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U.S. Citizenship
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Services

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FILE:



WAC 04 050 53497

Office: CALIFORNIA SERVICE CENTER

Date: **JUL 15 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:

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.

Maia Johnson

 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 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 record indicates that the petitioner is currently employed as a Grade II Scientist at CovX Pharmaceuticals Incorporated in San Diego, California. The petitioner submitted supporting documents including ten recommendation letters, copies of his journal articles and conference abstracts, his academic credentials, evidence of and relating to his membership in professional associations, citations of his journal articles, evidence of his income, fellowships and guest lectures in India. The director noted the petitioner's accomplishments, but found the record did not establish the requisite sustained acclaim. On appeal, the petitioner submits a brief, copies of previously submitted documents, and a recent earnings statement. The petitioner's claims do not overcome the substantive reasons for denial and the appeal will be dismissed. The evidence submitted, counsel's contentions and the director's decision 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. The petitioner submitted documentation of a "Senior Research Fellowship" granted to support the petitioner's doctoral research at the Cancer Institute in India, a "Post-Doctoral Fellowship" to support the petitioner's studies at the University of Pretoria in South Africa, a "post-doc position" at the Institute of Bioinorganic and Radiopharmaceutical Chemistry at the *Forschungszentrum Rossendorf* in Germany, a "Post Doctoral Fellowship in Targeted Radioimmunotherapy" at the University of Washington, and a "Postdoctoral Associate" position at the Sidney Kimmel Cancer Center in San Diego, California. The director noted that, unlike prizes or awards for past achievements, fellowships are awarded to fund prospective research. The director also explained that research funding is inherent to scientific activity and is not necessarily evidence of sustained national or international acclaim. On appeal, the petitioner contends that "[t]hese are competitive scientific fellowships awarded based on past achievements and not merely to every qualified scientist. It is important to note that because of my outstanding research accomplishments in the field of cancer therapy, I was selected for these competitive international fellowships among several applicants. In addition, fellowships and grants are peer-reviewed"

We do not contest that the fellowships were awarded to the petitioner based on his past achievements or that his fellowships may have been peer-reviewed and competitive. However, only other graduate students and postdoctoral researchers – not established scientists at the top of their fields – compete for such fellowships. The submitted documents do not demonstrate that the petitioner's fellowships are equivalent to nationally or internationally recognized prizes or awards reflective of the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

(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 director correctly determined that the petitioner did not meet this criterion. The record contains evidence of the petitioner's membership in seven scientific associations and societies. First, the petitioner submitted a copy of his membership certificate for the International Society for Biological Therapy of Cancer (SBT) and a printout from the SBT website. The printout states that regular membership requires "a MD or PhD in a biological science or the equivalent and [being] an active, bona fide representative of the international scientific community with a specialty or interest in a field related to the biological therapy of cancer" and nomination by a SBT member or two references. These requirements are common to scientists active in the petitioner's field and do not constitute outstanding achievements.

Second, the record contains a copy of the petitioner's "Regular Membership" certificate for the Society for Experimental Biology and Medicine (SEBM) and a printout from the SEBM website. As stated on the printout, SEBM regular membership requires "active involvement in a scientific career in experimental biology or biomedical research evidenced by receipt of a doctoral level degree and publication of original articles in reviewed journals" and two professional references. Again, these are common qualifications – not outstanding achievements – of scientists in the petitioner's field.

Third, the petitioner submitted evidence of his "Full Society Membership" in the Radiation Research Society. The submitted printout from the society's website states that membership is granted to "persons who have contributed to the advancement of understanding the effects and risks of radiation or have rendered service in a field related to radiation sciences. The fulfillment of these qualifications shall be determined by an examination of the accomplishments and qualifications of the candidate including publications." Two professional references are also required. The printout does not define "contributed to" or "rendered service" or otherwise indicate that such accomplishments constitute outstanding achievements, rather than active employment in radiation sciences or a related field.

