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U.S. Citizenship
and Immigration
Services

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FILE: EAC 03 105 50539 Office: VERMONT SERVICE CENTER

Date: JUL 15 2005

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:



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.

Maiphusm

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 researcher in molecular biology and medical science. The record indicates that at the time of filing the petitioner was a postdoctoral fellow in the Department of Cellular and Molecular Physiology at the Yale University School of Medicine. The petitioner submitted supporting documents including: her academic credentials and honors, copies of her scholarly articles in Chinese and their English abstracts, 13 recommendation letters, a printout from the PubMed website with English abstracts of her Chinese articles, a copy of her American Association for the Advancement of Science membership card, documents relating to her postdoctoral fellowship at Yale University, two abstracts presented at scientific conferences in the United States, and a printout from the Centers for Disease Control and Prevention (CDC) providing general information about *candidiasis* infections. The director determined the evidence did not establish that the petitioner had earned the sustained national or international acclaim requisite to classification as an alien with extraordinary ability.

On appeal, counsel submits a brief and the following new evidence: a second support letter from the petitioner's supervisor at Yale, two additional recommendation letters, evidence of her membership in the Society of General Physiologists, and a copy of a recent journal article of which the petitioner is the lead author. Counsel's claims and the additional evidence submitted on appeal do not overcome the deficiencies of the petition and we affirm the director's decision.

We first note two issues raised by counsel on appeal. First, on page two of his appellate brief, counsel claims "the Vermont Service Center, in implementing its decision to NOT issue RFE's [sic] is simply denying all petitions, like this one with boilerplate letters. . . . This new policy of Vermont's of sacrificing consideration of the merits of each case for the expediency of decreasing processing times is both illegal and immoral." Counsel discounts the director's review of the supporting evidence for this petition as discussed in her decision. Although 8 C.F.R. § 103.2(b)(8) requires the director to requests additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing," the director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation.

Furthermore, even if the director had committed a procedural error by failing to solicit further evidence. The petitioner has in fact supplemented the record on appeal and the AAO has considered all the evidence in reaching a decision. Therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

Second, counsel claims that Citizenship and Immigration Services (CIS) discriminates against Chinese petitioners and beneficiaries by imposing an excessive standard on their petitions. Counsel's claim is undocumented and needlessly inflammatory. On page five of his appellate brief, counsel quotes the second letter of the petitioner's supervisor at Yale, Professor Clifford L. Slayman, who states, "[the petitioner] would be irreplaceable upon departure from the United States, and if this were to occur for discriminatory reasons, it would be tragic." Counsel then "note[s] that [redacted] concerns about discrimination may be well-founded. It seems from my perspective . . . that the standards required of Chinese tend to exceed the standards of all other nationalities." Counsel does not document how the petition was denied through discriminatory imposition of an excessive standard, rather than denied because of the deficiencies of the submitted evidence. Counsel also cites no other specific cases of alleged discrimination of Chinese petitioners or beneficiaries.

Counsel's remaining contentions, the evidence submitted 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 copies of her "Award of Excellence in Undergraduate Studies" issued in 1991 by Hunan Normal University in China and her "Award of Excellence in Graduate Studies" issued in 1995 by Wuhan University in China. The record also contains a letter addressed to the petitioner from the Funding Resource Center at Yale University, dated January 25, 2000, and informing the petitioner that she has "been awarded a [redacted]

Coxe Fellowship" and that "[t]he primary purpose of the Brown-Coxe Fellowship is to support new postdoctoral fellows at a level near the first step of the NIH fellowship scale." The petitioner also submitted a copy of the fellowship application.

While notable, these honors were granted for the petitioner's scholastic achievement and to support her postdoctoral studies. Academic honors such as these do not satisfy this criterion because they are granted by individual institutions, are only open to students or recent postdoctoral fellows – not established scientists – and thus they do not reflect the requisite sustained national or international acclaim. On appeal, counsel contends that the petitioner's postdoctoral fellowship at Yale "is awarded on the basis of national competition," but the record contains no evidence to support this claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Even if the fellowship were based on national competition, it would still not satisfy this criterion because only new postdoctoral researchers – not established scientists – are eligible and because "national competition" is not, *a fortiori*, national recognition 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. In his initial brief, counsel stated that the petitioner was a member of the Society of Biochemistry and Molecular Biology in China from 1994 to 2000. The record contains a certificate from this society attesting that the petitioner was invited to speak at the Ninth Annual meeting of the society in 1995. The certificate does not state that the petitioner was a member of the society at any time and the record contains no other evidence of her membership or that the society requires outstanding achievements of its members.

