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FILE: WAC 03 155 51123 Office: CALIFORNIA SERVICE CENTER Date: **NOV 14 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.

*Mari Johnson*

*R* 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 neuroscience researcher. The record shows that at the time of filing the petitioner was employed as a research scientist by AGY Therapeutics, Incorporated (AGY) in San Francisco. The petitioner initially submitted supporting materials including evidence of his academic credentials, service as a referee for one scientific journal in his field, contribution to two patent applications, membership in two professional associations, postdoctoral fellowship at Stanford University, six of his published articles, and six letters of recommendation written by individuals who have either worked with or are familiar with the petitioner's work. In response to the director's Request for Evidence (RFE), the petitioner submitted additional evidence relating to his research fellowship, membership in

one association, review of manuscripts for one journal, information regarding journals that have published the petitioner's articles, citations to his work, a letter from his employer and two additional letters of recommendation. On appeal, counsel submits a two-page brief and no additional evidence. Counsel's contentions do not overcome the deficiencies of the petition and the appeal will be dismissed. We address the evidence submitted and counsel's claims in the following discussion of the regulatory criteria relevant to the petitioner's 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 his receipt of a Wellcome Trust International Research Fellowship (Wellcome Fellowship) in 1999. Graduate and postdoctoral fellowships do not meet this criterion because only students and recent graduates are eligible for and receive such assistance to continue their academic studies or receive research training. While they may be highly competitive and prestigious, postdoctoral fellowships are temporary positions served under the direction of more experienced scientists and thus only evidence the fellow's past academic achievements and future potential.

In this case, the record contains no primary evidence of the petitioner's Wellcome Fellowship. However, six recommendation letters confirm that the petitioner received this fellowship. With his RFE response, the petitioner submitted a document entitled "Wellcome International Research Fellowships 2003," which states, "Candidates should note that this award is high profile and extremely competitive. It is envisaged that only 10 to 15 awards will be made during any one year. . . . These fellowships are intended to provide further research experience for basic science or clinically qualified researchers in leading laboratories overseas." The document states that only candidates who have or will shortly obtain their doctoral or medical degree in the United Kingdom or the Republic of Ireland are eligible for the fellowship. The petitioner also submitted a printout of an electronic mail message from the Science Program Officer of the Wellcome Trust who states that "all grants are judged on scientific merit and the quality of the candidate." This letter does not state that the 2003 criteria were also in force in 1999 when the petitioner purportedly received his fellowship.

The recommendation letters that discuss the petitioner's receipt of the Wellcome Fellowship indicate that it is limited to researchers at the beginning of their professional careers. [REDACTED] of the National Institute of Neurological Disorders and Stroke at the National Institutes of Health and a former Wellcome Trust fellowship recipient, further explains that these fellowships "are highly regarded and sought after through [sic] their prestige and value for allowing research at the highest level. For scientists at the outset of their careers the Wellcome Trust International Traveling Research fellowship is the pinnacle of grants that can be awarded." [REDACTED] Professor of Psychiatry and Behavioral Sciences at Stanford University School of Medicine and the petitioner's postdoctoral supervisor, explains that "[t]his award is given to a very small number of young scientists and is regarded in the international scientific community as being a great recognition of the exceptional quality of the researcher." [REDACTED] Professor and Director of the Molecular Neurobiology Department at the Max-Planck Institute for Medical Research in Germany, states that the petitioner "has been awarded one of the most prestigious fellowships available to young postdoctoral scientists from the Wellcome Trust. These fellowships are awarded to a select few scientists after completion of their PhDs as recognition of their contributions to science during their studies and their future potential." [REDACTED] Professor of Neuroscience and Director of the MRC Centre for Synaptic Plasticity at the University of Bristol in the United Kingdom who worked with and co-authored publications with the petitioner during the petitioner's doctoral studies, states that he is on the awarding board of the Wellcome Fellowships and

that they “are recognized as being the most competitive and illustrious available for young researchers to undertake research outside of the UK.” [REDACTED] and [REDACTED] Professor at the Child Study Center of Yale University School of Medicine and a current collaborator of the petitioner, makes similar comments and [REDACTED] Professor of Physiology at the Institute of Medical Sciences within the University of Toronto, also affirms the prestige and competitiveness of this fellowship.

