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FILE: EAC 02 223 50611 Office: VERMONT SERVICE CENTER Date: JUN 17 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 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 failed to consider the petitioner's request to amend the petition to a lesser classification. Counsel states that it is a "long standing practice" to allow petitioners to amend their petitions to a lesser classification. While the director may sometimes allow a petitioner to amend a petition as a courtesy, counsel provides no legal source indicating that the director was obligated to do so. Thus, the director's failure to consider the petition under a lesser classification was not reversible error.

Counsel further asserts that the director failed to consider the evidence submitted in response to the director's request for additional evidence. The director's decision does not include the chronology of the proceedings and provides a general analysis of the record. The director did not, however, deny the petition for abandonment as mandated by the regulation at 8 C.F.R. § 103.2(b)(13) in cases where there is no response to a request for evidence. Thus, the director's decision does not suggest that she failed to consider the petitioner's response. All of the evidence of record will be considered in detail below.

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 sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a scientist. 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 never identified which criteria he claims to meet; however, the evidence relates to 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.

The petitioner's resume lists a fellowship and student award. No evidence of these achievements is contained in the record. The director concluded that academic awards cannot serve to meet this criterion. Counsel does not challenge this conclusion on appeal and we concur with the director.

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 lists his membership in the American Chemical Society and the American Association for the Advancement of Science. The record lacks evidence of these memberships and the membership requirements of these associations. Thus, we concur with the director's conclusion, uncontested on appeal, that the record lacks evidence to meet 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.

The director concluded that frequent citation is an indication of interest in and reliance on the cited author's work but that the record lacked "evidence that others have cited the [petitioner's] work to a degree that would be indicative of his claimed sustained national or international acclaim." The petitioner did submit some evidence of citations to his work in response to the request for additional evidence. The director's decision, however, does not state otherwise. Rather, the director concluded such evidence was insufficient. Regardless, articles that cite the petitioner's work are about the work of the citing author, not the petitioner. Thus, citations cannot serve to meet this criterion. Rather, we will consider citations as evidence of the influence of the petitioner's articles below.

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 concluded that the petitioner had not submitted evidence relating to this criterion. We acknowledge that, in response to the director's request for additional evidence, the petitioner submitted an e-mail dated after the date of filing advising the petitioner that he had been recommended as a possible reviewer

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

and requesting him to complete a survey. This evidence does not suggest that the petitioner had reviewed the work of others as of the date of filing. As such, it is not evidence of his eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Regardless, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys sustained national or international acclaim. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner 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 that he is recognized beyond his immediate circle of colleagues. The director failed to consider the petitioner's citation record because "citations are legally required."

The petitioner works in the laboratory of [REDACTED] at Harvard University. [REDACTED] asserts that the petitioner "accomplished successfully the development of several processes for constructing biologically relevant molecules." In addition, the petitioner "developed a new extremely efficient way of producing an important amino acid which is of great utility for the synthesis of new pharmaceuticals."

[REDACTED] the petitioner's research advisor at the University of Michigan, explains that the petitioner "re-designed the whole synthetic approach to lapidelectine B and single-handedly carried the synthesis to a point where the entire skeleton of the molecule had been assembled."

In addition to the above letters and other similar letters from colleagues, the petitioner provided letters from more independent sources. [REDACTED] a professor at the California Institute of Technology, asserts that the petitioner "worked out one of the most challenging projects in organic chemistry." He predicts that the petitioner's results will benefit the pharmaceutical industry. While we normally require more specific evidence as to the influence the petitioner's work has already had, we note that [REDACTED] assertion is supported by the fact that several of the citations to the petitioner's work are from researchers working for the pharmaceutical industry.

[REDACTED] professor of chemistry at Emory University, asserts that he became aware of the petitioner's work through the petitioner's publications and discussions with the petitioner's research advisor. [REDACTED]

[REDACTED] professor at Wayne State University, asserts that he began following the petitioner's work after attending one of the petitioner's conference presentations. Both attest to the importance of the petitioner's area of research and the potential implications for his work.

[REDACTED] an assistant professor of Chemistry at Yale University, characterizes the petitioner's work as "breakthrough" and states that his methods have become "widely used" in organic synthesis. He does not claim to use the petitioner's method himself or to have been otherwise influenced by the petitioner.

In response to the director's request for additional evidence, the petitioner also submitted evidence of his recent work at Novartis, initiated after the date of filing. We cannot consider this as evidence of the petitioner's eligibility as of that date. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

We disagree with the director's dismissal of citations as objective evidence of the petitioner's impact in the field. While it may be required in the field to cite prior work on which the author is relying, that fact is precisely why frequent citation is an excellent indication of an article's impact in the field. While the petitioner's citation record is moderate and includes several citations by the petitioner himself and his co-authors, we cannot ignore that the petitioner's work is cited by research teams at major pharmaceutical companies. In light of the above, we find that the petitioner has met this criterion.

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

The petitioner submitted evidence that he has authored 12 published articles. 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 who have not yet begun "a full-time academic and/or research career." This report reinforces CIS's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

As stated above, the record contains evidence that independent experts have moderately cited two of the petitioner's articles. Thus, we find that the petitioner meets this criterion. For the reasons discussed above and below, however, he falls far short of meeting any other criterion. A petitioner must meet three criteria to establish eligibility for the classification sought.

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

At the time of filing, the petitioner was a postdoctoral fellow at Harvard University. When considering evidence under this criterion, we look at the nature of the role the petitioner was hired to fill. We cannot conclude that every postdoctoral fellow plays a leading or critical role for the university as a whole.

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 indicates that the petitioner shows talent as a researcher, but is not persuasive that the petitioner's achievements set him significantly above almost all others

in his 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.

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.