Fourth, the record also evidences the petitioner's "Associate Membership" in the American Association for Cancer Research (AACR). The submitted printout from the AACR website indicates that associate membership requires nomination by an Active, Emeritus, or Honorary member of AACR in good standing and submission of the applicant's curriculum vitae, but nothing equivalent to outstanding achievements. On appeal, the petitioner submits evidence suggesting that he is now an "Active Member" of AACR. We cannot consider this evidence because it arose after the petition was filed. The 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. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Finally, the petitioner submitted evidence of his membership in the American Association of Pharmaceutical Sciences (AAPS), the American Institute of Biological Sciences (AIBS), and the American Association for the Advancement of Science (AAAS), but no evidence of the AAPS, AIBS or AAAS membership criteria or other evidence that outstanding achievements are prerequisite to membership in any of these three associations.

The record does not establish that any of seven associations of which the petitioner is a member require outstanding achievements as a prerequisite to membership. Consequently, the petitioner does not meet this 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. The petitioner submitted eleven recommendation letters from scientists who know the petitioner through his graduate work in India and his postdoctoral positions abroad. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has earned sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

The record indicates that the petitioner obtained his doctoral degree from the Cancer Institute of the University of Madras in India in 1998. Dr. A. Meenakshi, Professor and Head of the Department of Biochemical Oncology at the Cancer Institute and the petitioner's doctoral advisor, explains that the petitioner's "Ph.D. thesis was on the 'Radioimmunolocalization of technetium-99m in a murine lymphoma'" and that he "successfully targeted the murine lymphoma with radiolabeled monoclonal antibodies which has immense clinical relevance in the management of human lymphoma." Dr. T. Rajkumar, Scientific Director and Professor of Molecular Oncology

at the Cancer Institute, affirms that the petitioner "worked on the tumor-specific targeting of radiolabeled monoclonal antibodies in a murine lymphoma model which has great relevance to the radioimmunodetection and therapy of human cancers. This work was supported by the Indian Council of Medical Research and the RD Birla Smarak Kosh Trust. He was a resourceful investigator and had exceptional skills in animal models of cancers and antibody therapies." Dr. Muthukumaran Sivanandham, Professor of Biotechnology at Anna University in Coimbatore, India, states that he met the petitioner while he was a graduate student at the Cancer Institute and also affirms the subject of the petitioner's doctoral research.

The record contains copies of three articles related to the petitioner's doctoral research published in scientific journals. The petitioner is the lead author of all three articles, but the record indicates that only one of these articles has been cited by other researchers. The petitioner's article entitled "Preliminary Study on Immunoscintigraphy of a Murine Lymphoma Using Technetium-99M Labeled Chicken Antibody" and published in 2000 in *Tumori* was cited once by an independent research team in 2002. The record also contains copies of four abstracts (relating to the petitioner's doctoral research) of which the petitioner is the lead author that were presented at various scientific conferences, but the petitioner submits no evidence that these abstracts have been widely cited or otherwise significantly recognized in his field. Hence, the record does not establish that the petitioner's doctoral research made contributions of major significance to his field.

The record includes eight letters from scientists who became acquainted with the petitioner through his four postdoctoral positions outside of India. Dr. Oliver W. Press, Professor of Medicine in the Division of Oncology at the University of Washington in Seattle, states that the petitioner worked in his laboratory at the Hutchinson Cancer Research Center from 2000 to 2002. Professor Press explains that his "laboratory is developing innovative new treatments for hematologic malignancies, including leukemias and lymphomas" and that the petitioner "did a superb job evaluating the utility of pretargeted radioimmunotherapy in mice with lymphoma." Professor Press notes that the petitioner "presented his research findings at national meetings[,] including the American Association for Cancer Research [AACR]" and has "published an outstanding first-authored manuscript of his work in the *Journal of Nuclear Medicine* and is a co-author on two other manuscripts from our lab." Dr. D. Scott Wilbur, Professor of Radiation Oncology at the University of Washington, states that he collaborates with Professor Press and met the petitioner as a postdoctoral fellow in Professor Press' laboratory. Professor Wilbur explains that "[i]n our collaborative studies, [the petitioner] investigated the advantages of a novel new approach termed 'pretargeted radioimmunotherapy' over conventional radioimmunotherapy. His findings from those studies were quite convincing. The pretargeting achieved higher cure rates in mice compared with conventional radio-immunotherapy." Professor Wilbur affirms that the petitioner's research was published in peer-reviewed journals and presented at the national AACR meeting. The significance of the petitioner's work at Professor Press' laboratory is similarly discussed by Dr. Joseph Rajendran, a nuclear medicine physician on the faculty of Radiology and Radiation Oncology at the University of Washington who collaborated with Professor Press on research in which the petitioner was involved, and by Dr. A. Sampath Narayanan, Research Professor in Pathology at the University of Washington School of Medicine who also met the petitioner as a postdoctoral fellow in Professor Press' laboratory.