The petitioner documented her membership in the American Association for the Advancement of Science (AAAS) by submitting a copy of a card listing her category of membership as "Post Doc." On appeal, the petitioner submits a letter addressed to her, dated March 4, 2003 and informing her that she has "been elected to membership in the Society of General Physiologists." The record is devoid of any evidence that outstanding achievements are prerequisite to AAAS "Post Doc" membership or membership in the Society of General Physiologists. Accordingly, the petitioner does not meet this criterion.

The director concluded that "[b]ased on the evidence submitted, it does not appear that these associations require outstanding achievements of their members." On appeal, counsel states, "[p]erhaps if there was doubt here, an RFE should have been issued." Yet the evidence required is explicitly stated in the regulation and on appeal, counsel submits no evidence that outstanding achievements are prerequisite to membership in any of the organizations of which the petitioner is or was a member.

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

The director stated:

The beneficiary has presented at scientific conferences and has authored several scientific articles for publication in journals, activities that are not unusual for a researcher to do. However, the record offers insufficient evidence that her contributions are generally acknowledged as representing major advances that have enjoyed widespread implementation in the field.

On appeal, counsel contends that the director is imposing an unauthorized requirement of “widespread implementation in the field.” We do not read the director as imposing a standard beyond the statute or regulation. Rather, the director is apparently noting that the petitioner’s work has not received significant recognition as having made major contributions in a manner reflective of sustained acclaim, one example of which might be “widespread implementation in the field.”

Counsel also claims the director ignored the petitioner’s recommendation letters in a “disingenuous way to attempt to avoid consideration of Petitioner’s strongest evidence.” Although not included under her discussion of this category, the director did address the petitioner’s support letters under the sixth criterion. She noted that the letters “seek to describe [the petitioner] as one of the elite few at the very top of the field,” but explained:

[t]he opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim for classification as an E11, Alien of Extraordinary Ability. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

This is an accurate statement of the appropriate standard for reviewing support letters as evidence of an alien’s eligibility under the regulatory criteria at 8 C.F.R. § 204.5(h). However, we acknowledge that the director made subsequent comments indicating that she did not substantively assess the claims made in the petitioner’s support letters. Accordingly, we review the letters’ discussion of the petitioner’s contributions in relation to other relevant evidence in the record.

The record indicates that prior to her position at Yale, the petitioner was a graduate student at the Institute of Virology at the Chinese Academy of Preventive Medicine in Beijing where she conducted research on vascular endothelial growth factor (VEGF) receptors. Dr. Yun Lai Chan, Professor of Physiology and Biophysics at the University of Illinois College of Medicine, states that the petitioner “was well-known in China for her achievements in study tomor [sic] related cytokine and in designing new anti-tumor therapy strategy.” Dr. Yuqing Huo, Assistant Professor in the Department of Biomedical Engineering and Cardiovascular Research Center at the University of Virginia, explains that the petitioner “was the first person in the world who found that the first two extracellular domains of VEGF receptor KDR can bind VEGF. . . . [She] was also the first researcher who successfully expressed KDR with Adeno-associate virus (AAV) gene therapy vector and proved the recombinant virus can inhibit the vessel formation of melanoma. These findings advanced the science of tumor therapy and gene therapy.” Dr. Jiang Fan, Research Biologist at Merck Research Laboratories, affirms that the petitioner “is the first researcher to express VEGF receptor in a gene therapy vector, which proved to inhibit the growth of melanoma in animal experimentation. This discovery may lead to the development of new drugs for the treatment of tumors and other vascular formation related diseases.” Dr. Feng-Qian Li, Acting Assistant Professor in the Department of Medicine and the Division of Medical Genetics at the University of Washington School of Medicine, heralds the petitioner’s research results in this area as “among the most important medical investigations ever done” and that her work “opened a new concept in tumor therapy.” Finally, Dr. Pentao Liu, Research Fellow at the National Cancer Institute of the National Institutes of Health

(NIH), states, “[the petitioner] was well-known in China for her scientific achievements in the investigations of tumor related cytokine, VEGF, and for her design of a new anti-tumor therapy strategy by using soluble VEGF receptors to inhibit the growth of tumor angiogenesis. . . . I would like to point out the several chemical compounds that block VEGF and its receptors are currently in clinical trials in the United States for treating several malignant cancers.” Yet Dr. Liu does not specify any clinical trial that is directly based on the petitioner’s work.

