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U.S. Citizenship
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Services

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JUN 13 2005

FILE: EAC 03 099 51006 Office: VERMONT SERVICE CENTER Date:

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:

[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.

for
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.

On appeal, counsel asserts that the director wrongfully changed the period in which to appeal from 30 to 15 days. Any information about the appeal period provided by the director cannot supercede the regulations. Had the director provided the wrong amount of time, this office would still consider the appeal timely if filed within the time proscribed by the regulations. That said, the director's decision in this matter gave the appeal period as 30 days (33 if mailed) and the Form I-290B Notice of Appeal indicates that a timely appeal would need to be filed by November 6, 2004, the correct date. As such, the record does not support counsels concerns on this matter.

In conclusion, counsel asserts that "few people in the world can rise to the level of Research Scientist at Yale University, yet [the director] brushes this off without even a mention." We do not find that employment at Yale University creates a presumption of eligibility any more than major league status does for athletes. See Supplementary information at 56 Fed. Reg. 60899 (November 29, 1991). While Yale's prestige is clearly a factor, the regulations make very clear that the employer's distinguished reputation becomes relevant only when the alien plays a leading or critical role for that employer. 8 C.F.R. § 204.5(h)(3)(viii). At the time of filing, the petitioner was a postdoctoral associate at Yale, which, as discussed below, is not a leading or critical role for the institution as a whole. The remaining regulatory criteria, and counsel's assertions relating thereto, will be discussed below.

Counsel also states:

Congress has allowed 20,000 visas per year for this category. By denying this case, [the director] is in fact saying that every year there are 20,000 foreigners in this country MORE qualified than a Yale Scientist with 39 publications who has won major prizes and who is held in high esteem by the top people in her profession.

As discussed below, counsel's characterization of the petitioner's publication record is somewhat inflated. Regardless, the allocation number represents congressional intent to set a limit on the number of aliens, inclusive of those working in the arts, education, business, or athletics in addition to the petitioner's field, immigrating to the United States. The allocation is not a standard as to who qualifies. Nothing in the statute, regulations, or case law indicates that evaluation under this classification requires consideration, assuming such an inquiry were even possible, of whether there are 20,000 "foreigners" in the five fields covered by the statute who are more qualified.

As set forth in the regulations quoted below, an alien must meet at least three of the regulatory criteria to establish eligibility. The director found that the petitioner did not meet any of those criteria. On appeal, counsel asserts that the petitioner meets five. We concur with the director that the petitioner did not meet any of the criteria at the time of filing. We note that even if we found that the petitioner met the contributions criterion, set

forth at 8 C.F.R. § 204.5(h)(3)(v), and the scholarly articles criterion, set forth at 8 C.F.R. § 204.5(h)(3)(vi), for which the most evidence has been submitted, the petitioner would only meet two criteria. For the reasons discussed below, the petitioner falls far short of meeting any other criterion.

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 she has sustained national or international acclaim at the very top level.

According to Part 6 of the petition, it seeks to classify the petitioner as an alien with extraordinary ability as a postdoctoral associate. While postdoctoral researchers are not precluded from establishing eligibility for this exclusive classification, we will not narrow the petitioner's field to those beginning their postdoctoral careers.

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 that, she claims, meets the following criteria.¹

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

The petitioner submitted her 1997 Second Place award at the 5th [REDACTED] Award for Excellent Thesis of Young Scientist sponsored by the Chinese Association of Physiology Science. In addition, the petitioner received awards that appear to be local to Hunan Province. The director concluded that the petitioner had not established that the awards were national.

On appeal, counsel asserts that the director should have inquired as to the national nature of the awards in a request for additional evidence. Counsel asserts that the award “is the highest scientific award in China.” The petitioner submits documentation regarding the excellent thesis award that demonstrates 24 selected young scientists from 16 provinces competed for six awards, one first place, two second place, and three third place awards.

The petitioner has now demonstrated that the award was national in scope, although the materials do not support counsel’s assertion that the award is the highest scientific award in China. The plain language of the regulation, however, requires that the awards be nationally *recognized* awards for excellence *in one’s field*. We must presume that the use of the word “recognized” is not superfluous and, thus, that it has some meaning. See *Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). As stated above, the regulation at 8 C.F.R. § 204.5(h)(2) defines extraordinary ability as a level of expertise such that the individual is one of that small percentage who have risen to the very top of the field. Once again, we must presume that this language was included in the regulations for a purpose. *Id.* In order to give this definition any meaning, the evidence submitted to meet the regulatory criteria that follow must be evaluated as to whether it is indicative of or consistent with ranking at the top of one’s field. This interpretation represents a consistent approach by this office to all cases in this classification. As stated above, we will not narrow the petitioner’s field to students or those in the early stages of the postdoctoral career. Experienced experts in the field do not compete for excellent student theses awards. Thus, receipt of such an award is not indicative of an individual who is one of the very few at the top of her field. While we acknowledge that the award is indicative of a high quality of work in comparison with other students nationally, by itself it cannot serve to meet this criterion.