The petitioner submitted copies of three articles concerning his research in Professor Press' laboratory that were published in scientific journals in his field. He is the lead author of one article and a co-author of the other two. The record shows that the petitioner's co-authored article that was published in 2001 in *Blood* has been cited 29 times, including five self-citations by the petitioner and his co-authors. His second co-authored article, published in 2003 in *Blood*, has been cited three times by independent research teams. However, the article of which he is the lead author, published in the *Journal of Nuclear Medicine* in 2003, has been cited only once by

another research team. The petitioner also submitted copies of two abstracts printed in the proceedings of the 2001 AACR meeting. He is the lead author of one abstract and a co-author of the other. This evidence indicates that the petitioner has received limited recognition for his work, but does not reflect sustained national or international acclaim.

The record indicates that the petitioner left Professor Press' laboratory for another postdoctoral position at the Sidney Kimmel Cancer Center [SKCC] in San Diego, California in 2002. Dr. Albert B. Deisseroth, President and Chief Executive Officer of the Center, explains that the "major focus of [the petitioner's] work was the development of vascular targeted delivery of antibodies and drugs to tumors, a very promising strategy for the therapy of solid tumors." Dr. Deisseroth also notes that the petitioner "establish[ed] a small animal imaging facility at the SKCC." Dr. Carl K. Hoh, Director of the Nuclear Medicine Division at the University of California in San Diego, explains that the petitioner "worked on the vascular targeted cancer imaging and therapy using radiolabeled antibodies which was a collaborative project between my laboratory and the Sidney Kimmel Cancer Center. I am confident that [the petitioner] received superior training at the Sidney Kimmel Cancer Center." The petitioner submitted three conference abstracts – but no published articles – of which he is a co-author that are related to his research at the SKCC. The record is devoid of any evidence that these abstracts have been widely cited or that the petitioner's work at the SKCC has otherwise been recognized as making major contributions to his field.

The petitioner also submitted a letter from Dr. Peter Brust, Head of Biological Research at the Institute of Interdisciplinary Isotope Research at the University of Leipzig in Germany, who states that the petitioner worked in his former laboratory at the Institute of Bioinorganic and Radiopharmaceutical Chemistry at the *Forschungszentrum Rossendorf* in Dresden. The petitioner's curriculum vitae states that he held this postdoctoral position for six months in 1999. Dr. Brust explains that in this position the petitioner "was actively involved in the characterization of glioblastoma cell lines expressing HSV1-tk gene for an important Positron Emission Tomography (PET) imaging project." The record contains no corroborative evidence of the petitioner's work in Germany.

Finally, the record contains a letter from Dr. Marco Colombatti, Associate Professor of Immunology at the Department of Pathology of the University of Verona in Italy. Professor Colombatti explains that he previously tried to arrange a position for the petitioner in his laboratory, but was unsuccessful. Professor Colombatti briefly notes the petitioner's experience, skills and journal publications.

Although the letters indicate that the petitioner's work is well regarded by those who have worked with him or are familiar with his work, they do not establish that his research has made major contributions to his field in a manner reflective of sustained national or international acclaim. The petitioner has published just three articles in scientific journals. While one of his co-authored articles has been widely cited, his sole first-authored article has been cited only once. The petitioner has participated in national and international conferences in his field, but the record is devoid of any evidence that his participation was notably distinguished or that the work he presented was otherwise recognized as making major contributions to his field. Accordingly, the petitioner does not meet this criterion.

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

The director found that the petitioner met this criterion, but did not fully discuss the relevant evidence. Our review of the record finds that the evidence does not satisfy this criterion. As discussed above under the fifth criterion, the petitioner has co-authored three articles published in scientific journals. However, frequent publication of research findings is inherent to success as an established scientist and does not necessarily indicate the sustained acclaim requisite to classification as an alien with extraordinary ability. Evidence of publications must be accompanied by documentation of consistent citation by independent experts or other proof that the alien's publications have had a significant impact in his field.