The record documents 15 articles co-authored by the petitioner that were published in Chinese scientific journals. The petitioner is the lead author of four of these articles. The record also contains a printout from the website of PubMed with the English abstracts of eight of her articles, including two of which she is the lead author. The printout states that six of these articles have been indexed for Medline or PubMed, but the record contains no documentation of the significance of such indexation. The record is devoid of any evidence that the petitioner’s articles have been cited or otherwise widely acknowledged by other researchers (outside of those solicited to write recommendation letters for her petition) as making major contributions to her field. Hence, the record does not demonstrate that the petitioner’s work in this area satisfies this criterion.

The record contains even less evidence to corroborate the significance of the petitioner’s recent contributions as a postdoctoral fellow at Yale. In his first letter, Professor Slayman, the petitioner’s supervisor, explains that the petitioner joined his laboratory “in the summer of 2000 . . . to undertake molecular studies on the two major proteins, designated ScTRK1 and ScTRK2, responsible for accumulation of potassium, the dominant intercellular cation, in the yeast *Saccharomyces cerevisiae* . . . the brewers’ yeast.” Professor Slayman states, “[the petitioner] was the first person to demonstrate the correct transmembrane orientation of this class of proteins, which is a necessary first step in the purposive design of drugs to act via these proteins. She presented her data at the September 2002 meeting of the Society of General Physiologists, and is now preparing two full research manuscripts.” Professor Slayman explains that the petitioner was also working on “the characterization of the TRK protein in the plasma membrane of the facultative parasite, *Candida albicans*, with a direct eye toward potential antifungal drugs” and “adapting yeast membrane technology to screen for neuroactive drugs and anticancer agents.” Professor Slayman believes the petitioner “has become an authority in the area of structure-function analysis of transporter proteins.” Two other professors in the Department of Cellular and Molecular Physiology at the Yale University School of Medicine, Dr. Joseph F. Hoffman and Dr. Carolyn W. Slayman, summarize and praise the petitioner’s work in these areas.

The petitioner also submitted numerous letters from experts in this field outside of Yale University. Dr. Gerald A. Berkowitz, Professor of Plant Science at the University of Connecticut, explains that he became acquainted with the petitioner’s work through presentations of her research at two conferences. Professor Berkowitz states that the petitioner’s “analysis of [the TRK proteins’] folding within the yeast plasma membrane has provided a new understanding of how atomic architecture is related to protein function” and notes the potential application of the petitioner’s research in the design of pharmaceuticals and crops resistant to pathogens and environmental stressors. Professor Chan of the University of Illinois also states that the petitioner’s “unique talent is contributing to the field of pathogenic fungi, an extremely important field to life sciences and medical treatment.” Dr. Mingyao Liu, Assistant Professor in the Department of Medical Biochemistry and Genetics at Texas A&M University, states that the petitioner’s work on Trk1 and Trk2 proteins “will provide detailed understanding of the structure and function of potassium transporters” and notes her research on the “potassium transporter of *Candida albicans*, which is the most important pathogenic fungi for many diseases.” Dr. Jiang Fan of Merck Research Laboratories explains that the petitioner’s research in these areas “is answering many fundamental questions concerning how cells regulate potassium, which will lead to understanding the basis of

many diseases and identifying the targets for drug development.” Similar descriptions of the petitioner’s research and its significance are made by Dr. Li of the University of Washington, Dr. Liu of the National Cancer Institute, Dr. John Cuppoletti, Professor of Molecular and Cellular Physiology at the University of Cincinnati College of Medicine, Dr. Robert K. Nakamoto, Professor of Molecular Physiology and Biological Physics at the University of Virginia, and Dr. Paul M. Hasegawa, Professor at the Center for Plant Environmental Stress Physiology of Purdue University. Professor Hasegawa also notes that the petitioner’s “studies on the TRK proteins are thus far unique in the United States.”

The record contains little evidence to corroborate the petitioner’s contributions in these areas. At the time of filing, none of the petitioner’s research at Yale had been published. The record contains copies of abstracts co-authored by the petitioner presented at two scientific conferences. The petitioner is the lead author of one of the abstracts. The petitioner submitted no documentation that her work was distinguished from that of other conference participants and recognized as making major contributions to her field. There is no evidence, for example, that her papers won awards or that she was a featured speaker at the conferences. There is also no evidence that any other research teams have attempted to replicate and verify her findings or are conducting studies that build upon her research. Indeed, Professor Hasegawa attests that the petitioner’s research on TRK proteins is “thus far unique in the United States.” Accordingly, the record does not establish that the petitioner’s research at Yale has made major contributions to her field in a manner reflective of the requisite sustained acclaim.

