

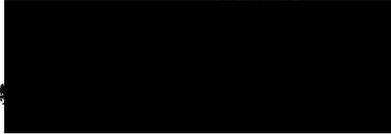


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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: NOV 10 2005

WAC 03 162 51718

IN RE:

Petitioner:



Beneficiary:

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.

for 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 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.

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.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "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).

In this case, the petitioner seeks classification as an alien with extraordinary ability as a neuroscientist. The record indicates that at the time of filing the petitioner had not yet obtained her doctoral degree, but was employed as a postgraduate researcher at the University of California, Davis. With her petition and in response to the director's Request for Evidence (RFE), the petitioner submitted evidence of her academic credentials, publications and citations of her work, membership in scientific associations, scholarship, graduate research grant and teaching assistantship, conference abstracts, letters soliciting her application for various academic positions, and 16 letters of recommendation written by 12 scientists who have worked or closely interacted with her. On appeal, the petitioner submits a brief and additional evidence of her recent publications, citations to her

work, her peer review of one manuscript, and general information regarding institutions where she has worked. The petitioner's claims and the additional evidence submitted on appeal do not overcome the deficiencies of the petition and the appeal will be dismissed. We address the evidence submitted and the petitioner's contentions in the following discussion of the regulatory criteria relevant to her case. The petitioner does not claim eligibility under any criteria not discussed below.

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

The petitioner claims to meet this criterion through her receipt of a Grant-In-Aid of Research Award from the Society for Integrative and Comparative Biology (SICB) in 1997; a scholarship from the International Women's Fishing Association (IWFA) in 1998; and a graduate student teaching assistantship from the University of Rhode Island from 1995-2000. The submitted evidence shows that these awards were presented to support the petitioner's doctoral studies at the University of Rhode Island. Scholarships, fellowships and grants to support academic study and research do not meet this criterion because only other students, not established scientists, are eligible for such awards. Even if competitive and prestigious, these forms of financial aid only demonstrate the academic accomplishments of students, not the recognized achievements of professional scientists.

On appeal, the petitioner claims that "[i]n science, comparable evidence of prizes or awards for excellence in the field of endeavor is the fellowship/scholarship and grant award." The record contains no evidence to support this claim. Simply going on record without supporting documentary evidence is not sufficient to meet 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)). Moreover, the comparable evidence provision of 8 C.F.R. § 204.5(h)(4) is invoked only when the regulatory criteria listed at 8 C.F.R. § 204.5(h)(3) "do not readily apply to the beneficiary's occupation." The petitioner provides no documentation to support her assertion that this criterion does not apply to her profession and the curriculum vitae of some of the authors of her recommendation letters show that scientific awards exist in her field apart from academic scholarships, fellowships and grants. 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 petitioner submitted evidence that she is a postdoctoral member of SICB. The submitted printout from SICB's website states that the Society has approximately 2,400 members and that "[t]here are various categories of membership to allow participation by individuals at all levels of career development." The printout does not state the eligibility criteria for postdoctoral members and the record contains no evidence that outstanding requirements are prerequisite to this level of SICB membership. Accordingly, the petitioner's SICB membership does not meet this criterion.

The petitioner submitted evidence of her invitation to join The American Physiological Society (APS), but no evidence that she became an APS member or that outstanding achievements are prerequisite to APS membership. On appeal, the petitioner claims she has been nominated to become a member of Sigma Xi, The Scientific Research Society, but submits only a printout from the Society's website and no evidence of her actual nomination. Regardless, nomination for membership is not equivalent to actual membership and even if the petitioner was already a member of Sigma Xi, the submitted printout does not show that outstanding

achievements are prerequisite to Sigma Xi membership. The printout simply states that the Society consists of “more than 70,000 scientists and engineers who were elected to the Society because of their research achievements or potential.” 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.

