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U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: APR 14 2005

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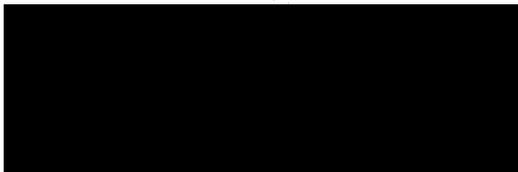
Petitioner:



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:



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

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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(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 into the United States will substantially benefit prospectively the United States.

The applicable regulation defines the statutory term "extraordinary ability" as "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification as an alien with extraordinary ability in the sciences as a cancer researcher. The petitioner initially submitted seven recommendation letters, photocopies of her articles and abstracts, citation information for her articles, a copy of her 2002 Gallo Award, association membership information, grant materials and a copy of her doctoral degree. After assessing the evidence, the director concluded that the petitioner met none of the regulatory criteria and denied her petition. On appeal, the petitioner submits additional evidence including a copy of her 2003 Gallo Award, additional membership information, two additional reference letters, a recent article, abstracts and updated citation information. Much of this evidence arose after the petition was filed and cannot be considered. A petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). None of the remaining evidence submitted on appeal is sufficient to overcome the reasons for denial and we

affirm the director's decision. The evidence submitted and the petitioner's claims are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

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

The director correctly determined that the petitioner did not meet this criterion.¹ The petitioner submitted a copy of her 2002 Gallo Award presented by The Cancer Institute of New Jersey. Four of her reference letters briefly mention the petitioner's receipt of this award and describe the prize as "prestigious" and "competitive." Yet the record contains no independent, corroborative evidence of the significance of this award, namely whether or not it is nationally or internationally recognized as an award for excellence in the field of cancer research. On appeal, the petitioner states that "[o]nly 10 to 15 out of 1,000 scientists get Gallo Awards" and submits evidence that she received the award again in 2003 (jointly with three other individuals). We cannot consider the petitioner's subsequent receipt of the award in 2003 because it occurred nine months after the filing of her petition. 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49. Nor can we accept the petitioner's unsupported assertion regarding the competitiveness of the award. Statements made without accompanying documentary evidence cannot meet the petitioner's burden of proof. *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190, 193-94 (Reg. Comm. 1972).

The petitioner also claims to have received three "Excellent Student" awards while pursuing her medical degree at Nantong Medical College in China. Although some of her references mention these awards, the record contains no primary evidence of these honors. More importantly, student awards are irrelevant to the petitioner's case. Academic study is prerequisite to a career in the sciences. Only other students – not established scientists – compete for academic honors. While such awards may show the recipient's past potential, they do not establish her current national or international recognition for excellence as an established research scientist.

(ii) 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 has not met this criterion. She initially submitted a photocopy of her expired membership card for the American Association for the Advancement of Science (AAAS) that listed her as a student member. The petitioner submitted no evidence regarding AAAS that would indicate that outstanding achievements are a prerequisite to membership. The petitioner also submitted evidence of her associate membership in the American Association for Cancer Research (AACR). According to the AACR, associate membership is open to graduate students, medical students and residents, and clinical and postdoctoral fellows involved in cancer research. Associate membership only requires nomination by an active, emeritus, or honorary member of AACR in good standing. This membership does not establish the petitioner's eligibility under this category. To satisfy this criterion, membership in an association must be earned by virtue of a member's outstanding achievements. Membership based on employment or activity in the field, a minimum of education or work

¹ The director found insufficient evidence to show that the Gallo Award "qualifies as a major prize since it is issued by the state of New Jersey." While we disagree with the director's implication that an award cannot be major or nationally recognized if it is issued by a state, we agree with her subsequent statement that "[i]t is unclear who was considered for this prize and the criteria used to chose its recipients."

experience, or recommendations by current members is insufficient because these qualifications do not constitute outstanding achievements. On appeal, the petitioner submits evidence that she has become an active member of AACR. Although somewhat more valued, active AACR membership is still insufficient to establish the petitioner's eligibility. According to AACR, active membership is open to individuals who have two years of research experience that has resulted in peer-reviewed publications and who have been nominated by two AACR active, emeritus or honorary members in good standing. These qualifications are common among cancer researchers and are not outstanding achievements. In addition, it appears that the petitioner's change in membership status occurred after her petition was filed and if so, cannot be considered on appeal. 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49.

(iii) Published material 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 submitted evidence of the citation of her articles by other researchers. Initially the petitioner only submitted the number of times her articles had been cited by others. Mere citation is insufficient to meet this criterion because it does not establish that the citing article is actually about the alien. On appeal, the petitioner submits abstracts and copies of articles that cite her work. Many of these articles were published after her petition was filed and cannot be used to establish her eligibility at the time of filing. *Id.* at 49. The petitioner submits no evidence of the significance of the remaining citations, for example, whether the authors cite her article in a substantive discussion of her research or simply in passing to establish a subsidiary point. The citations of the petitioner's articles are more relevant to and will be discussed below under the fifth criterion.

