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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 14 2006
EAC 03 055 52572

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

3 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

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

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

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

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The applicable regulation defines the statutory term "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification as an alien with extraordinary ability in the sciences, specifically as a postdoctoral researcher in the field of applied microbiology. At the time of filing, the petitioner was a postdoctoral researcher at the College of Engineering Environmental Institute at Pennsylvania State University. The petitioner originally submitted supporting materials including eight recommendation letters, evidence of his scholarly publications, documentation of three awards and four academic honors, evidence of his membership in three professional associations and documents relating to his review of the work of others in his field. The director determined that although the record indicated that the petitioner had made meaningful contributions to his field, it did not establish that he had garnered the sustained national or international acclaim requisite to classification as an alien with extraordinary ability. On appeal, counsel submits a brief and additional evidence including documentation of the petitioner's present employment at Antex Biologics, Incorporated; three new

articles; citation information for some of the petitioner's articles; and evidence of his participation at additional conferences.

We first address counsel's contention that the director should have issued a Request for Evidence (RFE) before denying the petition. Although 8 C.F.R. § 103.2(b)(8) requires the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing," the director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. In this case, the director did not deny the petition based on insufficient evidence of eligibility.

Furthermore, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

The evidence submitted, counsel's remaining contentions and the director's decision are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

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

The director correctly determined that the petitioner did not meet this criterion. The petitioner submitted evidence that he received his master's and doctoral degrees with "Great Distinction" from Ghent University in Belgium. As the director stated, academic honors do not satisfy this criterion because they are evidence of scholastic achievement, not national or international recognition as an excellent research scientist.

The petitioner also submitted documents in Chinese relating to three awards purportedly earned when he was employed by the Jiangsu Institute of Microbiology. The director mistakenly assumed that these awards were "related to achievements that took place during [the petitioner's] undergraduate and graduate training" and further stated that "[n]o awards are listed which are for activities taking place after attainment of the beneficiary's Ph.D. in 2001." On appeal, counsel contends that "the statute does not require that the awards be received AFTER the award of a Ph.D. This is a rule apparently made up by this examiner." While we recognize that the statute and regulation do not require that evidence under this criterion arise after receipt of an alien's Ph.D., our concern is not the timing of these awards, but their actual documentation. The petitioner failed to submit complete and certified translations of the Chinese documents and we consequently cannot determine whether the evidence supports the petitioner's claimed eligibility under this criterion. See 8 C.F.R. § 103.2(b)(3). Accordingly, the petitioner does not meet this criterion.

(ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The director correctly determined that the evidence submitted did not establish the petitioner's eligibility under this criterion. The petitioner submitted documentation of his membership in three associations in his field: the American Society for Microbiology (ASM), the Society for Industrial Microbiology (SIM); and the Association

of Environmental Engineering and Science Professors (AEESP). The petitioner submitted an ASM membership application form that states that ASM membership is open to "anyone who is interested in its objectives and has a minimum of a bachelor's degree or equivalent in microbiology or a related field." Similarly, the submitted SIM membership form states that "SIM welcomes individuals interested in the advancement of applied microbiological sciences with emphasis on industrial materials & processes." Finally, the record includes a printout from the AEESP website that states that "Affiliate Membership is open to individuals associated with academic programs who are not eligible for regular membership. These include . . . post-doctoral associates." These documents do not establish that outstanding achievements are prerequisite to membership in ASM, SIM or AEESP.

On appeal, counsel claims that because "the statute only requires proof of membership," the director should have asked for additional information regarding the membership criteria of these associations in a RFE. Counsel ignores the regulatory mandate that the associations "require outstanding achievements of their members." 8 C.F.R. § 204.5(h)(3)(ii). The evidence submitted indicates that ASM, SIM and AEESP require only interest and involvement in the petitioner's field. The record does not establish that these three organizations require outstanding achievements of their members. Accordingly, the petitioner does not meet this criterion.

(iii) Published material 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.

As noted by counsel on appeal, the director mistakenly stated that the record contained evidence of the citation of the petitioner's work and that such citations did not meet this criterion. In fact, the petitioner originally submitted no documentation of the citation of his scholarly publications. Yet the director's oversight has not prejudiced the petitioner. On appeal, the petitioner submits citation information for some of his articles that we address below under the fifth and sixth criteria.

(iv) 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.

