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FILE: [REDACTED]
EAC 03 019 55345

Office: VERMONT SERVICE CENTER

Date: JUL 21 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.

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 (AAO) 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.

On appeal, counsel asserts that the director erred by failing to issue a request for evidence in accordance with 8 C.F.R. § 103.2(b)(8). At this point, the decision already having been rendered, the most expedient remedy for this complaint is the full consideration on appeal of any evidence which the petitioner would have submitted in response to such a request.

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

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has earned sustained national or international acclaim at the very top level.

This petition, filed on October 22, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a biomedical researcher. At the time of filing, the petitioner was working as a Senior Postdoctoral Fellow in the Center for Vaccine Development (CVD) at the University of Maryland School of Medicine (UMSM). The petitioner earned his Ph.D. in Molecular Microbiology from the Free University of Brussels in 1999.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence 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 an August 12, 1998 letter from the Interim Chairman of the Department of Pediatrics at the University of Maryland stating: "We are delighted that you will be joining our Fellowship program with the Division of Pediatric and Infectious Diseases, University of Maryland School of Medicine. Your term will begin December 1, 1998 with an annual salary of \$23,000."

The preceding letter reflects the petitioner's selection for an advanced scientific training opportunity at the University of Maryland rather than a nationally or internationally recognized prize or award for excellence in the field. Fellowship appointments such as this are presented not to established scientists with active professional careers, but rather to those individuals seeking further their research training and experience. The petitioner cannot artificially restrict his field to exclude all those researchers who have long since completed their advanced scientific training and therefore do not compete for such term positions. Therefore, it is implausible for the petitioner to argue that his eligibility for a postdoctoral training opportunity elevates him to a level above almost all others in his field.

The petitioner also submitted correspondence indicating that he received academic scholarships and a fellowship to pursue graduate studies and "training in Clinical Bacteriology" at the Free University of Brussels. University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. We note here that scholarships are generally presented for scholastic achievement and the pursuit of further academic study rather than for excellence in one's field. The most established and experienced scientists, who are employed in their own right and do not apply for academic scholarships, are ineligible for consideration for such awards and therefore we cannot conclude that an individual selected for a graduate scholarship stands at the very top of his field. Nor are we persuaded that obtaining financial support for one's studies and training is a rare mark of acclaim or extraordinary ability.

The petitioner also submitted evidence of an "Employee of the Month" award presented to him in 1985 when he was working as a "technician" at the International Center for Diarrheal Disease Research in Bangladesh. This employee award constitutes evidence of institutional recognition rather than national or international recognition.

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted a copy of his membership card for the American Society for Microbiology (ASM) and a "Confirmation of Attendance" letter indicating that he "participated" in a Belgian Society for Microbiology (BSM) meeting on October 17, 1997. The attendance letter has two fill-in-the-blank spaces in which the petitioner's name and address were written by hand. This letter indicates that the petitioner attended a BSM meeting, but it does not constitute first-hand evidence of his membership in the BSM. The petitioner also submitted general information about these societies printed from their websites. According to this information, full membership in the ASM "is open to any person who is interested in microbiology and holds at least a bachelor's degree or equivalent experience in microbiology or related field." The information provided from the BSM's website did not include its official admission requirements. There is no indication that membership in these societies required outstanding achievement in the petitioner's field or that he was evaluated by national or international experts in consideration of his membership. The record contains no evidence to establish that the preceding organizations require outstanding achievement of their members in the same manner as highly exclusive associations such as the U.S. National Academy of Sciences.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution.

Counsel argues that citation of the petitioner's work by others in the field represents qualifying evidence under this criterion. We note, however, that the petitioner and his work were not the primary subject of the articles that cited his findings. Scientific articles which cite the petitioner's work are primarily about the author's own work, not the petitioner's work. As such, they cannot be considered qualifying published material about the petitioner's work. We cannot ignore that the articles citing the petitioner's work similarly referenced scores of other authors. In the petitioner's field, it is the nature of research work to build upon work that has gone before. In some instances, prior work is expanded upon or supported. In other instances, prior work is superseded by the findings in current research work. In either case, the current researcher

normally cites the work of the prior researchers. Clearly this is not the same thing as published material written about an individual's work in the field. This type of material does not discuss the merits of an individual's work, the individual's standing in the field, or any significant impact that his or her work has had on work in the field. Citations of the petitioner's work will be addressed under a separate criterion.