On appeal, the petitioner states, “In fundamental science especially in biology, the significance of the work is not evident until years of work. Comparable evidences [sic] are letters of testimonials from independent and leading researchers in the field of neuroscience working in prominent and distinguished institutions doing cutting-edge researches [sic] funded by the US government.” Again, the comparable evidence provision of 8 C.F.R. § 204.5(h)(4) is invoked only when the regulatory criteria listed at 8 C.F.R. § 204.5(h)(3) “do not readily apply to the beneficiary’s occupation,” not simply when a given criterion does not apply to an individual alien at a certain stage of his or her career. While it may take time for the significance of a scientist’s research findings to be reflected in published material about his or her work, the petitioner must establish her 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. We address the recommendation letters submitted on appeal in our discussion of the fifth criterion below.

(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 petitioner did not initially claim eligibility under this criterion. On appeal, she submits evidence of her review of one manuscript for publication in the *Biological Bulletin* in 1998. This single review performed five years before this petition was filed does not reflect the requisite sustained acclaim. The petitioner also claims to meet this criterion because she was an editorial assistant for the *Journal of Crustacean Biology*, as stated on her curriculum vitae, yet the record contains no evidence of her work for this journal. Again, simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165.

Finally, the petitioner claims to satisfy this category because she has judged the work of her students as a teaching assistant and instructor at the University of Rhode Island. Yet duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself, or in a substantial proportion of positions within that occupation. The petitioner submitted no evidence that she has judged of the work of other scientists in her field in a manner significantly outside the general duties of her teaching positions and reflective of national or international acclaim. 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 petitioner initially submitted 16 letters from 12 scientists with whom she has worked or closely interacted. On appeal, she submits letters from four additional scientists in her field who have not worked with her. 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 record indicates that prior to her arrival in the United States, the petitioner was a research associate at the Southeast Asian Fisheries Development Center (SEAFDEC) in the Philippines. [REDACTED] Aquaculture Pathobiologist in the Aquaculture Department of SEAFDEC, states that the petitioner worked in his laboratory at SEAFDEC and that he later served on her master's thesis committee. Mr. [REDACTED] explains that the petitioner's thesis was "very important in the Philippine effort to develop, evolve, and perfect a hatchery rearing technology for 'milkfish' *Chanos chanos* Forsskal. In nature, the . . . survival [of milkfish fry] normally does not reach 1%. Applying and extending her findings . . . , we had a handy chemotherapeutant to control egg-larval mortality in the hatchery." Mr. [REDACTED] further notes that the petitioner also worked on "the toxicities of various therapeutic chemicals used in fish, shellfish, and crustacean culture; isolation and characterization of microbial pathogens problematic to fish and crustaceans; and, histopathology of aquatic animal diseases with microbial etiology." [REDACTED] Professor and Chairman of the Department of Fisheries, Animal and Veterinary Science at the University of Rhode Island and a member of the petitioner's doctoral dissertation committee, affirms that the petitioner's "work as [an] aquacultural disease specialist was known and respected around the Southeast Asian Region and beyond." The record shows that the petitioner co-authored four articles regarding her research at SEAFDEC, three of which have been cited a total of six times by other researchers.

The record shows that the petitioner came to the United States in 1983 to work at the Howard Hughes Medical Institute and the Marine Biological Laboratory (MBL) in Woods Hole, Massachusetts. [REDACTED] Senior Research Associate and Resource Manager of the *Aplysia* Resource Facility at the University of Miami, states that he worked with the petitioner when the *Aplysia* Facility was initially funded by the Howard Hughes Medical Institute. Mr. [REDACTED] explains that the petitioner's "significant contribution was in the establishment of clean and sterile protocols for the handling of the vulnerable 'nursery stage' of the snails. Her methodology ensured the long-term survival and consistent high quality of the animals imperative for the biomedical research being done on these animal models."

[REDACTED] Associate Scientist at the MBL, states that the petitioner was a research associate in his laboratory from 1989 to 1995 and explains that his "research aim at that time was dedicated to the culture and growing of *Hermisenda* and other related species as biomedical models for neurobiological research with an emphasis on learning and memory." Dr. [REDACTED] further explains that the petitioner's "research on invertebrate neuronal cell culture . . . contributed to *Hermisenda*'s usefulness as a neurotoxicological model for lead-induced learning deficiencies. . . . Her work was contributory to 6 peer-reviewed publications, and 11 abstracts, presentations or posters." The petitioner's contributions in this area are affirmed by [REDACTED] Professor of Microbiology at Cape Code Community College and an Investigator at MBL who often interacted with the petitioner during her stay at MBL. The record shows that the petitioner co-authored five articles, one abstract and one letter to the editor with Dr. [REDACTED] and others that were published in scientific journals. These articles have been cited a combined total of 28 times, but only six times by independent research teams. The petitioner also submitted copies of ten abstracts co-authored with Dr. [REDACTED] and others that were presented at scientific meetings.

