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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: JUN 02 2005

IN RE:

Petitioner:

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:

[Redacted]

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 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 pertinent regulations 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 sustained national or international acclaim at the very top level.

The petitioner is a research scientist at Science Applications International Corporation (SAIC) Frederick, an operations and technical support contractor for the National Cancer Institute at Frederick, Maryland (NCI-Frederick).

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 which, he claims, meets 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.

Counsel, in the introductory letter submitted with the initial filing, states: "Most internationally acclaimed scientists and other renowned experts have received national or international award[s] for their accomplishments.

Due to his outstanding achievements and unique contributions to the field of molecular biology, [the petitioner] is not an exception to this rule.” Counsel lists four documents under the heading “Receipt of Awards”:

- A. Award for ‘Consistent Outstanding Performance’ granted from SAIC Frederick.
- B. Certificate of Appreciation granted from the National Cancer Institute and SAIC Frederick.
- C. Letter of Promotion to postdoctoral fellow.
- D. Letter of employment as a Visiting Scientist at the Intramural Research Support Program at National Cancer Institute in Frederick.

Items A and B are internal documents, recognizing the petitioner’s aptitude and performance. The awards are not national or international; they are limited to SAIC employees performing contract work at NCI-Frederick. There is no evidence that the petitioner’s \$500 bonus attracted national attention within the scientific community. Items C and D simply establish the petitioner’s employment; holding a job is not a prize or award. We note that the letters do not indicate that the petitioner was “promoted” to the position of postdoctoral fellow. Rather, he received “a lateral transfer to the full-time exempt position of Postdoctoral Fellow. . . . This lateral transfer will not result in a change in . . . salary.” A good reputation within the company where one works is not national or international acclaim, regardless of the prestige of that employer. When examining counsel’s remaining claims about the significance of the evidence, we must do so in light of the fact that counsel apparently considers a “lateral transfer” to a postdoctoral position to be not only a “promotion” but also a nationally recognized prize.

Counsel also discusses awards that the petitioner is said to have received while a student in Moscow, but the record contains no documentation from the awarding entities. These awards are student awards, which, by nature, are available only to those individuals who are still in preparation for their careers and are not yet qualified to engage in their chosen professions. University study is not a field of endeavor, and honors that are limited to the students of one particular university are not national or international.

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.

Counsel asserts that the petitioner satisfies this criterion through the American Chemical Society (ACS) and the American Society for Microbiology (ASM). A letter from ACS to the petitioner states, in part: “In recognition of your preeminence in the scientific community, you have been formally nominated for membership in the American Chemical Society.” A subsequent letter confirms the petitioner’s acceptance into the ACS.

The petitioner has also submitted background materials from the ACS’ official web site, <http://www/chemistry.org>. One page from that site indicates that “Membership is for Everyone,” and that the ACS has “more than 163,000 members.” The highest rank of membership, that of Full Member, requires “a bachelor’s degree in a chemical science from an ACS approved program, a bachelor’s degree in a chemical science from a non-approved ACS program and three years work experience, an earned doctor’s or master’s degree in a chemical science, or less formal training than indicated above but having significant achievement in a chemical science.” A bachelor’s degree and experience in the field are not “outstanding achievements” so much as bare minimum professional competency requirements. There is no indication that nationally or internationally recognized experts judged the petitioner’s candidacy for membership. Given the ACS’ admission of well over a hundred fifty thousand members, and its own declaration that “Membership is for Everyone,” we cannot conclude that membership is limited to those acclaimed experts at the top of the field of chemistry.

Similarly, the petitioner provides printouts from ASM's web site, <http://www.asmus.org>, indicating that ASM is the "largest single life science membership organization in the world," with "over 42,000 members." The site states: "Eligibility to become a Full Member of the Society 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." Once again, these criteria demonstrate professional competence rather than outstanding achievements; any trained microbiologist would appear to qualify for membership.

Counsel discusses the membership requirements of both ACS and ASM, but does not explain how basic degrees and employment experience are "outstanding achievements." Because the petitioner's own evidence conclusively proves that neither ASM nor ACS require outstanding achievements (by any reasonable definition) of their tens of thousands of members, and the petitioner has claimed no other memberships, we conclude that the petitioner has not satisfied this criterion.

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.

