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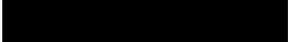
U.S. Citizenship
and Immigration
Services

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FILE:  Office: VERMONT SERVICE CENTER Date: JUL 13 2005

IN RE: 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 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 January 15, 2003, seeks to classify the petitioner as an alien with extraordinary ability as an Epidemiologist. At the time of filing, the petitioner was working as a Research Associate in the Department of Epidemiology at the Johns Hopkins School of Public Health and as an Adjunct Investigator in the Laboratory of Epidemiology, Demography and Biometry, National Institute on Aging, National Institutes of Health.

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, internationally 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 pertaining to 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.

We note here that the plain wording of this criterion requires “nationally or internationally recognized” prizes or awards for excellence in the field. The burden is on the petitioner to demonstrate the level of recognition and achievement associated with his awards.

The petitioner submitted evidence showing that he received a [REDACTED] Memorial Award” from the Johns Hopkins University School of Hygiene and Public Health.

[REDACTED] the petitioner’s Ph.D. advisor in the Department of Epidemiology of Johns Hopkins University School of Public Health, states: “Because of [the petitioner’s] extraordinary academic accomplishments he was granted the highly competitive and prestigious [REDACTED] Memorial Award, granted to the most outstanding graduate students in the Department.”

The [REDACTED] Award is reflective of departmental recognition, rather than national or international recognition. In respect to awards from universities and other learning institutions, Citizenship and Immigration Services (CIS) views academic awards as local or institutional honors rather than internationally recognized awards for the reason that they are limited to the individual school or institution presenting the award. We cannot ignore [REDACTED] statement that the petitioner’s award was presented for “academic accomplishments” rather than excellence in the epidemiology field. Graduate study is not a field of endeavor, but, rather, advanced training for future employment in a field of endeavor. We cannot artificially restrict the petitioner’s field to exclude all those epidemiologists who had long since completed their graduate studies and therefore did not compete for a departmental graduate student award.

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. To qualify as major media, the publication should have significant national distribution.

On appeal, the petitioner submits several articles about his work published in December 2003, but this evidence all came into existence subsequent to the petition’s filing date. A 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 (Comm. 1971).¹

¹ The published material relates entirely to an article in the January 7, 2004 issue of *Stroke*. We agree that the petitioner’s published study received a significant level of media attention; however, pursuant to *Matter of Katigbak*, new circumstances that did not exist as of the January 15, 2003 filing date cannot retroactively establish eligibility as of that date.

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.

On appeal, the petitioner submits e-mails dated October 13, 2003 and thereafter requesting that he review articles for publications such as the *New England Journal of Medicine*, *Journal of Women's Health*, *International Journal of Obesity*, *Medical Science Monitor*, *NeuroImage*, and *Stroke*. This evidence, however, came into existence subsequent to the petition's filing date. See *Matter of Katigbak* at 45, 49. Subsequent developments in the petitioner's career cannot retroactively establish that he was already eligible for the classification sought as of the filing date.

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

The petitioner submitted five letters in support of the petition. [REDACTED] Professor, Department of Epidemiology, Johns Hopkins University, states:

[The petitioner] has been playing an important role in a National Institutes of Health funded study, the Atherosclerosis Risk in Communities Study. The study is one of the premier studies on cardiovascular disease. Through this study [the petitioner] is making an impact in the development of essential understandings for the prevention of cardiovascular disease. To date, the study has provided approximately 325 projects for national and international scientific conferences and meetings, and has published over 305 articles in scientific journals.

[The petitioner] . . . has presented an important paper on risk factors for survival after myocardial infarction at the Society for Epidemiology Research. The paper provides data relevant to improving health care after myocardial infarction. Another paper he has presented in an American Heart Association Conference is on alcohol effect on subclinical cerebrovascular disease; this research provides important information that may well be helpful for developing public advices on alcohol drinking. He has also played an important role through his contributions to a paper on trend of cardiac procedures use, and another paper on echocardiography and cardiovascular disease. Both manuscripts have been presented at an American Heart Association Conference. In addition, he has coauthored on a paper on hormones and cardiovascular disease, which has been published in the *American Journal of Epidemiology*. The paper provides important insights on the effects of hormones on cardiovascular disease. His work on sleep apnea and white matter disease in the brain stem is the first paper on the subject to show that pathological abnormalities in the brain stem is associated with impaired arousal ability. The paper has been presented in an American Thoracic Society Conference, and has great relevance to the understanding of sleep abnormalities.