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 petitioner submitted evidence of her membership in the Chinese Association of Physiology Science as of 1997. The director concluded that the petitioner had not demonstrated the membership requirements for this association. Counsel does not challenge this assertion on appeal and we concur with the director.

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.

The director stated that the petitioner had not demonstrated that her work had been cited. On appeal, counsel asserts that one of the petitioner’s articles has been cited 37 times. Counsel further asserts that the citation record for the remaining articles “has not been checked.” Counsel provides no explanation for this failure. Previously in his brief, counsel asserts that the petitioner’s cited work has also received “considerable attention from the lay press,” and that he is submitting some examples of such attention.

The petitioner submitted a comment on her work that appeared in the same issue as her article in *Nature Medicine*, a review of this work in *Nature Reviews* that does not specifically mention the article or the petitioner, a press release issued by Yale University that does not mention the petitioner by name, and a Yale Bulletin piece that does not mention the petitioner by name. The petitioner also submitted the citation evidence supporting counsel's assertion that her article in *Nature Medicine* has been cited 37 times as of the date of appeal. Only two of the articles citing the petitioner's work were published prior to the date of filing, February 5, 2003.

Articles which cite the petitioner's work are primarily about the author's own work, not the petitioner. As such, they cannot be considered published material about the petitioner. The review article appeared in the same issue as the petitioner's article and, thus, did not garner any recognition for the petitioner beyond those already reading the journal. We will, however, consider this evidence below as it relates to the significance of the petitioner's publication record. Even if we were to consider frequent citation as evidence to meet this criterion, and we typically do not, a petitioner must establish eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). As of that date, the petitioner had only been cited twice, one of which was the commentary.

The materials submitted on appeal do not support counsel's assertion that the petitioner's work garnered "considerable attention from the lay press." A press release by the petitioner's own employer is not as persuasive as independent journalistic coverage. School publications, such as the Yale Bulletin, cannot be considered major media. Finally, these materials do not mention the petitioner by name and, thus, cannot be considered published materials "about" the petitioner if that word is to have any meaning.

In light of the above, the petitioner has not demonstrated that she meets this criterion.

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

The director concluded that the petitioner had not demonstrated the impact of her articles and that the letters were not adequately supported by unsolicited materials reflecting acclaim. On appeal, counsel asserts that the director's "boilerplate garbage" represents "a truly pathetic way for an uninformed examiner to dismiss the tremendous accomplishments of a Yale scientist." While we concur with the director's position that reference letters prepared in support of a petition are more persuasive when supported by unsolicited materials indicative of acclaim, we will consider the letters in more detail below.

The petitioner submitted several reference letters attesting to her skills, talent and importance to ongoing projects. While aliens who qualify for this classification are presumably talented, attestations of talent cannot form the sole basis for eligibility for the classification sought. Rather, the statutory standard for this classification is whether the petitioner has national or international acclaim. The relevant consideration for this regulatory criterion is whether, at the time of filing, the petitioner had already made contributions of major significance to her field and was recognized as having done so beyond her immediate circle of colleagues. In evaluating the letters below, we emphasize that letters identifying specific contributions and explaining their impact are more persuasive than letters providing general praise. Similarly, letters from independent experts previously aware of the petitioner's reputation in the field are more persuasive evidence of acclaim than letters from colleagues, although letters from colleagues are important in explaining the details of the petitioner's work.

The petitioner obtained her Ph.D. from Hunan Medical University in 1999, after which she joined the laboratory [REDACTED] at Yale University School of Medicine. As stated above, the petitioner's thesis at Hunan Medical University received a national young scientist thesis award. The only discussion of this work, however, comes from Yunlai Chan, a professor at the University of Illinois College of Medicine who met the petitioner while on sabbatical at Yale University. [REDACTED] explains that the petitioner investigated Ca²⁺, the trigger of the heart's contraction process. One of the few individuals able to perform microsurgery on small animals, the petitioner "managed to investigate" new inotropic agents that can improve Ca²⁺ sensitivity without increasing intracellular Ca²⁺. [REDACTED] asserts that success in such an investigation "would open up the possibility of designing drugs that can make [the] heart working [sic] better and more efficiently." [REDACTED] however, does not assert that the petitioner was able to improve Ca²⁺ sensitivity without increasing intracellular Ca²⁺, nor does he identify a pharmaceutical company (or any other research institution) that has begun applying the petitioner's results towards the development of a designer drug.