The record indicates that the petitioner is the co-author of an article entitled "A Comparative Evaluation of Conventional and Pretargeted Radioimmunotherapy of CD20-expressing Lymphoma Xenografts" that was published in 2001 in *Blood*. This article has been cited 29 times, including five self-citations by the petitioner and his co-authors. A second article of which the petitioner is a co-author was published in *Blood* in 2003 and is titled "Comparison of Anti-CD20 and Anti-CD45 Antibodies for Conventional and Pretargeted Radioimmunotherapy of B-cell Lymphomas." This article has been cited three times by independent research teams. The petitioner submitted a printout from BloodMed.com listing *Blood* as the second highest in rank among the top journals in general medicine with an impact factor of 8.977.

The article first-authored by the petitioner, "Comparison of Immunoscintigraphy, Efficacy, and Toxicity of Conventional and Pretargeted Radioimmunotherapy in CD20-Expressing Human Lymphoma Xenografts," was published in the *Journal of Nuclear Medicine* in 2003. This article has been cited only once. The petitioner submitted a printout from the website of the *Journal of Nuclear Medicine* stating that it "is the most widely read peer-reviewed journal in nuclear medicine and its allied disciplines" and has "an ISI impact factor of 4.510, is in the top 5% of all 5,748 scientific serials rated, and is ranked third based on immediacy index out of the 81 journals included in the category of radiology, nuclear medicine, and medical imaging." However, the record contains no independent evidence to corroborate this claim regarding the journal's prestige.

The petitioner also submitted copies of nine abstracts co-authored by him from various scientific conferences. The petitioner is the lead author of five of these abstracts. The record contains no evidence that these abstracts have been published or consistently cited by independent researchers.

We note that two of the petitioner's articles were published in 2003 and that his petition was filed in December 2003. Hence, it is understandable that these articles were not widely cited within this short time frame. However, the petitioner must still establish eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The evidence submitted indicates that the petitioner is the co-author of two articles published in a reputable medical journal, but only one of these articles has been widely cited. The petitioner is the lead author of a third article published in a purportedly prestigious journal in his field, but the article has been cited only once. This publication record is not consistent with sustained national or international acclaim. Accordingly, the petitioner does not meet this criterion.

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

The director correctly determined that the petitioner did not meet this criterion and the petitioner does not contest that conclusion on appeal. The record indicates that the petitioner was a postdoctoral researcher at four institutions before obtaining his present position at [REDACTED] Incorporated. The letters discussed under the fifth criterion explain that the petitioner made valuable contributions to specific laboratories at these

institutions and assumed important responsibilities for individual research projects, but they do not establish that he played a leading or critical role at any of the institutions. The record also contains no independent evidence that these four institutions have distinguished reputations. Besides a copy of the petitioner's offer-of-employment letter stating his position as "Scientist (Grade II)," the record contains no evidence of the petitioner's role at [REDACTED]. Accordingly, the petitioner does not meet this criterion.

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The director correctly determined that the petitioner did not meet this criterion. The petitioner submitted evidence that his current salary of \$70,000 at [REDACTED] is substantially higher than the salaries he earned at his postdoctoral positions. On appeal, the petitioner contends that his current salary and benefits "are significantly higher than others in the field with similar level of expertise who will normally receive a salary of \$55,000 - \$60,000 in the industry and \$45,000 - \$55,000 in the academic institutions." He submits a copy of his recent earnings statement from [REDACTED] but no documentation of the salaries of other researchers in his field or other evidence to support his claim that his salary is significantly higher than others in his field. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, the relevant comparison is to scientists at the very top of the petitioner's field, not the average or "normal" salary of scientists "with similar level of expertise." The record contains no evidence that the petitioner's salary is comparable to scientists at the very top of his field. 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, 8 U.S.C. § 1153(b)(1)(A), 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 evidence in this case indicates that the petitioner has made valuable contributions to cancer research, but the record does not establish that he has achieved sustained national or international acclaim as a scientist placing him at the very top of his field. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his 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.