In regard to the petitioner's conference presentations, we note that acclaim is generally not established by the mere act of presenting one's work at a scientific conference. The record contains no documentation demonstrating that the presentation of one's work is unusual in the petitioner's field or that the invitation to present at conferences where the petitioner spoke was a privilege extended to only a few top researchers. Participation in scientific conferences and symposia of the petitioner's kind is routine and expected in the medical research community. Many professional fields regularly hold conferences and symposiums to

present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the petitioner above almost all others in his field at the national or international level. The record contains no evidence showing that the petitioner's conference presentations commanded an unusual level of attention in comparison to other conference participants or that the petitioner has served as a keynote speaker at a national or international medical conference.

Professor of Public Health and Chair, Department of Population Health Sciences, University of Wisconsin Medical School, states:

I had the privilege of being [the petitioner's] Ph.D. advisor while being a faculty member at the Department of Epidemiology at the School of Public Health in the Johns Hopkins University.

* * *

[The petitioner] is currently engaging in a National Institutes of Health funded study, The Sleep Heart Health Study. This study, in which [the petitioner] is playing a leading research role, is the largest project on sleep-related diseases in the world. The objective of the study is to investigate and understand the cardiovascular and other consequences of sleep disordered breathing. . . . Not only will the results of the study further our understanding of sleep disordered breathing and provide the direction for further research, but it will also establish the guidelines for health care policy. [The petitioner] is playing a leading and critical role in this study with his project titled "Sleep apnea and white matter disease in the brain stem." [The petitioner] presented the results from this project at the top professional meeting in the field, the American Thoracic Society. [The petitioner's] work has provided the first human data to show that pathological changes in the brain stem may be a cause of impaired arousal ability. The finding has made a significant and crucial impact in the field. Because the impaired arousal ability is the mechanism underlying many life-threatening diseases, this research in which [the petitioner] is playing a leading role may greatly improve prevention of those diseases.

We acknowledge Professors [redacted] and [redacted] observation that that the petitioner was among the first to show that pathological changes in the brain stem may be a cause of impaired arousal ability. However, of far greater relevance in this proceeding is the importance to the overall field of the petitioner's discovery. In this case, the petitioner has not provided adequate evidence showing that this finding was widely recognized throughout his field as a major contribution. The petitioner must show not only that his discoveries are important to his superiors at Johns Hopkins University, but throughout the greater research community as well. [redacted] observation that the petitioner's work "may greatly improve prevention" of many life-threatening diseases is not adequate to demonstrate that his work rises to the level of a contribution of major significance.

[redacted], Assistant Professor of Medicine and Epidemiology, Columbia University, received her Ph.D. and M.P.H. degrees from The Johns Hopkins University School of Hygiene and Public Health during the 1990's. She states:

[The petitioner's] research has a great impact in the U.S. health care community. [The petitioner] has made broadly recognized original scholarly and research contributions in the field of Epidemiology of cardiovascular disease. One example, of numerous, is the important role he is playing in a National Institutes of Health funded study, the Sleep Heart Health Study. His work on sleep apnea and white matter disease in the brain stem is the first paper on the subject to show that pathological abnormalities in the brain stem are associated with impaired arousal ability. The paper has been presented in an American Thoracic Society Conference. The research has a great impact on the Epidemiology field. In addition, other medical fields have been influenced by these research findings of [the petitioner].

[The petitioner] and his team have published two papers on hormones and cardiovascular disease in *American Journal of Epidemiology*. These papers proposed new directions for research on hormones and cardiovascular disease. They have drawn considerable attention. These studies have provided important evidence for clinical diagnosis and treatment of cardiovascular disease and are impacting research in the U.S. and abroad.

We accept that petitioner's published work has yielded some useful and valid results; however, it is apparent that any journal article, in order to be accepted for publication or presentation, 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 or presentation has made a major contribution in his field. The record contains no evidence showing that the petitioner's research findings were widely cited as of the petition's filing date.

Assistant Professor of Medicine, Johns Hopkins University School of Medicine, states:

[The petitioner's] research has contributed in significant ways to public health concerns in the United States. For example, he was a leading researcher on a paper regarding the relationship between hormones and cardiovascular disease. This paper, entitled "A Hypothesized Relationship Between Relative Androgen Excess and Increased Cardiovascular Risk After Menopause," proposed an innovative approach to the problem of cardiovascular disease acceleration among pre-menopausal women. The most prestigious journal in our field, the *American Journal of Epidemiology*, published the paper [The petitioner] also was an author of another research paper on hormones and subclinical cardiovascular disease. The paper, entitled "Endogenous Postmenopausal Hormones and Carotid Atherosclerosis: A Case-Control Study of the Atherosclerosis Risk in Communities Cohort," was also published in the *American Journal of Epidemiology*. Both of these important papers have furthered current knowledge regarding the effects of hormones on cardiovascular disease.