[REDACTED] praises the petitioner's skills, asserting that she brought new approaches to Yale University. While he asserts that the petitioner "continues to contribute to the development of important new animal model systems and new avenues of investigation," his actual discussion of the petitioner's accomplishments is limited to their potential impact. Specifically, he states:

Many of these contributions *have the capacity* to significantly alter the manner in which patients are treated clinically. For example, [the petitioner's] efforts recently have led to the first ever demonstration that genes *could* be regulated in vivo using an artificial transcription factor. This approach *may* revolutionize the field of gene therapy.

(Emphasis added.) [REDACTED] then discusses the petitioner's collaboration with the Salk Institute, where she helped demonstrate "a new pathway by which blood vessel growth is controlled." He concludes that the results of this work "*may* lead to new therapies for cancer and ischemic heart disease." (Emphasis added.)

The remaining letters from Yale faculty and other collaborators are general and mostly provide general praise of the petitioner's dedication and skills. These attributes are not at issue. While some of the references refer generally to "major contributions," they fail to explain how the petitioner's work has already impacted the field. [REDACTED] Yale University, states only that the petitioner's area of research "holds great promise for the treatment of ischemic heart disease, heart failure, as well as other critical areas of medicine." [REDACTED] an associate professor at the University of California, Los Angeles who has collaborated with the petitioner, asserts that her work on transcription factors regulating genes in live animals "represents a unique approach to gene therapy that may lead to therapeutics."

[REDACTED] a research associate professor in the Department of Neurology at Northwestern University, asserts that he came to know of the petitioner "through her presentations."² [REDACTED] discusses the petitioner's work with HIF1a, a major regulator of transcriptional cellular responses to hypoxia shown to be elevated in ischemic heart. According to [REDACTED] the petitioner "found that, in addition to its role as a critical mediator of cellular responses to hypoxia, HIF1a has important basal effects on cardiac and vascular physiology as well as on the basal expression of several genes, including those involved in vascularization, metabolism and calcium handling." [REDACTED] explains the skills need to perform such work and asserts that the results are "important to

² According to her curriculum vitae, as of the date of [REDACTED] letter, the petitioner had only presented her work at a single conference.

clinical trials for cardiovascular system disorders.” He does not identify any such trails that are applying the petitioner’s work. Regarding the petitioner’s transcription work discussed above, [REDACTED] states that it “may significantly augment the success of clinical gene therapy approaches for heart disease.” This statement appears to be speculation, as [REDACTED] does not identify any places where the petitioner’s work is being applied.

[REDACTED] Sierra-Honigmann, Director of Tissue Repair and Regeneration Laboratory at Cedars-Sinai Medical Center, asserts that the petitioner’s project is “promising” and, with further research, has the “potential” for human application. Such qualified praise is not indicative of an individual who has already made a contribution of major significance to the field of cardiology.

[REDACTED] Director of Research at the Cardiovascular Institute in Chicago, notes that the petitioner has been involved in several important inter-institutional collaborations and asserts that his laboratory will be collaborating with the petitioner on an upcoming project. While these collaborations are clearly an opportunity for greater exposure in the field, they do not necessarily imply that the petitioner has already garnered national or international *acclaim*.

On appeal, the petitioner submits three more letters from independent members of the field. While they claim to know of the petitioner’s work through her publications, it is not clear whether they were aware of the petitioner prior to receiving a request for a reference letter that included copies of the petitioner’s articles. [REDACTED]

[REDACTED] a professor at the Medical College of Wisconsin, notes the importance of the petitioner’s area of research and asserts that her work “will likely lead to new ways to prevent ischemic vascular disease.” The petitioner was also the first to show that “HIF-1 α plays a central role in coordinating energy availability and utilization in the heart.” This work has “important implications for many disease states in which cardiac oxygen delivery is impaired.” [REDACTED] also notes the petitioner’s microsurgery skills that allowed her to insert a miniature catheter into the mouse heart. [REDACTED] an associate professor at Columbia University, asserts that the petitioner’s creation of an artificial transcription factor is an “exceptional achievement for such a young researcher.” As stated above, however, we will not narrow the petitioner’s field to those just beginning their postdoctoral careers.

[REDACTED] Director of the Laboratory of Tumor Biology and Cancer Gene Therapy at Duke University Medical Center, states that the significance of the petitioner’s work is evident from the commentary in *Nature Medicine* and the coverage in “the lay press.” As discussed above, however, the record is absent evidence of any coverage in the “lay press.” Specifically, a press release from Yale University itself, which may or may not have been reproduced in a major newspaper, does not constitute evidence of journalistic coverage in the “lay press.” [REDACTED] not provide examples of lay press coverage or explain how he has first hand knowledge of such coverage. A copy of a single article that actually appeared in the “lay press,” which has not been submitted, would have far more evidentiary value than multiple claims of such coverage.

