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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUN 20 2005
WAC [REDACTED]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined 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 in medicinal chemistry. The record indicates that the petitioner is a postdoctoral research associate at the Scripps Research Institute in La Jolla, California. The petitioner initially submitted supporting documents including her curriculum vitae and academic credentials, five recommendation letters, evidence of her publications and citations of her articles, documentation of two U.S. patents and two patent applications on which she is listed as a co-inventor, a professional association membership card, an article from a patent law firm newsletter, evidence of her participation in professional conferences in her field, printouts from the websites of institutions and universities where she has been employed and educated, and additional information relating to one area of her research (vascular targeting agents). The director noted the petitioner's accomplishments, but found that the record did not evidence the requisite sustained acclaim.

On appeal, counsel submits a brief and additional evidence including three new recommendation letters and the galley proof for a new article of which the petitioner is the lead author. Counsel's claims and the additional evidence submitted on appeal do not overcome the deficiencies of the original petition and the appeal will be dismissed.

We first address three issues raised by counsel. First, in his initial brief, counsel referenced a letter written by Former Immigration and Naturalization Service Acting Assistant Commissioner [REDACTED]. This letter requires no deference. As clarified by the Office of Programs, such letters "do not constitute official Service policy and should not be considered as such in the adjudication of petitions or applications." Memo. from Thomas Cook, Acting Asst. Cmmr., Off. of Programs, Immig. and Naturalization Serv., to All Serv. Ctr. Dirs., Dist. Dirs., Offs.-in-Charge, *Significance of Letters Drafted by the Office of Adjudications*, (Dec. 7, 2000). In addition to the Act, regulations and AAO precedent decisions, only policy memoranda are considered official CIS policy. *Id.* The Weinig letter is internal correspondence responding to an inquiry from a service center director. It is not a CIS policy memorandum and thus warrants no deference.

Second, counsel also cites two unpublished AAO decisions in his appellate brief for the proposition that the exceptional prestige and caliber of the authors of an alien's recommendation letters should add support to the alien's petition. Counsel again relies on unauthoritative sources. Although designated and published decisions of the AAO are binding precedent on all CIS employees in the administration of the Act pursuant to 8 C.F.R. § 103.4(c), unpublished AAO decisions have no such precedential value.

Third, counsel believes that "to deny [this] application *without even having issued a Request for Evidence* [was] unfortunate" (emphasis in original), as stated on page three of his appellate brief. 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.

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

(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 petitioner did not meet this criterion. The record contains a copy of the petitioner's membership card for the American Chemical Society. The petitioner also submitted an excerpt from the 2001 ACS Annual Report that describes the organization as "the world's largest scientific society with a membership of more than 163,000 chemists, chemical engineers, academicians, and other practitioners of the chemical sciences." The record does not include the ACS membership criteria or any other evidence that

outstanding achievements are prerequisite to ACS membership. 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.

The petitioner submitted copies of twelve articles that cite publications of which she is a co-author and an article from the Spring 2001 edition of *Innovation Law News*, a newsletter published by the Head, Johnson & Kachigian patent, trademark and copyright law firm. The director discussed the citations, but did not address the newsletter article. This oversight has not prejudiced the petitioner, however, because the article does not evidence her eligibility under this criterion. The article is entitled "Inventor Spotlight" and features a photograph of the petitioner's supervisor at Baylor University, Professor [REDACTED]. The article discusses a patent issued in 2000, "Anti-Mitotic Agents Which Inhibit Tubulin Polymerization" and lists the petitioner's name as one of the patent's co-inventors. Documentation of this patent in the record affirms that the petitioner is one of five co-inventors of the patented discovery. The patent document also lists Head, Johnson & Kachigian as the representative law firm for the patent. The record is devoid of any evidence that this firm's *Innovation Law News* is a professional, major trade publication or other major media, rather than a newsletter sent to the firm's clients to highlight the firm's accomplishments, such as the patent discussed in the submitted article. Accordingly this article does not demonstrate the petitioner's eligibility under this criterion.

The articles citing publications of which the petitioner is a co-author are also insufficient to meet this criterion. Citation to the work of other researchers is requisite to articles published in scientific journals. Mere citation of a scientist's work by other researchers is not evidence that the citing articles are about the scientist as described in the regulation. Without evidence that the citing articles feature or substantively discuss the scientist's cited work, citations alone will not satisfy this criterion. On page six of his appellate brief, counsel claims that the petitioner "has been cited at least fifty-five times as positive authority in some of the most respected and prestigious scientific journals in her field. This constitutes that her research is recognized as being innovative and groundbreaking." Although publications co-authored by the petitioner in this case may be cited as "positive authority," none of the submitted citing articles feature or substantively discuss the petitioner's cited work in a manner reflective of the requisite sustained acclaim.