The director correctly found that the petitioner did not meet this criterion. The petitioner submitted signed evaluation forms indicating that he reviewed two manuscripts in his field for the journal *Environmental Engineering Science* in 2002. The petitioner's supervisor, [REDACTED] Pennsylvania State University, wrote the submitted letter requesting the petitioner's review of one of the manuscripts. The record also contains electronic mail messages between [REDACTED] the Publisher Editor of Scientific Journals at Ecomed Publishers, regarding the review of an article for the journal *Environmental Science and Pollution Research*. [REDACTED] explains that "I enlisted the support of a postdoctoral researcher with interest in this topic as well, so I have included his name at the bottom of the review page." The petitioner also submitted electronic mail messages addressed to him and 15 other individuals as "Dear Judge Volunteers" and including the petitioner's name in two lists of "Poster judges" and "Talk Judges" for awards at the Fifth Environmental Chemistry Symposium at Pennsylvania State University in March, 2002. The petitioner also claimed to have reviewed an article for the journal *Food Control* and submitted a website printout of the article's abstract, but no evidence of his actual review.

The director noted that the petitioner's judging was "conducted in conjunction with with [sic] several other practitioners in the field, and not primarily by the beneficiary." On appeal, counsel contends that that the statute does not require an alien to be the sole judge and that the director "is making up law has [sic] he goes along." While it is true that there is no requirement that the alien's participation be limited to those instances where he or she serves as the sole judge of the work of others, we do not read the director's statement as imposing such a requirement. Rather, the director's comment is a reasonable reaction to the record, which indicates that the petitioner's judgment of the work of others is inconsistent with the requisite sustained acclaim. The evidence submitted suggests that the petitioner was asked to review articles by or due to his association with his supervisor, [REDACTED]. On appeal, the petitioner submitted evidence that he was a co-convenor (with Professor Logan) of the session on Microbial hydrogen-energy production at the 2003 SIM Annual Meeting and that he had agreed to serve as a judge for the 2003 Environmental Chemistry Symposium at Pennsylvania State University. These events arose after the petition was filed and consequently cannot be considered. The petitioner must establish his eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Accordingly, the petitioner does not meet this criterion.

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

The director correctly determined that the petitioner did not meet this criterion. The petitioner submitted evidence of his publications and eight recommendation letters from scientists in his field or related specialties. The petitioner's supervisors and a former colleague wrote four of the recommendation letters. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. The petitioner also submitted three letters written by experts who have not worked with him. Yet even when written by independent experts, recommendation letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions to his field.

The letters discuss three areas of the petitioner's research. First [REDACTED] Biotechnology and Vice President of Southern Yangtze University in China, explains that, "[a]s a primary researcher [the petitioner] has made a great achievement on fermentative L-lactic acid production, which was supported as a national key project by Minister of Chemical Industry, China. He and his colleagues have published first L-lactic acid research paper and review paper in the top Chinese professional journals in the early 1990s, which were indexed by Chemical Abstract." The record contains evidence of these two articles and their indexation by *Chemical Abstracts*, but shows that the petitioner was not the lead author of either article. The record contains no citation information for these articles or other evidence that the petitioner's research in this area constituted an original contribution of major significance to the field of applied microbiology.

Second, while pursuing his master's and doctoral degrees at Ghent University in Belgium, the petitioner conducted research concerning microbial process development of sourdough fermentation and microbial ecology in human health and diseases. [REDACTED] Director of Research and Development at the Chamtor Company in France and a former colleague of the petitioner, states that the petitioner developed a new sourdough fermentation process that more than doubled the productivity of the fermentation and was put into industrial practice. Yet the record contains no corroborative evidence that the petitioner's process was adopted

by the baking industry or otherwise had an impact in the field of applied microbiology. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

[REDACTED] and Technology at Ghent University and the petitioner's doctoral advisor, explains that the petitioner's thesis concerned the "possible antimicrobial effect of the nitrate to nitrite reduction in the oral cavity" and that the petitioner's research was published in four peer-reviewed journal articles. The petitioner submitted evidence of these four articles, of which he is the lead author. On appeal, the petitioner submits citation lists for each of these articles. The petitioner's article published in the August, 2001 edition of *Applied Microbiology and Biotechnology* has been cited three times. His article published in the April, 2001 edition of *Journal of Applied Microbiology* has been cited eight times. Another article published in the April, 2001 edition of *Food and Chemical Toxicology* has been cited twice, including one self-citation. [REDACTED] Editor of *Food Chemical and Toxicology* at Unilever Health Institute in the Netherlands, explains that in this article the petitioner "developed a new standard method to quantitatively characterize the bacterial nitrate reductase activity in the human oral cavity, which is much simpler and better than the methods used by other research groups." Finally, the petitioner's article published in the June, 2000 edition of *Journal of Microbiological Methods* has only been cited by the petitioner himself in subsequent publications. This minimal citation of only three articles does not indicate that the petitioner's work made a major impact in his field and does not reflect the requisite sustained acclaim.