On appeal, the petitioner submits three additional recommendation letters: a second letter from Professor Slayman, her supervisor at Yale; a letter from her current supervisor, Professor Victoria Bautch at the University of North Carolina at Chapel Hill whose laboratory the petitioner joined in August 2004; and a letter from Dr. Robert D. Simoni, Deputy Editor of the *Journal of Biological Chemistry* who discusses the significance of the petitioner’s article that was published in the January 2004 issue of this journal. In his second letter, Professor Slayman repeats much of the substance of his first letter and adds only that the petitioner’s research has been published in the *Journal of Biological Chemistry*, “cited in other work on yeasts,” and that the petitioner has moved on to Professor Bautch’s laboratory. We cannot consider this portion of Professor Slayman’s second letter or the other two letters submitted on appeal because they discuss evidence that did not arise until after the petition was filed. We also cannot consider the petitioner’s article from the *Journal of Biological Chemistry*, a copy of which she submits on appeal, because it was published 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).

On appeal, counsel claims “[w]ith 16 published articles and two presentations, clearly the beneficiary qualifies under this rubric. This certainly qualifies as making original scientific contributions.” Counsel misrepresents the number of the petitioner’s publications. Included in her publications list is a paper that was apparently presented at the First International Symposium on Bioanalytical Chemistry in Xian, China in 1995. The record contains no evidence that this paper was published in a scientific journal. Counsel also disregards his own acknowledgment, on the last page of his initial brief, that “[e]ligibility for the classification of ‘Alien of Extraordinary Ability’ is made on the basis of the *quality* and *caliber* of the evidence submitted as defined in 8 CFR 204.5(h)(2)” (emphasis in original). The weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h) must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of “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).

In this case, the record indicates that the petitioner’s work is well regarded by her supervisors and those experts familiar with her research who have written letters to support her petition. The petitioner published 15 articles in Chinese scientific journals and is the lead author of four of these articles. At the time of filing, the petitioner had presented some of research conducted at Yale University at two scientific conferences, but none of her work had been published. In addition, the record is devoid of any evidence that the petitioner’s publications have been widely cited or otherwise recognized (outside of her support letters) as major contributions to her field in a manner reflective of the requisite sustained acclaim. 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 correctly determined that the petitioner did not meet this criterion. As discussed above under the fifth criterion, the petitioner has co-authored 15 articles that were published in scientific journals in China. She is the lead author of four of these articles. 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 or her field.

In this case, the petitioner’s support letters speak highly of her published research, but the record contains no evidence that her articles have been cited or otherwise significantly recognized by other scientists. The petitioner submitted evidence that PubMed and Medline have indexed English abstracts of some of her articles, but the record does not document the significance of such indexation. As noted above under the fifth criterion, Dr. Liu of the National Cancer Institute notes that “several chemical compounds that block VEGF and its receptors are currently in clinical trials in the United States for treating several malignant cancers,” but he does not identify any clinical trial that is directly related to, or was developed based on knowledge gained through the petitioner’s published research on VEGF receptors. The petitioner’s publication record thus does not reflect sustained national or international acclaim and consequently does not satisfy 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. On appeal, counsel claims the director “essentially ignores the fact that Yale University is a distinguished institution, and that petitioner was and is a leading researcher there.” The record does not support this claim. The record establishes that at the time of filing the petitioner was a postdoctoral fellow in Professor Clifford Slayman’s laboratory within the Department of Cellular and Molecular Physiology at the Yale University School of Medicine. We do not dispute that Yale University has a distinguished reputation, however, that institutional prestige alone is insufficient to satisfy this criterion in this case. To meet this criterion, a petitioner must establish the nature of the alien’s role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization itself. We cannot assume, as counsel implies, that every school, department and laboratory at Yale has a reputation in

the relevant field as distinguished as that of the university as a whole. In this case, the record contains no evidence to document the reputation of the Department of Cellular and Molecular Physiology at the Yale University School of Medicine where the petitioner was employed at the time of filing.

Although the record shows that the petitioner made valuable contributions to Professor Slayman's laboratory, the record does not establish that she played a leading or critical role for the Department of Cellular and Molecular Physiology. On appeal, counsel cites Professor Slayman's second letter stating that the petitioner "would be irreplaceable upon departure from the United States." Counsel focuses on the wrong issue. Professor Slayman is commenting on the value to this country of the petitioner as a research scientist. He did not state that the petitioner was irreplaceable in his laboratory. In fact, the petitioner has since moved on to a new position at the University of North Carolina in Chapel Hill. Professor Hoffman and Professor Carolyn W. Slayman, also from the same department at Yale, make similar comments regarding the value of retaining the petitioner in the United States because of her abilities to contribute to biomedical science, but they also do not state that the petitioner performed a leading or critical role for their department at Yale. 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 through her research, but the record does not establish that she has achieved sustained national or international acclaim as a scientist placing her at the very top of her field. She 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 her 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.