The petitioner’s field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien’s contributions must be not only original but of major significance. We must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. See *Walters v. Metro. Educ. Enters.*, 519 U.S. at 209; *Bailey v. U.S.*, 516 U.S. at 145. To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the

impact of the petitioner's work. As discussed above, the petitioner's independent references do not claim to be influenced by the petitioner's work. While the record includes numerous attestations of the potential impact of the petitioner's work and it appears to have generated some interest in the field, none of the petitioner's references provide examples of how the petitioner's work is already influencing the field. While the evidence demonstrates that the petitioner is a talented researcher with tremendous potential, it falls somewhat short of establishing that the petitioner had already made contributions of major significance that were recognized as such as of the date of filing. Thus, the petitioner has not established that she meets this criterion.

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

Initially, counsel asserted that the petitioner had authored seven articles, including a first-authored article in *Nature Medicine*. The petitioner submitted six articles³ and evidence that she presented her work at a conference. The director referenced his discussion for the previous criterion, which included his concern that the record lacked evidence of citations.

On appeal, counsel asserts that the petitioner has a "fabulous" publication record including 39 articles, abstracts and presentations.⁴ The petitioner submits her current curriculum vitae that lists 14 published articles, nine of which were published as of the date of filing, 13 abstracts, four of which were clearly published prior to the date of filing, and three conference presentations, one of which occurred prior to the date of filing. In support of these claims, the petitioner submitted a copy of an article published in 2001 but not submitted previously, an article published online by the *FASEB Journal* in 2004, and several abstracts, three of which were clearly published prior to the date of filing. Thus, the petitioner has now documented authorship of seven articles and three abstracts published as of the date of filing. As stated above, the petitioner also submits her citation record for a single article, reflecting 37 citations.⁵

The regulation at 8 C.F.R. § 204.5(h)(3) states that a petition for the classification sought "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." The regulatory criteria then follow as subparagraphs under this paragraph. The evidence submitted to meet any criterion must be evaluated as to whether it is indicative of or consistent with national or international acclaim if that statutory standard is to have any meaning. This office consistently finds that duties inherent to an occupation cannot serve to meet a given criterion.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers

³ The petitioner submitted another article, published in *Acta Pharmacologica Sinica* in 1997, that does not list the petitioner as an author. Rather, the authors are [REDACTED]

⁴ In comparison, we note that one of the petitioner's references, [REDACTED] asserts that he has authored over 170 scientific articles.

⁵ In comparison, we note that one of the petitioner's references, [REDACTED] indicates that he has been cited more than 3,000 times.

who have not yet begun “a full-time academic and/or research career.” This report reinforces our position that publication of scholarly articles in the sciences is not automatically evidence of sustained acclaim; we must consider the research community’s reaction to those articles.

As of the date of filing, the petitioner had documented authorship of seven articles, three abstracts, and presented her work at one conference. We acknowledge that the petitioner has published in extremely prestigious journals, including *Nature Medicine* and the *Proceedings of the National Academy of Sciences*. As of the date of this appeal, at least one of the petitioner’s articles has been moderately cited. The statutory standard for this classification is “national or international acclaim.” The petitioner must be able to demonstrate such acclaim as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. While the petitioner’s publication record is consistent with some national exposure as of the date of filing, the most persuasive evidence of the impact of the petitioner’s published articles, the citations, were not significant as of the date of filing.

In light of the above, the petitioner has not established that she met this criterion as of the date of filing.

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

Counsel relies on the reference letters discussed above to meet this criterion. Under counsel’s analysis, the petitioner’s original published results produced at a distinguished university would serve to meet the contributions criterion, the scholarly articles criterion, and this criterion. Such an analysis renders the necessity of meeting at least three regulatory criteria (and the statutory requirement for extensive documentation) meaningless.

We have already considered the petitioner’s contributions while at Yale University above. At issue for *this* criterion, however, are the role the petitioner was hired to fill and the reputation of the entity that hired her. We do not contest the distinguished reputation of Yale University as a whole. At the time of filing, however, the petitioner filled the role of postdoctoral associate. We cannot conclude that the role of postdoctoral associate is a leading or critical role for Yale University as a whole beyond the obvious fact that Yale requires the services of its numerous postdoctoral associates to participate in the research occurring at that institution. Thus, we concur with the director that the petitioner does not meet this criterion.

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 herself as a cardiology researcher to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows immense talent as a postdoctoral associate, but is not persuasive that the petitioner’s achievements set her significantly above almost all others in her field, including the most experienced and accomplished members of the cardiology field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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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.