Counsel lists the impact factors and rankings of some of the journals in which the petitioner's work has been cited as evidence of the journals' prestige. Yet the record contains no primary evidence of these factors or rankings. Without documentary evidence to support a claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record also does not support counsel's claim that the petitioner's work has been cited "at least fifty-five times." The record contains citation information for four articles of which the petitioner is a co-author and a patent application on which she is identified as a co-inventor.¹ The record indicates that these sources have been cited a combined total of 29 times, not the 55 times alleged by counsel. Moreover, the petitioner submitted no evidence that, at the time of filing, she had been cited as the lead author of any publications in scholarly journals. The citing

¹ Two of the submitted articles include the following citation: [REDACTED] V.P. Mocharla, P.M.M. Del and A. Shirali, PCT Int. Appl. WO 9839323, *Chem. Abstr.*, 1998, 129, 245037." The record does not document this application or its publication in *Chemical Abstracts*.

articles thus do not constitute published material about the petitioner in a manner indicative of sustained national or international acclaim.

Finally, we note that in his recommendation letter, the petitioner's supervisor at Baylor University, Professor Pinney, states that "the research efforts of the Pinney Group (which included significant contributions by [REDACTED] were featured on local television (CBS and ABC) as short separate segments and in an article published in the Waco Tribune Herald newspaper." The record contains no documentation of these television segments or newspaper article. 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.

In relation to this criterion, the petitioner originally submitted five recommendation letters; evidence of the publication, citation and presentation of her research; and documentation of two patents and two patent applications on which she is listed as a co-inventor. The director's decision does not explicitly state whether or not he found the petitioner to meet this criterion. As noted by counsel on appeal, the director first states that "it appears that the petitioner has established eligibility under this criterion," but then equivocally states that "[t]he record still did not sufficiently document evidence to corroborate the significance of the petitioner's scientific contributions with regards to its originality, contribution to the scientific community, and how it set the petitioner apart *individually* as being internationally recognized of [sic] having extraordinary ability" (emphasis in original). Regardless of this ambiguity, a full review of the record establishes that the petitioner does not meet this criterion.

The record contains eight recommendation letters (including three letters submitted on appeal) written by the petitioner's supervisors, collaborators, colleagues and one apparently independent expert in her field. 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 or her field beyond the limited number of individuals with whom he or she has worked directly. Even when written by independent experts, 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 achieved sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

The letters primarily discuss three areas of research to which the petitioner has contributed. First, while a doctoral student and then a postdoctoral research associate at Baylor University, the petitioner worked on discovering new antitumor agents that interact with the protein tubulin and on developing new vascular targeting agents for cancer chemotherapy. [REDACTED] Associate Professor of Chemistry at Baylor University and the petitioner's former supervisor, opines that the petitioner "is clearly a first-rate chemist, and her scientific contributions are of the utmost importance and significance on both a National and International level." As evidence of these contributions, Professor [REDACTED] cites the fact that the petitioner is "a co-inventor on several patent applications and a number of issued patents, a co-author on three published manuscripts, and . . . has made numerous presentations at both local and National scientific meetings."

Other letters also attest to the value of the petitioner's contributions while working in Professor [REDACTED] laboratory. [REDACTED] Chief Scientific Officer and Head of Research and Development at Oxigene Incorporated, states that he has known the petitioner since 1999 as a scientific collaborator. [REDACTED] claims

that the petitioner “developed many lead drug candidates, some of which are in prodrug form [and] are being evaluated in mice at University of Lund, Sweden,” but the record contains no corroborative evidence of this evaluation in Sweden. [REDACTED] also states that the petitioner’s work “on synthesis and development of novel vascular targeting anticancer agents for the treatment of solid tumors . . . has already resulted in several patents, some of which Oxigene Inc. has licensed.” The record contains a printout from Oxigene’s website entitled “Next Generation Drug Developments,” which states that “[t]hrough a drug development alliance with Baylor University, OXiGENE is working on a new generation of small molecule vascular targeting agents.” However, neither [REDACTED] letter nor the printout identify the patents (of which the petitioner is a co-inventor) that purportedly have been licensed by Oxigene.

[REDACTED] Senior Investigator at the National Cancer Institute of the National Institutes of Health, explains that he has known the petitioner since 1997 when she was a graduate student and they “began a collaboration to investigate interactions of compounds she synthesized with tubulin, an important cancer agent.” [REDACTED] considers the petitioner to be “an outstanding research scientist and an expert in her field.” He states that the petitioner’s “work has yielded new molecular frameworks for design of antitubulin agents, and she has synthesized highly active agents. Her work has been of major importance, and she has successfully synthesized compounds that have eluded other organic chemists in this competitive field.”

