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U.S. Citizenship
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Services

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FILE: EAC 03 211 50689 Office: VERMONT SERVICE CENTER Date: JUN 24 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:

[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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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. Specifically, the director concluded that the petitioner did not meet any of the regulatory criteria.

On appeal, counsel asserts that the director's decision does not reflect the evidence submitted. The petitioner submits several exhibits in support of the appeal and in a supplemental submission. For the reasons discussed below, we find that the petitioner meets two of the regulatory criteria but has not established eligibility for the classification sought as three criteria are required.

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 fellow. 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.

In his initial brief, counsel listed the following awards:

96-98 Overseas Research Student Awards, UK
96-98 Cambridge Overseas Trust, University of Cambridge, UK
96-98 New Hall Overseas Student Bursary, University of Cambridge, UK
1997 Lundgren Fund, University of Cambridge, UK
1998 New Hall Grants for Graduate Research, University of Cambridge, UK
1998 President Fund, Society for General Microbiology, UK
1998 ICPP98 Bursary and Assistance Fund, 7th International Congress of Plant Pathology.

The awards were submitted as part of Exhibit C. We note that Miriam-Webster Online provides the British definition of bursary as follows: a monetary grant to a needy student: scholarship. Thus, the first three awards are scholarships. The letter acknowledging receipt of the petitioner's acceptance of the Lundgren Awards does not explain the purpose or selection process for this £441 award. The remaining awards cover the costs of attending a conference.

The director concluded that the awards were based on academic achievements and could not serve to meet this criterion. On appeal, counsel asserts that the petitioner received "seven awards, of which two were clearly national or international." Counsel fails to identify which of the seven awards are national or international. Counsel continues that it is irrelevant that the petitioner was a student when she received the awards and notes that a Nobel Prize is indicative of preeminence regardless of whether the recipient is a student.

Counsel misunderstands the director's concern. The issue is not whether the petitioner was a student when she won the awards but whether the awards are limited to students. Unlike the Nobel Prize referenced by counsel, competition for scholarships is limited to other students. Experienced experts in the field are not seeking scholarships. Thus, they cannot establish that a petitioner is one of the very few at the top of her field.

Regarding the funds disbursed to defray the costs of attending a conference, it is the petitioner's burden to demonstrate that these are nationally recognized awards such that the most experienced and renowned members of the field aspire to win such awards. The record includes no evidence regarding the selection criteria or pool of competitors for these awards. As such, the petitioner has not met her burden of establishing that they are nationally recognized awards. The unsupported assertions of counsel do not constitute evidence. *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).

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

In light of the above, the petitioner has not established that she meets 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.

Initially, the petitioner submitted evidence of general citations and three commentaries that appeared in journals carrying her articles. While counsel, in his initial brief, refers to the petitioner's citation record as evidence that the petitioner has had "a high impact on her field," he does not assert that the citations or commentaries are sufficient to meet this criterion.

The director concluded that the petitioner had not submitted evidence to meet this criterion. On appeal, counsel references this conclusion as "proof" that the adjudicator did not read counsel's cover letter. As stated above, counsel does not assert that the commentaries serve to meet this criterion in his initial cover letter. The petitioner resubmits the commentaries.

Counsel does not appear to assert that the general citations serve to meet this criterion. We simply note that 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.

We do not question that the commentaries further emphasize that the prestigious journals publishing her articles find the petitioner's work noteworthy. These commentaries will be considered below as counsel initially asserted that they should be, as evidence of the significance of the petitioner's articles. We cannot conclude, however, that they serve to meet this separate criterion. As stated above, the commentaries appeared in the same journal issues that carried the petitioner's work. The commentaries are commissioned by the journals to promote the work published in their journals and do not constitute independent journalistic coverage of the petitioner and her work. Thus, they do not reflect recognition of the petitioner's work beyond the publications printing it. In light of the above, while we do not dismiss the relevance of the commentaries, we cannot conclude that they serve to meet this criterion. Rather, we will consider them below as they relate to the significance of the petitioner's contributions and scholarly articles.

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

The petitioner obtained her Master's degree from the National Taiwan University in 1994. The petitioner then obtained her first Ph.D. from the University of Warwick in 1996 and her second Ph.D. from the University of Cambridge in 1999. The petitioner then accepted a postdoctoral fellowship at the University of Connecticut, the position she held at the time of filing.