On appeal, counsel states that the petitioner's research "has been written about in several forums." The petitioner's appellate submission includes seven articles all published in November and December of 2002. This evidence cannot be accepted, however, because it came into existence subsequent to the petition's filing date. A petitioner must establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Aside from the issue of the date that these articles came into existence, we cannot ignore that the petitioner himself is actually mentioned in only one of the articles. In contrast, the petitioner's supervisor, Dr. [REDACTED] Professor of Pediatrics, Medicine, and Microbiology & Immunology, University of Maryland School of Medicine, is named or directly quoted in six of the articles. For example, the article in *The Lancet*, which does not mention the petitioner, quotes Dr. [REDACTED] and states that Dr. [REDACTED] "led the study." Other articles cite "findings by [REDACTED] and colleagues," but they do not specifically name the petitioner. The plain wording of the regulation, however, requires "published materials about the alien." If the petitioner himself is not the primary subject of these articles, then such articles fail to demonstrate his individual acclaim. We find no evidence to support the conclusion that the petitioner been the primary subject of *sustained* national or international media attention.

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.

As previously noted, the regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. For example, evaluating the work of accomplished professors as a member on a national panel of experts is of far greater probative value than evaluating students in one's research laboratory.

In a letter accompanying the petition, the petitioner states: "In addition to my research work, I have been supervising the work of graduate students and junior post-doc fellows. Being a supervisor of [Dr. [REDACTED] lab, I conduct lab meetings, journal clubs, and organize the presentations of other works in the lab." A letter from Dr. [REDACTED] confirms that the petitioner serves as a laboratory supervisor.

On appeal, counsel argues that the petitioner's work as a laboratory supervisor is adequate to satisfy this criterion. We do not find that supervising "graduate students and junior post-doc fellows" is tantamount to judging the work of others in one's field for purposes of this criterion. Furthermore, in this instance, we note that Dr. [REDACTED] rather than the petitioner, was the final authority on issues relating to the researchers in the laboratory. We also note that not one of the letters of support, including the letters from Dr. [REDACTED] and the petitioner himself, refers to the petitioner as having served as a "judge" of the work of others in his field. While a laboratory supervisor may evaluate the work of laboratory employees, this evaluation process is inherent to a

supervisory relationship.¹ It does not, however, elevate the petitioner above almost all others in his field at the national or international level. We find no evidence to demonstrate that the petitioner has formally judged the work of established researchers (such as tenured professors) who have long since completed their graduate studies or postdoctoral training. The petitioner's involvement in supervising students or "junior" researchers is not indicative of national or international acclaim and does not fulfill this criterion.

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

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

Dr. Nataro, the petitioner's research supervisor at UMSM, states:

One cause type of *E. coli*, called enteroaggregative *E. coli* (EAEC), is a leading cause of infant diarrhea throughout the world.

* * *

[The petitioner] has made crucial discoveries concerning critical virulence mechanisms of diarrheagenic *E. coli*. These studies serve as landmarks in our understanding of the disease process. In particular, [the petitioner] for the first time explained how EAEC colonizes to the intestine by establishing a biofilm. He has discovered novel EAEC virulence genes and characterized their roles in disease. Recently he discovered an exciting anti-aggregation protein (Aap), which EAEC need for colonization of the human intestine. This is a groundbreaking discovery for the EAEC pathotype and, importantly, this could lead to the first vaccine candidate for EAEC.

[The petitioner] has mastered cloning techniques, sequencing of genes, genetic engineering, and other standard molecular biology techniques, electron microscopy, biochemical techniques to study bacterial pathogenesis. The discovery of Aap is likely to lead directly to the development of new EAEC vaccines.

The record, however, contains no evidence showing that the petitioner's work has captured significant attention from pharmaceutical companies that produce vaccines.

