtain; an alien who is not at the top of his or her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from experts in the field, without reaching the top of that field.

It has not been shown, nor does the overall tone of the witness letters presented in this case suggest, that the petitioner's accomplishments are comparable to those of scientific experts such as Professors Nomura and Madura. That these individuals have demonstrated achievements that far exceed those of the petitioner demonstrates that, however respected the petitioner may be and whatever future promise his career may hold, the petitioner has not yet reached the top of his field. Even if it were unanimously agreed that the petitioner would one day reach such a level, this visa classification is reserved for those already at the top of their field, not for those who are expected eventually to reach that level.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself as a scientific researcher 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 the 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.