Dr. Tsung-Che Tseng, a former professor at the National Taiwan University, indicates that the petitioner worked in his laboratory developing antibodies against mycotoxin fumonisins for use in screening contaminated grains. Dr. Tseng does not explain whether this project was influential or even successful. Dr. Tseng further attests to the petitioner's studies in Great Britain, but fails to provide any detail regarding the focus of her research during that period.

Dr. Mary Osborn, a professor at the University of Connecticut and a member of the National Academy of Sciences, is the only reference to discuss the petitioner's work in Great Britain. Specifically, according to Dr. Osborn, the petitioner's Ph.D. thesis involved the study of "global regulation of virulence genes in a phytopathogenic bacterium, and her findings constituted a significant contribution to the field." While Dr. Osborn provides no explanation for the importance of this work, two of the petitioner's articles coauthored with her Ph.D. mentor, Dr. George Salmond, have been well cited.

Most of the letters focus on the petitioner's work in the laboratory of Dr. Lawrence Rothfield at the University of Connecticut. Dr. Rothfield explains that the petitioner studies how cells identify intracellular locations, a question fundamental to finding new drug targets for bacterial infections and cellular development in general. Dr. Osborn explains the importance of this work given the emergence of antibiotic-resistant bacteria. The petitioner focused on the MinE protein, which, according to Dr. Yuen-Tsu Nicco Yu, is a member of the Min group that controls cell division site selection. According to Dr. Rothfield, the petitioner "was the first person to design mutations that affected specific regions of the surface structure of the MinE protein, and use these site-specified mutations to unravel the mechanism of placement of the cell division site." In addition:

[The petitioner] has made the seminal discovery that there are several previously unrecognized structures that extend along the length of the bacterial cell. She showed that these cytoskeletal structures are required both for placement of the cell division site and in maintenance of cell shape.

Dr. Jonathan Beckwith, a professor at Harvard University Medical School and a member of the National Academy of Sciences, notes that he refereed the petitioner's article for the *Proceedings of the National Academy of Sciences*. He describes her work as "a spectacularly beautiful piece of work revealing quite novel aspects of the process of cell division in the bacterium *Escherichia coli*." In addition, the petitioner "described unexpected features of the internal architecture of the bacteria." Dr. Beckwith concludes that the petitioner's paper "is of great significance to the study of cell division in bacteria, an important subject because of its relevance to the development of new antibiotics for treating bacterial diseases."

The petitioner's other references provide similar attestations. The director noted that letters prepared in support of the petition are insufficient by themselves and concluded that the record lacked objective evidence to support those letters, such as evidence that the petitioner is widely cited. On appeal, counsel asserts that the director's discussion constitutes "boilerplate garbage" and notes the submission of citations in this case.

While we agree with the principles expressed by the director, we concur with counsel that they do not fit the facts of this case. The evidence for this criterion would have been bolstered by specific examples of work that has been influenced by the petitioner's results. Nevertheless, the detailed and specific opinions of two members of the National Academy of Science, supported by evidence that the petitioner is well cited in the scientific literature and is the subject of three commentaries, sufficiently establish that the petitioner 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.

The petitioner submitted evidence of 14 articles, including articles published in the *Proceedings of the National Academy of Sciences* and *Cell*. The petitioner has been consistently cited and, as stated above, has been the subject of commentaries in the journals that published her work. The director's only discussion of this criterion

is to reference the discussion relating to the petitioner's contributions. In that discussion, the director implies that the record does not reflect that the petitioner is widely cited. As noted by counsel on appeal, such an implication is not supported by the record. We find that the petitioner has established that she meets this criterion.

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

The director acknowledged that the petitioner was contributing to her employer, but determined that such contributions were typical in the field. On appeal, counsel asserts that the director ignored the University of Connecticut's reputation and the claims that she was "a leading researcher there." Counsel then reiterates the petitioner's publication record.

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 the University of Connecticut as a whole. At the time of filing, however, the petitioner filled the role of postdoctoral fellow. We cannot conclude that the role of postdoctoral fellow, an inherently temporary, entry-level position, is a leading or critical role for the University of Connecticut as a whole beyond the obvious fact that the university requires the services of its numerous postdoctoral fellows to participate in the research occurring at that institution. Thus, we concur with the director's ultimate conclusion 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 biomedical 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 tremendous talent as a postdoctoral fellow, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.