While these letters attest to the cachet of the petitioner's fellowship, they indicate that the Wellcome Fellowships are awarded to promising scientists at the beginning of their careers, not to leading scientists at the top of their fields. The petitioner's fellowship may indicate his exceptional promise as a researcher, but he must demonstrate that this honor is comparable to those won by scientists who have already achieved sustained national or international acclaim. The petitioner cannot restrict his field to exclude scientists who have long ago completed their advanced research training and therefore do not compete for postdoctoral fellowships. The record thus does not demonstrate that the petitioner's Wellcome Fellowship reflects the requisite sustained acclaim. 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 of his “ordinary” membership in The Biochemical Society and his membership in the Society for Neuroscience (SFN). As evidence that these memberships meet this criterion, counsel cites the letter of Professor [REDACTED] who states, “[The petitioner] is a member of numerous societies, whose membership requirements are quite stringent. [His] membership in the Society for Neuroscience required his nomination by two current members of the organization. Similarly, as a member of the Biochemical Society [he] received sponsorship from three long-standing members of this organization.” The record does not corroborate Professor [REDACTED] statements. With his RFE response, the petitioner submitted a printout from the website of SFN, which states, “Any scientist residing in the United States, Canada or Mexico, who has done meritorious research relating to the neurosciences is eligible to be a regular member.” The printout does not define “meritorious research” or further describe the membership selection criteria. The record is devoid of any documentation from The Biochemical Society concerning its membership criteria. On appeal, counsel claims that the petitioner's SFN membership alone is “cause enough for classification as extraordinary ability.” Yet the evidence submitted does not demonstrate that outstanding achievements are prerequisite to SFN 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.*

As evidence of the petitioner's eligibility under this criterion, counsel initially cited two recommendation letters that discuss his publications and one letter that confirms his review of manuscripts for the *Journal of Neuropharmacology*. On appeal, counsel does not claim that the petitioner meets this criterion. However, we note that published articles written by an alien are not published materials about the alien or his work. Similarly, manuscripts reviewed by an alien are not published materials about the alien. The record contains no evidence of published materials about the petitioner and his work. Accordingly, he does not meet this criterion.

*(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 claims to meet this criterion because he has been a reviewer for one scientific journal in his field. We cannot ignore that peer review of manuscripts is intrinsic to the editorial process of many scientific journals and that established research scientists often serve as referees for various journals in their field. Because 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, a scientist will not meet this criterion unless he or she has completed a significantly large number of reviews, served on the editorial board of journals in his or her field, or has otherwise judged the work of other scientists in a manner reflective of the requisite sustained acclaim.

In this case, the petitioner initially submitted a letter from an editorial assistant of *Neuropharmacology* confirming that he had reviewed manuscripts submitted for publication to the journal. With his RFE response, the petitioner submitted a second letter from Professor ██████████ who is the editor in chief of this journal. Professor ██████████ explains that publication in *Neuropharmacology* requires peer review and "reviewers who have demonstrated exceptional contributions to the field and whose unique knowledge places them as the only experts who can judge the significance and quality of the papers submitted for publication." Professor ██████████ states that the petitioner was selected as a reviewer due to his "unique insights and knowledge in the field of neuropharmacology and in particular the roles and regulation of glutamate receptors [as demonstrated by] his extensive publication record at a high level and his many presentations and interactions at the premier scientific meetings in this field." Professor ██████████ also notes that the petitioner wrote a review article that was published in *Neuropharmacology* in 2000 and that articles reviewed by the petitioner have been published and were well received and highly cited. The record also contains evidence that *Neuropharmacology* has an impact factor of 3.801, an immediacy index of 0.525 and a cited half-life of 5.6 years.