Counsel observes that other researchers have cited the petitioner's work in various scholarly journals. An article is not about the petitioner or his work merely because that article contains a bibliographic citation to the petitioner's work. Many such articles contain dozens of citations. The articles containing the citations are about the specific area of scientific interest; they are not about the dozens or hundreds of researchers cited in the article. For this reason, we consider citations to be not published materials about the alien, but rather a gauge of the field's reaction to the petitioner's own published work, covered by a separate criterion.

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.

Counsel observes that the petitioner "reviewed articles for the Journal entitled 'Nucleic Acid Research,'" and counsel states "the fact that [the petitioner] was invited to review these articles, indicates that he has adequate experience and knowledge in the area of molecular biology to serve as a reviewer. . . . It should be noted that only researchers who are considered to be an authority in the field are invited to review articles." The evidence regarding the petitioner's participation in peer review consists of electronic mail messages. The messages are addressed to [REDACTED], and begin with salutations such as [REDACTED] and [REDACTED]. The journal's editors were clearly soliciting peer reviews not from the petitioner, but from [REDACTED] who then delegated the task to the petitioner. Clearly, the petitioner's involvement in these peer reviews is a reflection of [REDACTED]'s opinion of the petitioner, rather than a measure of the petitioner's national or international acclaim.

The petitioner submits "Reviewer Information" from the Office of Scientific Quality Review at the Agricultural Research Service (ARS) of the United States Department of Agriculture. This written piece states, in part:

Peer reviewers are individual scientists and technical experts who possess relevant and extensive knowledge in a field of science, and can use that expertise to critically evaluate specific scientific research project plans for scientific or technical quality. . . . Generally, to be considered an expert in a field of science, a peer reviewer must be accomplished in his/her field, and be nationally and/or internationally recognized as an authority in the field.

Counsel states that the ARS document is “General Information About the Requirements for Reviewing Articles.” The document, however, does not refer to peer review of journal articles. Rather, it refers specifically and repeatedly to peer review of “ARS research project plans.” These reviewers must travel and serve on a panel, for which they “are reimbursed for their travel and lodging expenses.” The petitioner submits no evidence that he has ever served as a peer reviewer for ARS research project plans, or that the journal for which he has assisted [REDACTED] with peer reviews has similar standards.¹ Therefore, the ARS peer review document has nothing to do with “reviewing articles” and has no demonstrated relevance to the present petition.

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

Counsel lists the petitioner's various research projects, including, counsel claims, “the discovery of new cancer treatments.” Simply listing and describing the petitioner's work does not establish that the petitioner's past efforts have resulted in original scientific contributions of major significance in the field. Counsel also observes that the petitioner's past work has resulted in a number of patent applications. Because the United States Patent and Trademark Office receives hundreds of thousands of patent applications each year, and approves more than half of them, we cannot conclude that the filing of a patent application is *prima facie* evidence of the major significance of a particular scientific contribution.

The petitioner's initial submission includes six witness letters. Four of the six initial witnesses work at NCI-Frederick, where the petitioner works. A fifth witness was a student at Moscow State University at the same time as the petitioner, and the remaining witness heads a facility whose researchers have collaborated with the petitioner. [REDACTED] who supervises the petitioner's work, states that the petitioner “has made useful contributions to science in his time here.” [REDACTED] Jr., chief of the Laboratory of Experimental and Computational Biology at NCI-Frederick, states that the petitioner “has successfully completed and published a number of important scientific studies on the fundamental interactions of DNA and proteins. . . . His findings will be of great benefit in exploiting the data of the human genome project and other large scale biomedical research efforts.”

[REDACTED] a research fellow at NCI-Frederick who “work[s] on the same team” as the petitioner, states that the petitioner has taken the lead “on a whole range of profound fundamental research projects and authored many research articles of the highest academic quality.” [REDACTED] an SAIC-Frederick staff scientist at NCI-Frederick, states that the petitioner “demonstrated his truly outstanding abilities researching in the field of DNA base flipping, DNA-protein recognition and interaction, and molecular information theory. Among other prominent publications in his field he also co-authored the patented innovation describing the new type of molecular engines that utilize the principle of muscular contraction.”