Finally, several of the recommendation letters discuss the petitioner's recent work on perchlorate remediation and genetic engineering of bacteria for enhancing hydrogen energy production. [REDACTED] the petitioner's supervisor at Pennsylvania State University, describes the petitioner as "one of the strongest researchers I have ever known in performing microbiological research in my laboratory" and explains that the petitioner is "currently performing several different investigations to understand the bacterial enzymes used for perchlorate degradation. This information will be important if we are to operate biological treatment systems for a long-term removal of perchlorate from contaminated water sources." [REDACTED] also explains that the petitioner's work on genetic engineering of bacteria for enhancing hydrogen energy production will be of great importance as global warming concerns lead the world away from its reliance on fossil fuels. [REDACTED] former Professor of Industrial Microbiology at the Massachusetts Institute of Technology and a member of the National Academy of Sciences, states that the petitioner's research in these areas "is having a major impact on applied microbiology." [REDACTED] describes the petitioner as "one of the finest investigative researchers in this field. . . . His reputation is worldwide, and he is certainly among the top of this profession in the United States and in the world." [REDACTED] Microbiology at Southern Illinois University, also "consider[s] [REDACTED] scientist of high caliber who is uniquely qualified in the field of bioremediation and is making significant contributions to this field." [REDACTED] Associate Professor of Environmental Microbiology at Michigan Technological University, states that based on her review of the petitioner's resume, she "strongly believe[s] that he is a highly accomplished scientist who is conducting cutting edge research on microbial production of hydrogen fuel/energy sources and degradation of perchlorate."

Despite these glowing assessments, the record contains no corroborative evidence of the petitioner's contributions in these two areas. At the time of filing, none of the petitioner's research at [REDACTED] laboratory had been published. On appeal, the petitioner submitted evidence of the subsequent publication of three articles that we cannot consider. The petitioner must establish eligibility at the time of filing; a petition

cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

In this portion of her decision, the director noted that publication of research is inherent to success as an established scientist and determined that the petitioner's publication record was insufficient to meet this criterion. The director also addressed the recommendation letters and determined that they did not establish that the petitioner's contributions had advanced his field in a manner reflective of the requisite sustained acclaim. On appeal, counsel derides this section of the director's decision as "boilerplate garbage . . . and other nonsense that was obviously made up by some primeval bureaucrat who know [sic] nothing about either law or scientific publications. . . . There is no sense to what is being said, and none of it relates to this petition. This petitioner has 16 journal and book publications, as well as 23 conference publications, for a total of 39 publications. He ABSOLUTELY qualifies in this category despite what this boilerplate-loving examiner says." Counsel mischaracterizes the director's decision and the record does not support his claims regarding the petitioner's publications. The record indicates that at the time of filing, (besides numerous abstracts), the petitioner had published just ten articles in scientific journals and two chapters for one book. Only three of his articles have been minimally cited by other researchers. The evidence submitted thus does not establish the petitioner's eligibility under this criterion.

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

The director correctly determined that the petitioner did not meet this criterion. As previously mentioned, counsel claims on appeal that the petitioner "has 16 journal and book publications, as well as 23 conference publications, for a total of 39 publications." However, mere publication of scientific work is insufficient to satisfy this criterion. Frequent publication of research findings is inherent to success as an established scientist and does not necessarily indicate the sustained acclaim requisite to classification as an alien with extraordinary ability. Evidence of publications must be accompanied by documentation of consistent citation by independent experts or other proof that the alien's publications have had a significant impact in his field. In this case, the petitioner initially submitted no citation information for his publications, but counsel claims on appeal that the petitioner "has more than 90 citations which are included with this appeal." Counsel's claims regarding the petitioner's publication record are simply not supported by the evidence submitted.