[REDACTED] Assistant Professor of Chemistry and Biochemistry at the University of California, San Diego, first notes that he recommends the petitioner “based on the importance of the she is doing [sic] and her contributions to the cancer research area, as outlined in her *curriculum vitae*.” Professor [REDACTED] states that during her doctoral studies, the petitioner “designed and developed several molecular frameworks as antimetabolic, anticancer agents. As evidenced by her publications and presentations, several of the compounds that she has designed and synthesized have demonstrated excellent *in vitro* biological activities and have shown great promise as potential therapeutic agents.” Professor [REDACTED] also notes that the petitioner “has done research [on] the development of vascular targeting agents for solid tumors,” but does not discuss any particular contributions she has made in this area.

[REDACTED] Senior Research Investigator at the Bristol-Myers Squibb Pharmaceutical Research Institute, explains that he met the petitioner while she was working in Professor Finney’s laboratory and has been familiar with her work over the last five years. [REDACTED] claims that the petitioner “is amongst top level of scientists [sic]” and that “[d]ue to the high level nature and importance of her work, her research has enjoyed widespread recognition from the scientific community here in the United States.” [REDACTED] states that the petitioner’s “contributions in the development of antimetabolic agents as anticancer drugs resulted in several extremely active compounds that have demonstrated excellent reduction in cancer cell growth. Many of these compounds have been selected by National Cancer Institute to be tested in the NCI-60 cancer cell line panel for the development of these compounds as potential drugs.”

The record does not support many of the letters’ claims regarding the petitioner’s contributions while at Baylor University. At the time of filing, the petitioner had contributed to research performed at Professor [REDACTED] laboratory that was published in three articles in scientific journals. The petitioner is a co-author of each of these articles. The first article entitled “Characterization and Structural Analyses of Trimethoxy and Triethoxybenzo[b]thiophene” and published in 1998 in the *Journal of Chemical Crystallography* has been cited five times, including one self-citation by the article’s lead author, Professor [REDACTED]. The second article entitled “A New Anti-Tubulin Agent Containing the Benzo[b]thiophene Ring System” and published in 1999 in *Bioorganic & Medicinal Chemistry Letters* has been cited 14 times including two self-citations by the lead and

co-authors. The third article entitled "Preparation of New Anti-Tubulin Ligands through a Dual-Mode, Addition-Elimination Reaction to a Bromo-Substituted α , β -Unsaturated Sulfoxide" and published in 2000 in the *Journal of Organic Chemistry* has been cited twice. The petitioner submitted printouts from the websites of these three journals demonstrating that they are established publications that subject submitted articles to peer-review. Despite counsel's claims regarding the prestige of two of these journals (made on pages six and seven of his appellate brief), the record contains no corroborative evidence of these journals' impact factors, rankings or any other evidence that they are highly regarded publications in the petitioner's field. The petitioner also submitted evidence of six papers concerning research done at Baylor University that were presented at various scientific conferences. The petitioner is the lead author of two of these papers, but the record contains no evidence that the papers were exceptionally well-received or other evidence that they document original contributions of major significance to her field.

The record also contains documentation of two U.S. patents and two patent applications that list the petitioner as one of five co-inventors for discoveries made while the petitioner was working at Baylor University. To establish eligibility under this category by virtue of patents, a petitioner must not only show that his or her work has been granted a patent, but that the patented invention constitutes a scientific contribution of major significance to his or her field. As our office has repeatedly stated, the significance of the patented invention must be determined on a case-by-case basis. See *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n.7 (Comm. 1998). A letter submitted on appeal from ██████████ Professor of Chemistry at the Scripps Research Institute, states that "[t]he issuance of patents for [the petitioner's] work with real world application in this field demonstrates the importance of her contributions and the potential of her work in medical research. These patents have been licensed by Oxigene Inc. . . . and are being developed by them as anti cancer agents. Very few issued patents are utilized in real life." However, as previously mentioned, the record contains no primary evidence of the licensure or development of the patents by Oxigene. The record also contains copies of two articles that cite a patent application on which the petitioner is listed as a co-inventor ("PCT Int. Appl. WO 9839323") that was apparently published or discussed in *Chemical Abstracts* in 1998. *Supra* n. 1. The record suggests, but does not establish, that this application eventually resulted in a patent granted in 2000.

The evidence thus does not demonstrate that the petitioner meets this criterion through her work at Baylor University. Although the support letters affirm that her work was highly valued by her supervisor and is well regarded by six other individuals who have worked with her and one independent expert, other evidence does not support the claimed significance of the petitioner's work. The petitioner's research contributed to just three publications of which she is a co-author. These articles have been cited a combined total of 18 times by independent research teams. While notable, this publication and citation record does not demonstrate that the documented research constitutes original contributions of major significance to the petitioner's field (let alone contributions that can be primarily attributed to the petitioner) in a manner reflective of sustained national or international acclaim. The record also does not corroborate Oxigene's purported licensure and development of patented compounds of which the petitioner is a co-inventor.