[REDACTED] an assistant professor at Brown University when he wrote his letter, studied for his doctorate at Moscow State University while the petitioner was working toward his master's degree there. [REDACTED] states: “The most important outcome of [the petitioner's] research is that it allows theoretical prediction of targets for essential regulatory proteins in [the] human genome and, most importantly, leads to

¹ We take administrative notice of the American Chemical Society's *Ethical Guidelines to Publication of Chemical Research*, available online at <http://pubs.acs.org/instruct/ethic.html>, which states: “Inasmuch as the reviewing of manuscripts is an essential step in the publication process, and therefore in the operation of the scientific method, every scientist has an obligation to do a fair share of reviewing.” As an ACS member, the petitioner has presumably been exposed to these guidelines, but even if he has not, it remains that a professional organization with over 150,000 members views peer review as a routine duty rather than a rare privilege.

design of synthetic or natural molecular modulators of gene expression.” [REDACTED] director of the Wave Research Center (WRC) at the Russian Academy of Sciences, states:

In cooperation with WRC scientists [the petitioner] has made a good progress studying two important physical problems. First, it is the theoretical solution of a thermodynamic problem of low-temperature stratification in monomolecular associated liquids (the most urgent example is water). Second, he and his colleagues from the Laboratory of Experimental and Computational Biology (National Cancer Institute, Frederick, MD) have initiated the research in orientational ordering of proteins with Fe(+2) and Fe(+3) ions in a non-uniform magnetic field. Corresponding experiments are already planned at the Wave Research Center. In my opinion, these experiments will have interesting engineering applications.

Because no original work serves as evidence of its own significance or of its creator’s acclaim, we must consider the reaction of others in the field to the petitioner’s work. We must consider not only *what* is said about the petitioner’s work, but also *who* is saying it. Because all of the witnesses have collaborated with the petitioner, or have other close ties to him, then these letters cannot demonstrate *national* or *international* acclaim. The letters do not demonstrate that petitioner’s efforts have been recognized nationally or internationally as contributions of major significance in the field.

Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submits copies of several published articles by the petitioner. Because the act of publication does not automatically or inevitably convey acclaim, the petitioner has also submitted documentation from a citation index. Counsel states that the petitioner’s work has been cited 39 times. The petitioner submits documentation showing that six of his articles have been cited an aggregate total of 24 times, including at least eight self-citations by the petitioner and/or his collaborators. One article lacks an itemized list of citing articles, so we cannot determine if the five citations of that article include any further self-citations. The greatest number of independent citations for any one article is six. The petitioner has not shown that he has sustained national or international acclaim and recognition in his field of expertise through authorship of scholarly articles.

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

Counsel notes the “display” of the petitioner’s work at professional conferences. These events are not “artistic exhibitions,” nor do they serve a parallel purpose. Conference presentations are intended to disseminate highly technical findings to a specialized audience, and in this sense they are more akin to scholarly publications than artistic exhibitions. We discuss the petitioner’s scholarly publications elsewhere in this decision.

The director denied the petition, concluding that the petitioner has not satisfactorily satisfied any of the regulatory criteria claimed above. On appeal, counsel contends that the director “did not perform a careful review of the evidence presented or grant due consideration to [the petitioner’s] accomplishments.” Counsel states that the director at least should have issued a request for evidence as described at 8 C.F.R. § 103.2(b)(8). We note the absence of such a notice here in the record. The most expeditious remedy for this failing is to give full consideration on appeal to new evidence, submitted on appeal, that the petitioner presumably would have submitted in response to a request for evidence, had one been issued.

Counsel asserts: “It is clear from the record that has already been presented . . . that [the petitioner] has received national and international acclaim for his work. In the original packet, we presented evidence to

show that [the petitioner] clearly met at least six of the above listed criteria.” This is simply not the case. Counsel’s previous characterizations of key evidence have been proven to be exaggerated or otherwise inaccurate, such as the untenable position that ACS membership requires outstanding achievements as judged by recognized experts in the field. Therefore, at this stage, counsel’s assertions as to what the record “clearly” demonstrates carry negligible weight. We must focus on what the evidence itself actually *shows*, rather than on counsel’s demonstrably unreliable contentions as to what the evidence *means*. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel repeats and expands upon many of the arguments first put forth in counsel’s introductory letter. For instance, regarding memberships, counsel emphasizes the ACS letter that refers to the petitioner’s “preeminence in the scientific community,” without giving any attention at all to the ACS documentation, supplied by the petitioner, indicating that “Membership is for Everyone” who meets certain minimal standards of professional qualification. Counsel also fails to note the size of ACS’ membership, sufficient to populate a substantial city. These demonstrated facts overwhelmingly outweigh the ACS’ use of the word “preeminence” in what is, essentially, a self-serving letter designed to encourage the submission of membership fees.