Dr. [REDACTED] Assistant Professor, Department of Pediatrics, UMSM, states:

[The petitioner's] research concerns the molecular mechanisms by which different types of *E. coli* adhere and penetrate through the intestinal barrier. His research has provided invaluable information to understand the mechanisms by which this bacterium causes disease. He has described, for the first time, the ability of the bacteria to produce biofilms in the intestine, a mechanism that allows the microorganism to persist in the host tissue. He has also discovered novel EAEC virulence genes and

¹ There is no evidence showing that the petitioner has formally reviewed the work of researchers in the form of official employee reviews or personnel assessments.

established their role in the disease. I was particularly interested in [the petitioner's] research concerning pathogens that cause diarrhea in infants, and the mechanisms involved in these diseases, as they will be critical to assist the development of improved vaccines for neonates, which is precisely my own area of interest. I predict that his work, if allowed to continue, will ultimately lead to the discovery of much needed preventive and therapeutic control measures, especially vaccines.

The petitioner submitted additional letters of support from two other professors at the UMSM who provide similar information to that of Drs [REDACTED] and [REDACTED]

Dr [REDACTED] Associate Professor [REDACTED] University of Birmingham, United Kingdom, states:

[The petitioner] and I have recently coauthored a paper together, the content of which is can [sic] mostly be attributed to the research efforts of [the petitioner]. In this paper, he described an anti-aggregating protein which bacteria need for colonization of the human intestine. This is a pioneering discovery and has the potential for commercial development as a therapeutic.

Many of the witnesses discuss the "potential" of the petitioner's work as it relates to the future development of a therapeutic treatment or vaccine. Speculation regarding the future impact of the petitioner's findings is not adequate to demonstrate that his work rises to the level of a contribution of major significance. *See Matter of Katigbak* at 45, 49.

Dr. [REDACTED] Professor, Department of Cell Biology, Center for Research and Advanced Studies, Mexico City, states that he has known the petitioner for three years based on his collaborations with "Dr [REDACTED] group." Dr. [REDACTED] states: "[The petitioner] is a highly independent researcher who has made crucial discoveries on virulence mechanisms of diarrheagenic *E. coli*, such as he explanation of how enteroaggregative *E. coli* colonizes to the intestine by establishing biofilms and later developing diarrhea."

Dr. [REDACTED], Assistant Professor of Microbiology, Oregon State University, states that he met the petitioner in 1985 when they both worked together at the International Center for Diarrheal Disease Research in Bangladesh. Dr. [REDACTED] concludes his letter by stating that the petitioner "is an emerging expert in the development of vaccine strategies as well as gene therapy for infectious disease, which is clearly in the national interest." The visa classification sought by the petitioner, however, is intended for aliens already at the top of their respective fields, rather than for those individuals progressing toward the top at some unspecified future time. In the opening and closing paragraphs of his letter, Dr. [REDACTED] expresses his opinion that the petitioner qualifies for a national interest waiver. This provision applies to a separate visa classification and is irrelevant to the matter at hand. Although no such determination will be made here, even if the petitioner were found to be eligible for a national interest waiver, the threshold for such a waiver is below that for extraordinary ability.

[REDACTED] Chief, Center of Molecular Diagnostic, Department of Molecular Biology, Free University Hospital Saint-Pierre, Brussels, states that he worked with the petitioner during the petitioner's graduate studies in the Department of Molecular Biology. Robert Scheen further states: "[The petitioner] is broadly

trained in cell and molecular biology, biochemistry, clinical microbiology and biotechnology. He published important articles in peer reviewed international journals.”

We accept that petitioner’s published work has yielded some useful and valid results; however, it is apparent that any scientific manuscript, in order to be accepted in for publication, must offer new and useful information to the pool of knowledge. It does not follow that every individual whose scholarly research is accepted for publication has made a major contribution in his field. Without extensive documentation showing that the petitioner’s findings have been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that he meets this criterion.² The petitioner’s publications will be further addressed under the next criterion

In regard to the letters of support, we note that all but one were written by the petitioner’s former coworkers or collaborators, or UMMS faculty. This fact indicates that while the petitioner’s work is valued by those close to him, others outside his immediate circle are largely unaware of his research and do not attribute the same importance to his work. With regard to the personal recommendation of individuals from institutions where the petitioner has studied or 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 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.