The evidence submitted regarding the petitioner's recent work at the Scripps Institute also does not meet this criterion. ██████████ Associate Professor and the petitioner's supervisor at the Scripps Institute, explains that the petitioner is currently "pursuing advanced research to find inhibitors of metalloproteinases that are involved in various deadly diseases She has had great success in applying the novel *in situ* 'click chemistry' strategy for the development of agents that block the action of disease-related proteins. . . . Within less than 16 months, [the petitioner] has developed extremely potent subnanomolar inhibitors of the enzyme

Carbonic Anhydrase using this *in situ* 'click chemistry' strategy." Professor [REDACTED] a Nobel Laureate in Chemistry and a colleague of Professor [REDACTED] at the Scripps Institute, affirms that the petitioner "has used a novel technique called *in situ* 'click chemistry' to successfully develop extremely active inhibitors of the enzyme carbonic anhydrase that may provide treatments for diseases like convulsions, glaucoma and even cancer."

[REDACTED] Anstead, Assistant Professor in the Division of Infectious Diseases at the University of Texas Health Science Center in San Antonio, states that he became acquainted with the petitioner while she was working at Baylor University. Professor [REDACTED] also heralds the petitioner's "work on click chemistry, a new novel protocol for the development of drugs[, that] is making a great impact that might change the future of the drug discovery field" and notes that her recent research "has been accepted for publication in the prestigious peer-reviewed journal of chemistry, *Angewandte Chemie*." On appeal, the petitioner submitted a copy of the galley proof of an article entitled "In Situ Click Chemistry: Enzyme-Generated Inhibitors of Carbonic Anhydrase II" which lists her as the lead author. A galley proof is not evidence of actual publication. Moreover, this evidence arose after the petition was filed and consequently cannot be considered. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary 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). The record contains no other evidence that the petitioner's work at the Scripps Institute had resulted in contributions of major significance to her field at the time of filing.

Finally, we acknowledge the evidence regarding the petitioner's work in India prior to her arrival in the United States. Professor [REDACTED] the petitioner's current supervisor, briefly notes that the petitioner worked "on the synthesis of an anti-asthma drug at the Indian Institute of Chemical Technology, India, which is one of India's premier research institutes." The record shows that the petitioner is a co-author of an article concerning research performed at the Indian Institute of Technology that was published in 1995 in *Tetrahedron* and has been cited six times, including four self-citations by the article's lead author. Co-authorship of an article that has been cited only twice by independent research teams does not evidence an original scientific contribution of major significance to the petitioner's field. Accordingly, the petitioner does not meet 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.

As noted by counsel on appeal, the director did not clearly state whether or not the petitioner met this criterion. The director first stated that "it appears that the petitioner has established eligibility under this criterion," but then noted that the petitioner is not the principal author of any of the submitted articles. Regardless of the director's equivocal discussion, the record does not 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 or her field.

As discussed above under the third and fifth criteria, the petitioner submitted evidence that she is the co-author of four articles published in refereed scientific journals. These articles have been cited a combined total of 18 times by independent research teams. At the time of filing, the record indicates that the petitioner had published no journal articles as a lead author. This publication record does not reflect the sustained national or

international acclaim requisite to classification as an alien with extraordinary ability. Accordingly, the petitioner does not meet this criterion.

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

The petitioner originally submitted documentation of her conference presentations as evidence under this criterion. The director did not consider this evidence because this "regulatory criterion plainly refers to 'artistic' exhibitions or showcases." Even if we considered the petitioner's conference papers under this category pursuant to the comparable evidence provision of 8 C.F.R. § 204.5(h)(4), we would find them insufficient. As noted above under the fifth criterion, the record documents six papers presented at various scientific conferences. The petitioner is the lead author of two of these papers, but the record contains no evidence that the petitioner's research was exceptionally well received or otherwise distinguished from that of other conference participants. For example, the record includes no evidence that the petitioner was a featured speaker or that her papers won awards at any of the conferences. The submitted documents about the American Chemical Society (ACS) and the ACS Division of Organic Chemistry do not demonstrate that presentation of a paper at the ACS National Meetings or the latter division's National Organic Symposium is in and of itself reflective of national or international acclaim in the petitioner's field. 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 determined that the petitioner did not meet this criterion and counsel does not contest that conclusion on appeal.

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 medicinal chemistry through her research of anti-cancer agents. However, the record does not establish that, at the time of filing, the petitioner had achieved sustained national or international acclaim placing her at the very top of her field. She is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and her 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.