Professor ██████████ letter indicates that the petitioner has valuable expertise in his field, but it does not demonstrate his eligibility under this criterion. Professor ██████████ does not state how many reviews the petitioner completed for *Neuropharmacology* or the dates of his reviews. The record also contains a printout of an electronic message requesting the petitioner's review of a manuscript for the *Journal of Neurochemistry*, but no evidence that the petitioner actually completed the requested review. The petitioner submitted no evidence that he has reviewed manuscripts for any other journals, served on the editorial board of any journals in his field, or has otherwise judged the work of other scientists in a manner reflective of the requisite sustained acclaim. Accordingly, he 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.*

As evidence of the petitioner's eligibility under this criterion, counsel references the submitted recommendation letters. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his 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.

Professor ██████ explains that the petitioner's doctoral research "focused on the role of a subclass of receptors for glutamate, the most common excitatory neurotransmitter in the brain, so called kainite receptors. . . . [His] work has been recognized by its publication in major scientific journals and through presentation at major scientific meetings both in Europe and the USA. Three years after the completion of his PhD studies, work emanating from his discoveries is still being continued at the University of Bristol." The petitioner's curriculum vitae includes nine publications co-authored by the petitioner that either list Professor ██████ as the last author or concern kainite receptors. The record is devoid of any evidence of seven of these purported publications. 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)). The record includes copies of two of these articles, the first of which was published in *Trends in Pharmacological Sciences* in 1999. The petitioner submitted a Web of Science printout showing that at the time of filing, this article had been cited 96 times by other research teams. The second article was published in *Neuron* in 2003 shortly before the petition was filed. While several letters state that the petitioner presented his work in this area at scientific meetings, the record contains no copies of the petitioner's conference abstracts or other corroborative evidence of his participation at any meetings or conferences in his field.

Professor ██████ states that during the petitioner's postdoctoral fellowship in his laboratory, the petitioner "examined the molecular mechanisms underlying receptor functioning and the plasticity of synaptic transmission . . . . He has made important contributions to our understanding of synaptic processes through taking a molecular approach to the study of brain functioning." Professor ██████ affirms that the petitioner's investigation of "AMPA receptor regulation . . . . produced highly significant findings that explain how the trafficking of these receptors is both controlled and regulated by interaction with intracellular proteins. These findings produce a great potential for understanding the basis of normal brain function and the dysfunction that leads to disorders such as depression and neurodegeneration." Professor ██████ also affirms that the petitioner's work has "profound implications for how memory formation can be controlled in the brain." The petitioner is the lead author of an article concerning his postdoctoral research that was published in the *Proceedings of the National Academy of the Sciences* in 2002 and entitled, "Differential Roles for NSF and GRIP/ABP in AMPA Receptor Cycling." At the time of filing, the record shows that this article had been cited three times in the publications of other research teams. Professor ██████ states that "[t]his publication alone has brought to the fore a new area of research in that such receptors are highly dynamic and their regulation is under tight cellular control."

Professor ██████ also notes that the petitioner's invitation to write a review article concerning research in this area, the article's publication in the "high level" journal *Neuropharmacology* and its "impressive discussion of the field are testament to his knowledge, judgment and contributions to this important field of research." The record contains a copy of this article, of which the petitioner is the lead author that was published in 2000 in *Neuropharmacology*. The submitted Web of Science printouts show that at the time of filing, this article had been cited 31 times by other research teams. ██████, Professor of Physiology at the University of Toronto, and ██████ Director and Research Advisor in the Neuroscience Division of ██████ and Company, Limited, who worked with the petitioner during the petitioner's graduate studies, also affirm the significance of the petitioner's work in these areas.