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

The director correctly determined that the petitioner did not meet this criterion.² The petitioner submitted nine reference letters as evidence of her scientific contributions to the field of cancer research. All of these letters were solicited by the petitioner and most were written by her past and current advisors and colleagues. Consequently, they carry less weight than independent, pre-existing evidence of the petitioner's scientific contributions. In addition, some of the letters lack credibility because they repeat certain phrases verbatim and contain similar recitations of the petitioner's accomplishments suggesting that the language is not the author's own. Although her current supervisor at the Cancer Institute of New Jersey, Dr. Michael Reiss, heralds the petitioner's "outstanding achievements," he speaks mainly of the potential significance and future benefits of her current research. Dr. Reiss states that the petitioner is "developing tests that we will be able to use in the future" in treating cancer patients and that "[t]he effects [of some of the petitioner's work] are still being analyzed, but we are optimistic that this class of agents will be developed into a clinically useful form for cancer within the next few years." Similarly, Professor Susan Rittling of Rutgers University states that "the drugs Dr. Ge is developing have a high potential to help" advanced cancer patients. Professor Hsien-ming Meng of

² We do not agree with the director's assertion that all "significant advancements in the field of cancer research are well-documented in the form of news articles discussing the importance of the beneficiary's research and extraordinary ability in this field." We understand that many major scientific contributions to the field of cancer research are esoteric and incomprehensible to the general public and media. However, we agree with the director's ultimate determination that the evidence in this case is insufficient to establish the petitioner's eligibility under this criterion.

Wright State University echoes this sentiment, stating that the petitioner's "research will open new avenues for cancer therapy." Professor Philip Conran of the Medical College of Ohio also describes the petitioner's current research as "a promising field of endeavor." In sum, the letters demonstrate that her current research projects show promise, but do not yet constitute original scientific contributions of major significance to the field of cancer research.

The petitioner also claims that the citation of her articles is evidence that she has made major contributions to cancer research. Substantial and ongoing citation of a scholarly article by independent experts may evidence the author's original scientific contribution of major significance in the field. Yet the citation information provided in this case does not rise to that level. At the time of filing, the petitioner had published six articles in reputable scientific journals.³ The petitioner is the lead author on three of these articles. All of the articles are based on research done while the petitioner was a doctoral student at the Medical College of Ohio. The petitioner submitted citation information for five articles. An article published in 1998 was cited 12 times, including three self-citations. An article published in 1999 was cited seven times, including four self-citations. An article published in 2000 was cited three times with two self-citations and one citation by her doctoral advisor. One article published in 2001 was cited three times, twice by herself and once by her advisor. A second article published in 2001 was cited only once by herself. Clearly, the petitioner's work has not been widely cited.

Finally, the petitioner claims that her past and current research projects constitute major contributions to the field of cancer research. The record is insufficient to support this claim. As discussed above, the petitioner's Gallo Award, her recommendation letters, her publications and citations are all insufficient to establish the major significance of her work in the field of cancer research as a doctoral student at the Medical College of Ohio or as a post-doctoral fellow and research specialist at the Cancer Institute of New Jersey. The petitioner also claims that her research at Nantong Medical College in China "resulted in successful immunotherapy treatments that lengthened patients' lives significantly." Professor Zude Xu of Fudan University and Professor Deyan Lu of Nantong Medical College verify that the petitioner was a key investigator in clinical trials that treated 56 patients, but state only that "some of them had durable remission." Neither Professor Xu nor Professor Lu discusses the lasting significance of these clinical trials and the record contains no supporting evidence that would show that the trials garnered national or international acclaim for the petitioner.

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

As discussed above in relation to the fourth and fifth criteria, the petitioner had published six articles in scientific journals at the time she filed her petition. All of these articles arose from her research as a doctoral student at the Medical College of Ohio. Publication of one's research is requisite to successful doctoral studies in the sciences. Combined with the fact that they have not been widely cited, the petitioner's articles only evidence her success as a doctoral student. They do not reflect sustained national or international acclaim as an established research scientist in the field of cancer research.

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

³ On appeal, the petitioner submits more recent citations of her past articles and a copy of an article published in 2004. We cannot consider this evidence because it arose after her petition was filed. 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49.

The evidence submitted is insufficient to establish the petitioner's eligibility under this criterion. The evidence shows that the petitioner has made valuable contributions to the laboratories in which she has worked, but also establishes that she has never independently led a laboratory or initiated research projects by herself. The petitioner's supervisor, Professor Reiss, states that the petitioner is the leading scientist on a project to test whether certain drugs can inhibit breast cancer metastasis. Although Professor Reiss describes the petitioner as irreplaceable, he does not explain how her position compares to other researchers employed in his laboratory or others within the Cancer Institute of New Jersey. Besides Professor Reiss' letter, the record contains no evidence relating to the significance of the petitioner's position at the Cancer Institute of New Jersey. Although many of the petitioner's recommendation letters state that the Institute is the only cancer center designated by the National Cancer Institute in New Jersey, the record contains no independent evidence of the distinguished reputation of the Institute in general or Professor Reiss' laboratory in particular. Accordingly, the petitioner does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The petitioner bears this substantial burden of proof. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner in this case has not sustained that burden. The evidence indicates that the petitioner is a highly skilled researcher who is valued and well respected by her colleagues, but the record does not establish that she is a scientist of extraordinary ability in the field of cancer research. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.