As explained by Dr. [REDACTED] the petitioner's research at MBL led to her pursuit of doctoral studies at the University of Rhode Island. Professor [REDACTED] explains that the petitioner worked on "the characterization of calcium channels in the nerves of a large 'sea slug.' . . . This type of neural research potentially has application to solving such problems as the repair or healing of spinal cord injuries in higher animals including humans."

[REDACTED] Assistant Professor of Cell Biology at the Scripps Research Institute who met the petitioner when he was a postdoctoral fellow at MBL and the petitioner was a doctoral student, explains that the petitioner "investigated how lead affects the intracellular dynamics of calcium in neurons. She studied these processes on neurons of the molluscan invertebrate *Aplysia californica*, which is an established model system for learning and memory. Results from this research have a direct impact on our understanding of how heavy metals may impair neuronal function and on exploring new therapeutic strategies against these disorders." Professor Danuser emphasizes "the particularly interesting thrust in [the petitioner's] scientific contribution which rigorously links cell biological methods to deciphering the mechanisms of disease. I am fascinated by, and at the same time, a big admirer of her ability to tease apart the complexity of an illness into component processes at the cellular level which are amenable to examination under clean laboratory conditions." [REDACTED] Professor of Biological Sciences and Associate Dean of the Graduate School at the University of Rhode Island and a member of the petitioner's doctoral dissertation committee, also affirms the value of the petitioner's doctoral research. The record shows that the petitioner is the lead author of one article in this area that was published in *Biological Bulletin* in 1998 and has been cited once. The petitioner also submitted a copy of an abstract on this research (of which she is the lead author) presented at a scientific meeting at MBL in 1998.

The record indicates that at the time of filing the petitioner had not yet obtained her doctorate, but had begun working as a postgraduate researcher at the University of California, Davis (UC Davis).

[REDACTED] Associate Professor of Medicine and a colleague of the petitioner's at UC Davis, states that the petitioner "used a transgenic approach to develop mouse models deficient in several ion transporters. . . . [T]hese transgenic mice provide us with an *in-vivo* model system to study in detail how ion transporters function in normal hearing and during aging. Indeed, her work contributed significantly to our understanding of age-related hearing loss." [REDACTED] Assistant Professor in the Department of Neurological Surgery at UC Davis who met the petitioner at UC Davis in 2001, explains that the petitioner

brings a unique perspective to the field of Neuroscience, more specifically disorders of the nervous system. Her strong training in basic cellular mechanisms of ionic regulations in marine systems has given her a crucial evolutionary perspective that she uses to develop novel approaches to complex developmental questions in mammalian systems. This unique approach is in contrast to the typical 'top-down' paradigm classically taught in graduate Neuroscience curriculums and makes [the petitioner] an indispensable part of an active research team.

[REDACTED] Research Associate in the Department of Pharmacology at the University of Western Australia and a former colleague of the petitioner's at UC Davis, affirms the petitioner's skills and accomplishments in this area. The petitioner submitted evidence that she is the lead author of two articles and a co-author of one abstract concerning her research in this area that were published in scientific journals between 2002 and 2003. The petitioner's two articles have been cited a combined total of four times by other researchers.

In her RFE response, the petitioner also submitted a letter from [REDACTED] Professor of Neurological Surgery and the petitioner's second supervisor at UC Davis. On appeal, she submits letters from four scientists who discuss her recent work with Professor [REDACTED]. We cannot consider this evidence because the record indicates that the petitioner did not join Professor [REDACTED] laboratory until June

2003, after the petition was filed. 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).