Regarding the peer review of articles for *Nucleic Acids Research*, counsel states “[the petitioner] and [redacted] were contacted *jointly* by Nucleic Acids Research with respect to reviewing articles (See Exhibit 3).” The exhibits submitted on appeal are not, at this point, marked by exhibit numbers. The appellate submission includes a copy of an e-mail message which shows the names of the petitioner and [redacted] after the phrase “Your Name,” and their e-mail addresses after the phrase “Your Email.” The petitioner or counsel has highlighted this section in yellow ink. This highlighted passage, however, is taken from an April 17, 2002 e-mail message *from* [redacted] who had completed the review form. The original message, which had solicited the review, was dated March 29, 2002, and began: [redacted] “We would be grateful if you would agree to review a manuscript submitted to the Journal Nucleic Acids Research.” The petitioner’s name does not appear in the March 29 message, nor is there any more general reference to a “joint” invitation. Thus, the highlighting of the petitioner’s name in [redacted] April 17 reply is misleading.

Counsel asserts that the director did not give sufficient consideration to the petitioner’s pending patent applications, one of which involves a molecular motor, the other of which concerns a cloning technique for the p53 gene. With regard to the latter application, counsel asserts “these discoveries are seen to be vital in cancer research.” Counsel’s use of a passive verb leaves unanswered the question of *who* sees these discoveries as vital. The record contains no commentary about the petitioner’s work from independent third parties, to indicate that the petitioner’s work has attracted attention beyond his own group of collaborators and superiors.

The petitioner submits new letters on appeal. Counsel acknowledges that the witnesses “are indeed professional acquaintances” of the petitioner, but asserts that, given their stature in the field, their association with the petitioner is, itself, evidence of substantial talent and influence. Counsel cites an unpublished appellate decision, in which the AAO stated “the very fact that the petitioner is close to several ranking figures lends circumstantial support to the petitioner’s claims of eligibility.” In another cited decision (involving a different immigrant classification), counsel states that the AAO found “the caliber of witnesses was very high and that INS must give considerable weight to their expertise when evaluating the relative significance of the petitioner’s work.” Counsel states that similar logic applies in this proceeding.

Setting aside the fact that the cited decisions are unpublished and have no weight as precedent, we note that, in the second cited case, the AAO's comments were aimed at two witnesses. One witness was a member of the National Academy of Sciences (an organization that actually does require outstanding achievements of its members), and the other "received a first place ranking [from] the Institute for Scientific Information for publishing the highest number of worldwide influential papers in 1998" (internal quotation marks omitted). The petitioner has not shown that the witnesses in this present matter have attained comparable levels of achievement.

The petitioner has submitted new letters from previous witnesses. Dr. Thomas Schneider states that the petitioner is a "world-class molecular biologist" who would be difficult to replace, but he does not show that researchers around the country or the world share this opinion. The statutory and regulatory standard is sustained national or international acclaim. Dr. Schneider asserts that the petitioner "has achieved international recognition for his work on DNA replication," but he does not elaborate or explain what objective evidence he reviewed when he concluded that the petitioner has earned such recognition. Dr. Anton Borovjagin, who had left Brown University to become a research scientist at VectorLogics, Inc., Birmingham, Alabama, states: "There should be no doubt whatsoever that [the petitioner] has demonstrated extraordinary ability and that he is conducting high-level research that has huge implications for our ability to better diagnose and treat cancer." His letter is not, and cannot be, first-hand evidence that the petitioner has earned sustained acclaim at the national or international level, as opposed to among his collaborators.

Dr. Igor Sidorov states: "I cannot emphasize enough the importance of [the petitioner's] contributions to his field. He has opened up an entirely new avenue of research in the area of cancer research." At the same time, Dr. Sidorov claims that the petitioner "is a member of a professional organization that sets extremely high standards for its members. Dr. Sidorov does not name the organization. As noted above, the petitioner has only claimed membership in two associations: ACS and ASM. Because the petitioner's own evidence conclusively proves that neither ASM nor ACS has "extremely high standards" for membership, and the petitioner has claimed no other memberships, we must conclude that Dr. Sidorov was exaggerating those standards. This exaggeration, whether intentional or otherwise, must color our interpretation of his comments regarding the importance of the petitioner's work. More broadly, when the director determines that an alien's reputation does not extend beyond his own collaborators, additional letters from those very collaborators rarely lead to a reversal of that determination.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor. Review of the record, however, does not establish that the petitioner has distinguished himself as a researcher 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 a 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.