Almost all of the individuals offering letters of support cite the petitioner's published articles as evidence of his original contributions. Published work, however, falls under another criterion. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for published work and contributions, Citizenship and Immigration Services (CIS) clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. We will fully address the petitioner's published works and citations under the next criterion.

Chief, Geriatric Epidemiology Office, Laboratory of Epidemiology, Demography and Biometry, National Institute on Aging, National Institutes of Health, states:

[The petitioner's] research has the potential to have a major impact in the U.S. health care. He has played an important role in several National Institutes of Health-funded studies, the Atherosclerosis Risk in Communities Study, the Sleep Heart Health Study, and the Cardiovascular Health Study. His analysis of critical information on the role on sleep apnea and cardiovascular disease has been presented at several international scientific conferences, including the American Heart Association, the American Thoracic Society, and the Society for Epidemiology Research. These papers have the potential to make a contribution to the U.S. Health Care. Based on his excellent record, [the petitioner] was hired as a junior faculty member at Johns Hopkins University, a position that allows him also to work with me at the National Institute on Aging in epidemiologic studies of cardiovascular risk factors and disease.

In two separate observations above, [redacted] cites "the potential" of the petitioner's research. The assertion that the petitioner's results hold future promise, however, is not adequate to establish that his findings are already nationally or internationally acclaimed as a major contribution. *See Matter of Katigbak* at 45. With regard to the witnesses of record, many of them discuss what may, might, or could one day result from the petitioner's work, rather than how his past efforts already rise to the level of a contribution of major significance. Such observations are not adequate to distinguish the petitioner's contributions from those of established epidemiology researchers.

We also note [redacted] observation that the petitioner "was hired as a junior faculty member at Johns Hopkins University." The nature of such a position is certainly no indicator that the petitioner "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 petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

The petitioner's witnesses consist of his supervisor from the Laboratory of Epidemiology, Demography and Biometry at the National Institutes of Health and four professors affiliated with Johns Hopkins University. With regard to the personal recommendation of individuals from institutions where the petitioner has studied and worked, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the petitioner has earned sustained acclaim for his contributions outside of his affiliated institutions. If the petitioner's reputation is mostly limited to those institutions, then he has not achieved national or international acclaim, regardless of the expertise of his witnesses. As noted by the director, "[a]n individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim." Without extensive documentation (predating the petition's filing date) showing that the petitioner's findings have been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that his work rises to the level of 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.

The petitioner initially submitted evidence of his authorship of two articles appearing in the *American Journal of Epidemiology* in 2001 and 2002 and a few scientific conference abstracts.

On appeal, the petitioner submitted evidence of additional articles appearing in *Stroke*, the *American Heart Journal*, *Neuroepidemiology*, the *American Journal of Hypertension*, *Sleep*, *Circulation*, and the *American Journal of Epidemiology*, which were all published subsequent to the petition's filing date. See *Matter of Katigbak* at 45. Articles published subsequent to January 15, 2003 cannot retroactively establish eligibility as of that date.

We do not find that publication of scholarly articles is presumptive evidence of sustained national or international acclaim; we must also consider the greater scientific community's reaction to those articles. When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. 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 sources in his own publications. Numerous independent citations would provide firm evidence that other researchers have been influenced by the petitioner's work and are familiar with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the greater field, then it is reasonable to conclude that the alien's work is not nationally or internationally acclaimed.

The petitioner's appellate submission includes citation indices showing that his 2001 and 2002 articles in the *American Journal of Epidemiology* were cited an aggregate total of 17 times. Of the 17 cites, only three existed as of the petition's filing date. While the citation indices provided by the petitioner demonstrate some measure of interest in his published work, he has not shown that his publication record elevates him to a level above almost all others in his field at the national or international level. The weight of the journal articles authored by the petitioner in 2001 and 2002 is diminished by a lack of evidence showing that these articles are widely influential or that they had earned him national acclaim as of the filing date.

In conclusion, we note that virtually all of the evidence presented on appeal relates to circumstances or events arising after the filing date. In *Matter of Katigbak*, CIS (legacy INS) held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. We acknowledge that the petitioner's new evidence is indicative of some degree of national acclaim, but such evidence cannot retroactively establish that he was already eligible for the classification sought as of the petition's filing date.

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 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.