On appeal, the petitioner states, "In science, theses and dissertations are considered independent and original contributions to the field." While this statement may be true, it does not follow that all theses and dissertations make original contributions of major significance to their fields. On appeal, the petitioner submits excerpts from two articles that cite her 1995 article from the *Bulletin of Environmental Contamination and Toxicology* and 13 requests for reprints of this article from other researchers. Yet the record shows that the petitioner's article was cited only three times in the nine years between its publication and the submission of the petitioner's RFE response.

The record indicates that the petitioner's work is highly valued by the scientists with whom she has worked and who have written recommendation letters on her behalf. However, other evidence in the record does not corroborate the significance of the petitioner's work as assessed in these letters. The petitioner has published her work in scientific journals and presented her research at meetings, in keeping with the common practice among research scientists. The record shows that the petitioner's work has been only minimally cited by independent research teams and the petitioner submitted no evidence that she was an invited or featured speaker at any of the meetings where she presented her work. The record contains no other evidence that the petitioner has made original contributions of major significance to her field in a manner consistent with the requisite sustained acclaim. Accordingly, she 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.

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. In this case, the record shows that the petitioner has published 15 articles and five abstracts in reputable scientific journals. She is the lead author of eight of these articles. The submitted summary citation list shows that, at the time of filing, the petitioner's publications had been cited a combined total of 58 times, (an average of 3 citations per publication). The submitted lists of the citing articles for 11 of her publications show that out of a combined total of 45 citations, only 21 were made by independent research teams. For example, the petitioner's most widely cited article, "Induction of Metamorphosis in *Hermisenda Crassicornis* Larvae (Mollusca: Nudibranchia) by GABA, Choline and Serotonin," published in 1996 in *Invertebrate Reproduction and Development* has been cited ten times, but that total includes three self-citations by the petitioner and her co-authors. The evidence thus shows that the petitioner's articles have been only minimally cited by independent researchers. On appeal, the petitioner submits evidence that three recent articles have cited her publications, but we cannot consider this evidence because the citing articles were published after the petition was filed. 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), *Katigbak*, 14 I&N Dec. at 49. Beyond the submitted citation lists and the recommendation letters, the record contains no evidence regarding the impact of the petitioner's publications. The record thus does not establish that the petitioner's publication and citation record is consistent with sustained national or international acclaim. Accordingly, she 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 petitioner did not initially claim eligibility under this criterion. On appeal, she asserts that she has made “contributions to organizations and establishments that have distinguished reputation [sic]” and submits materials about the MBL, the Howard Hughes Medical Institute, SEAFDEC, and the UC Davis Health System. However, to meet this criterion, a petitioner must establish the nature of the alien’s role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization itself. In this case, many of the recommendation letters attest to the valuable contributions that the petitioner made to various projects at SEAFDEC, MBL, the Howard Hughes Medical Institute, and UC Davis. Yet none of the letters state, and the record does not otherwise show, that the petitioner performed a leading or critical role for any of these organizations, or their relevant departments, as a whole. For example, the petitioner’s contributions to one research project conducted in one laboratory within one department at UC Davis do not evidence her leading or critical role for that department or for UC Davis as a whole. 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.

Mr. ██████ states that the petitioner “commanded a high salary” while working at the Howard Hughes Medical Institute. Mr. ██████ explains that “[h]er salary level was at the highest level of her category, and was two to three times greater compared to the average Research Assistant salary level.” However, the record contains no documentation of the petitioner’s salary at that time or comparative evidence of the salary of other researchers in her field during the same time period. In her RFE response, the petitioner submitted a salary table from an unidentified source entitled “Non-Student Postgraduate Researcher” for fiscal years 2000 to 2002. Prior counsel stated that the petitioner’s salary was at level five of six levels listed for postgraduate researchers who have not yet obtained their doctoral degree. However, the petitioner submitted no documentary evidence of her salary as a postgraduate researcher at UC Davis and without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. 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). Most importantly, the relevant comparison is not to other research assistants or postgraduate researchers, but to all scientists working in the petitioner’s field. The record contains no evidence that the petitioner has commanded a high salary comparable to scientists at the very top of her field and thus consistent with the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

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 record in this case does not establish that the petitioner had achieved sustained national or international acclaim as a scientist placing her at the very top of her field at the time of filing. 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.