An exception is the letter from Dr. [REDACTED] Consultant Clinical Scientist at the Royal Free Hospital and Honorary Reader in the University of London. Dr. [REDACTED] states that he his “aware of the important advances emanating from Professor Nataro’s laboratory.” Dr. [REDACTED] further states:

[The petitioner] is a committed scientist who will provide important knowledge for the scientific community and beyond, and will enrich the community in which he is based. He has demonstrated his ability to work productively, to integrate his efforts into the American system, and to become recognized internationally as a scientist of ability. This is underscored by his recent work on a novel gene, *Aap*, in enteroaggregative *Escherichia coli*, the protein product of which has been termed “dispersin.” The data has been accepted for publication in the prestigious *Journal of Clinical Investigation*, and there is every chance that dispersin will prove to be a viable vaccine candidate.

The record, however, contains no evidence showing that the findings discussed by Dr. [REDACTED] were published as of the petition’s filing date.³ A petitioner, however, must establish eligibility at the time of filing. See *Matter of Katigbak* at 45, 49. Furthermore, as noted previously, the assertion that dispersin might someday prove to be a viable vaccine candidate is not adequate to establish that the petitioner’s findings are already nationally or internationally acclaimed as a major contribution.

² According to the citation history submitted by the petitioner, the greatest number of times one of his published articles had been cited was eleven times.

³ The article in *The Journal of Clinical Investigation*, entitled “A novel dispersin protein in enteroaggregative *Escherichia Coli*,” was published in November 2002 (subsequent to the petition’s October 22, 2002 filing date). In discussing the petitioner’s research contributions, the majority of the letters of support focus on the findings cited in this November 2002 article.

On appeal, the petitioner submits information printed from the University of Maryland's website regarding two patent applications filed in July 2002 and December 2002. The latter patent application came into existence subsequent to the petition's filing date. See *Matter of Katigbak* at 45, 49. We note here that anyone may file a patent application, regardless of whether the invention constitutes a significant contribution. According to statistics released by the U.S. Patent and Trademark Office (USPTO), which are available on its website at www.uspto.gov, the USPTO has approved over one hundred thousand patents per year since 1991. In 2001, for example, the USPTO received 345,732 applications and granted 183,975 patents. Therefore, given the amount of patent applications that the USPTO receives on an annual basis, we find it implausible that simply filing a patent automatically qualifies as a contribution of major significance in the field of biomedical research. In this case, there is no evidence showing that the patent applications related to the petitioner's findings were approved by the USPTO or that his findings were implemented by pharmaceutical manufacturers.

In the present case, we cannot conclude that petitioner's past contributions far exceed those of other capable biomedical researchers. There is no indication that the petitioner's work was nationally or internationally acclaimed as of this petition's filing date.

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 provided evidence of his authorship of articles appearing in publications such as *The Journal of Clinical Microbiology*, *Molecular Microbiology*, *Clinical Microbiology and Infection*, and *Infection and Immunity*.

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 submitted citation indices showing that his 1998 article in *The Journal of Clinical Microbiology* was cited eleven times and that his 2001 article in *Molecular Microbiology* was cited once (in a subsequent article authored by himself and Dr. [REDACTED]). Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers. While the citation index for the 1998 article demonstrates some degree of interest in his published work, the petitioner has not shown that this amount of citations over a research career spanning more than a decade elevates him to a level above almost all others in his field at the national or international level. We accept that the petitioner has authored some

published papers, but the weight of this evidence is diminished by a lack of evidence showing that any of his published findings are widely influential.

On appeal, the petitioner submits evidence of his authorship of articles appearing in *The Journal of Clinical Investigation* (November 2002), *The Journal of Biological Chemistry* (November 2003), *The Journal of Clinical Microbiology* (January 2004), and *Infection and Immunity* (July 2004). This evidence, however, came into existence subsequent to the petition's filing date. See *Matter of Katigbak* at 45, 49.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

On appeal, counsel argues that the petitioner's conference presentations satisfy this criterion. The AAO has consistently found, however, that this particular criterion applies to the visual arts rather than scientific research. In the fields of science and medicine, acclaim is generally not established by the mere act of presenting one's work at a scientific conference.

In regard to the petitioner's conference presentations, we note that 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 those of other conference participants or that he has served as a keynote speaker at a national or international scientific conference.

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.