The record indicates that at the conclusion of the petitioner's postdoctoral fellowship, he began working as a research scientist at AGY. Professor ██████ explains that he is collaborating with the petitioner on work initiated by the petitioner that "identified the protein known as striatal-enriched tyrosine phosphatase (STEP) as a potential target to develop drugs against which would be used in treatment of memory disorders." Professor Salter states that the petitioner is "making a project focused on the pharmacological development of drugs that can be used to treat disorders such as depression, stroke and neurodegeneration and thus are of exceptional value." Professor ██████ affirms the potential value of the petitioner's recent research. A letter from ██████ Patent Liaison for AGY, confirms that the petitioner "has been an instrumental inventor on two pending patent applications which have been filed with the USPTO." Yet the record contains no copies or other documentation of these patent applications. Moreover, even if these patents had been awarded (not simply applied for) prior to filing, they alone would not meet this criterion. To establish eligibility under this category by virtue of patents, a petitioner must not only show that his work has been granted a patent, but that the patented invention constitutes a scientific contribution of major significance in his field. The significance of a 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).

The record indicates that the petitioner's work is highly valued by the authors of his recommendation letters and that he is the lead author of an article published in the *Proceedings of the National Academy of the Sciences* and a review article published in *Neuropharmacology*. However, the record does not fully document the major significance of the petitioner's work to his field as assessed by the recommendation letters. Apart from five articles, the record does not document the other publications listed on his curriculum vitae or the petitioner's presentation of his work at scientific conferences in his field. The record contains no other evidence that the petitioner's work has been recognized by scientists, apart from his recommenders, as making major contributions to his field in a manner consistent with the requisite sustained acclaim. 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.*

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 researchers or other proof that the alien's publications have had a significant impact in his or her field.

In this case, the record contains copies of five articles co-authored by the petitioner and published in reputable journals in his field between 1999 and 2003. The record shows that the petitioner's first co-authored article, "Kainate Receptors: Subunits, Synaptic Localization and Function," published in 1999 in *Trends in Pharmacological Sciences* had been cited 96 times in the publications of other researchers at the time the petition was filed. The petitioner's second co-authored article, "PICK1 Interacts with and Regulates PKC Phosphorylation of mGluR7," published in 2000 in the *Journal of Neuroscience*, had been cited 31 times by other research teams at the time of filing. The review article of which the petitioner is the lead author, "Interactions Between AMPA Receptors and Intracellular Proteins," published in 2000 in *Neuropharmacology* had also been cited 31 times by other researchers at the time of filing. The petitioner is the first author of a fourth article, "Differential Roles of NSF and GRIP/ABP in AMPA Receptor Cycling," that was published in the *Proceedings of the National Academy of Sciences* in 2002 and had been cited three times by other research teams at the time of filing. The petitioner's fifth co-authored article, "Rapid and Differential Regulation of

AMPA and Kainate Receptors at Hippocampal Mossy Fibre Synapses by PICK1 and GRIP,” was published in *Neuron* two months before the petition was filed. In his RFE response, the petitioner submitted evidence of numerous, more recent citations to these articles, but we cannot consider this evidence because it arose 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).

The petitioner submitted evidence of the impact factor, immediacy index and cited half-life of each of the journals that has published his work. In addition, Professor Collingridge's letter submitted with the petition confirms that the petitioner was invited to write a review article on glutamate receptors for *Neuropharmacology*.

The caliber of several of the journals that have published the petitioner's work; his lead authorship of two articles, one of which is an invited review article and the other of which was published in the *Proceedings of the National Academy of Sciences*; and the wide citation of three of his articles by independent researchers provide sufficient evidence that the petitioner's publications have made a significant impact in his field in a manner consistent with the requisite sustained acclaim. Accordingly, the petitioner meets 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 evidence in this case indicates that, at the time of filing, the petitioner was a neuroscience researcher of great promise who had published scholarly articles in distinguished scientific journals in his field. However, the record does not establish that the petitioner had achieved sustained national or international acclaim as a neuroscientist placing him at the very top of his field at the time of filing. He 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 his 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.