At the time of filing, the petitioner had published 10 articles in scientific journals in his field and numerous abstracts. He is the lead author of seven of the journal articles and is also the lead author of two chapters in a book on biochemical engineering. The petitioner submitted supplemental information regarding four of his journal articles. The first article is entitled "Evaluation of Nitric Oxide Production by Lactobacilli" and was published in 2001 in *Applied Microbiology and Biotechnology* as a "Short Contribution." According to the submitted excerpt from the 2000 listing of "Journal Citation Reports Science Edition," *Applied Microbiology and Biotechnology* is ranked 46 out of 133 journals in this field and has an impact factor of 1.505 and a cited half-life of 6.9. On appeal, the petitioner submits evidence that this article has been cited three times by independent researchers. The petitioner's second article, "Quantitative Measurement of the Nitrate Reductase Activity in the Human Oral Cavity," was published in 2001 in *Food and Chemical Toxicology*, ranked 10 out of 94 journals in this field with an impact factor of 1.382 and a cited half-life of 7.7. This article has been cited two times, including one self-citation by the petitioner. The third article, "The Bactericidal Effect and Chemical Reactions of Acidified Nitrite under Conditions Simulating the Stomach," was published in 2001 in the *Journal of Applied Microbiology*, which is ranked 44 out of 133 journals in this field and has an impact factor of 1.511

and a cited half-life of 2.5. This article has been cited eight times by independent research teams. Finally, the petitioner's article entitled "Adaptation of *E. coli* Cell Method for Micro-scale Nitrate Measurement with the Griess Reaction in Culture Media," was published in 2000 in the *Journal of Microbiological Methods*, which is ranked 41 out of 80 journals in this field and has an impact factor of 1.512 and a cited half-life of 5.5. No independent researchers have cited this article which has only been referenced by the petitioner himself in five subsequent publications.

The record shows that at the time of filing, the petitioner has published ten articles in scientific journals, two book chapters and numerous abstracts. Independent researchers have cited only three of the petitioner's articles. These citations are minimal and do not reflect the requisite sustained acclaim. On appeal, the petitioner submitted evidence of the publication and citation of three more articles. We cannot consider this evidence because it arose after the petition was filed. The petitioner must establish eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49. Apart from citations, the record contains no other evidence of the significance of the petitioner's articles. Although relevant, the recommendation letters written by independent experts do not establish that the petitioner's publications have made a notable impact in his field. [REDACTED] simply states that the petitioner "has a significant publication record." As previously discussed under the fifth criterion, [REDACTED] notes that the petitioner co-authored two articles on L-lactic acid in China, but the record contains no evidence that these articles have been cited or otherwise recognized in his field. Despite counsel's claims, the evidence submitted does not demonstrate that the petitioner's publication record is consistent with the sustained national or international acclaim requisite to classification as an alien with extraordinary ability. Accordingly, the petitioner does not meet this criterion.

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

The director correctly found that the petitioner did not satisfy this criterion. On appeal, counsel claims that the director "essentially ignore[d] the fact that Penn State is a distinguished institution, and that petitioner was a leading researcher there." Again, counsel's claim is not supported by the record. The evidence indicates that at the time of filing the petitioner was a postdoctoral researcher at [REDACTED] laboratory at the College of Engineering Environmental Institute at Pennsylvania State University. [REDACTED] describes the petitioner as "irreplaceable" and "a key member of the perchlorate remediation research team at Penn State University." [REDACTED] notes that "Penn State prides itself on being one of the finest research establishments in the world in this field." [REDACTED] echoes these views by stating that the petitioner "is a key member of his research group at Penn State University, and Penn State itself is [at] the forefront of this research." [REDACTED] describes the petitioner as "a postdoctoral research associate in [REDACTED] laboratory at The Pennsylvania State University, one of the top research institutions in the country." Four other recommendation letters describe the petitioner as a "postdoctoral researcher" or as holding a "postdoctoral position." While the letters demonstrate that the petitioner is a highly valued member of [REDACTED] laboratory, they do not establish that he plays a leading or critical role for the Environmental Institute or Pennsylvania State University. Instead, the record indicates that the petitioner is a postdoctoral researcher whose work is led and directed by [REDACTED] not himself. In addition, the record contains no independent evidence that the Environmental Institute or Pennsylvania State University have distinguished reputations. Accordingly, the petitioner does not meet this criterion.

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

The petitioner initially submitted no evidence relevant to this category. On appeal, counsel claims the petitioner meets this criterion through his current employment as a principal scientist at Antex Biologics, Incorporated (“Antex”). The petitioner submitted a letter from Antex dated July 23, 2004 and captioned “Offer of Employment – Principal Scientist.” We cannot consider this evidence because it arose after the petition was filed. Again, the petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A) only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case indicates that the petitioner has made meaningful contributions to his field, but the record does not establish that he was a scientist of extraordinary ability at the time of filing.

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.