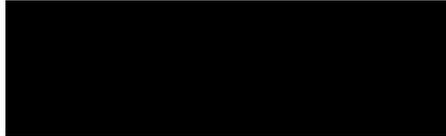


identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



*br*

FILE: [REDACTED]  
EAC 03 134 51315

Office: VERMONT SERVICE CENTER

Date: OCT 07 2005

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Mari Johnson*

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.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a postdoctoral fellow. While neither the statute nor the regulation preclude an alien so early in his career from establishing eligibility, we will not narrow the petitioner's field to those just completing their Ph.D. studies. Rather, the petitioner must compare with the most experienced and renowned scientists in his field.

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 director stated:

Merely meeting three of the ten categories of evidence suggested by regulation does not automatically establish the beneficiary's eligibility for the classification of "Alien of Extraordinary Ability." Determinations of eligibility are made on the basis of the quality and caliber of the evidence presented.

On appeal, counsel asserts that meeting three criteria is sufficient and cites *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994). While we may not agree with the exact wording of the above statements, we do not read the director's decision as concluding that the petitioner was eligible under the regulations but that the petition was not approvable. First, the director did not deny the petition despite finding that the petitioner meets three criteria. Rather, the director concluded that the petitioner did not meet any criteria. Moreover, a more rational interpretation of the director's decision is that a petitioner cannot merely submit documentation that relates to or addresses three criteria. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim.

The petitioner has submitted evidence that, he claims, meets the following criteria.<sup>1</sup>

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

Initially, counsel asserted that the beneficiary's research fellowships serve to meet this criterion. The director concluded that the petitioner had not provided evidence of lesser nationally or internationally recognized prizes or awards for excellence in the field. Counsel does not challenge this conclusion on appeal and we find that a job offer, even if competitive, is not a prize or award recognizing excellence in one's field.

*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 regular membership in the Society for Neuroscience and his junior membership in the International Society for Neurochemistry (ISN). The letter from the Society for Neuroscience provides that their bylaws define members as "any scientific worker residing in Canada, Mexico, or the United States who has done meritorious research relating to the neurosciences." Applicants for regular membership must be nominated by two members and submit a curriculum vitae and bibliography. The letter reference emeritus members, suggesting a higher level than the level obtained by the petitioner. While the petitioner submitted the membership requirements for ISN, the petitioner is only a junior member of ISN. The petitioner did not submit the requirements for junior membership.

The director concluded that the large number of members in the Society for Neuroscience and ISN suggests that neither requires outstanding achievements of their members. On appeal, counsel discusses the requirements for membership in both societies.

---

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

Publication in the field and nominations from two of the hundreds of thousands of members of an association are not outstanding achievements. As stated above, the Society for Neuroscience has emeritus members, suggesting that the petitioner has not obtained the most prestigious level of membership in the society. Thus, we concur with the director that the Society for Neuroscience appears to be a professional rather than an exclusive society. Finally, as stated above, the petitioner is only a junior member of ISN. As such, we need not decide whether regular membership in ISN is sufficient as the petitioner is not a regular member. The record lacks evidence of the membership requirements for junior members.

In light of the above, we concur with the director that the petitioner has not established that he 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, counsel asserted that citations serve to meet this criterion. The initial evidence, however, did not include any evidence of citations. The director noted that publication is inherent to the field of scientific research and concluded that the record contained "insufficient evidence that others have cited the [petitioner's] work to a degree that would be indicative of his claimed sustained national or international acclaim."

On appeal, counsel asserts that the discussion of the petitioner's publication record is confusing and that the director failed to evaluate the citations submitted. The petitioner now submits evidence of articles that cite his work, the vast majority of which were published after the date of filing. A petitioner must establish eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*; 14 I&N Dec. 45, 49 (Comm. 1971).

Specifically, the petitioner now submits evidence that his October 1995 article in the *European Journal of Clinical Chemistry and Clinical Biochemistry* has been cited seven times, five of which were prior to the date of filing. Of the five citations prior to the date of filing, two are self-citations by coauthors. The petitioner's March 1999 article in the *Journal of Neurochemistry* has been cited 16 times, only eight of which precede the date of filing. The list of citations ends at 10, thus the record contains the bibliography of only two of the citations that precede the date of filing, both of which are self-citations by either the petitioner or a coauthor. Of the eight citations that postdate the date of filing, five are self-citations by a coauthor and a sixth is a citation by one of the petitioner's coauthors of a different article. The petitioner's 2000 article in the *Journal of Neurochemistry* has been cited nine times, five of which precede the date of filing. Of the five that precede the date of filing, three are self-citations by coauthors or the petitioner. The petitioner's 2002 article in the *Naunyn-Schmiedeberg's Archives of Pharmacology* has also been cited nine times, only one of which predates the date of filing. Of the nine citations, six are by coauthors or the petitioner. While the petitioner also submitted evidence that his 2004 article in the *Journal of Biological Chemistry* has been cited twice, once by a coauthor, the petitioner's article itself postdates the date of filing. Thus, we can consider neither the article nor the citations.

While self-citation is a normal and expected practice, self-citations are not indicative of national or international acclaim. The petitioner has not established that, as of the date of filing, more than three independent research teams had cited any one of his articles. Regardless, as consistently stated by this office, articles that cite the petitioner's work are about the author's own research, not the work cited in the footnotes. Thus, while citations are indicative of the influence of a given article and will be considered below, articles that cite the petitioner's work cannot meet the plain language requirements of this criterion, set forth at 8 C.F.R. § 204.5(h)(3)(iii).

In light of the above, we concur with the director that the petitioner has not established that he meets this criterion.

*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.*

Initially, counsel asserted that the petitioner met this criterion through his roles as a principal investigator, research scientist, research fellow and lecturer and instructor. Dr. [REDACTED] E. A. Reith, the petitioner's collaborator at the University of Illinois at Chicago, asserts that the petitioner's teaching and instruction responsibilities at the Beijing University of Chinese Medicine serves to meet this criterion. The petitioner did not submit any reference letters from the Beijing University of Chinese Medicine describing the petitioner's responsibilities at that university.

The director concluded that the record contained no evidence relating to this criterion beyond his current duties as a researcher. On appeal, counsel asserts for the first time that the petitioner has reviewed manuscripts for two Chinese journals. As this claim was not advanced previously, we cannot conclude that the director erred in failing to consider it. Counsel provides no explanation for not advancing this claim initially and the petitioner provides no evidence to support this new claim. 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).

Regarding the petitioner's alleged teaching duties, the evidence submitted to meet each criterion must be indicative of or at least uniquely consistent with national or international acclaim. Duties that are inherent to every member of the profession are of limited evidentiary value in distinguishing the petitioner from others in the field. Every instructor evaluates the work of his students. Not every teacher, instructor or even full professor, however, enjoys national or international acclaim. Thus, the petitioner's teaching responsibilities are not persuasive.

Finally, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys sustained national or international acclaim. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner meets this criterion.

In light of the above, we concur with the director that the petitioner has not demonstrated that he meets this criterion.

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

The petitioner submitted four reference letters in support of the petition in addition to his publication record. The director concluded that the record did not establish that the petitioner meets this criterion due to the fact that the reference letters were solicited and record lacked evidence distinguishing the petitioner's publication record.

On appeal, counsel asserts that the director ignored the citation evidence and that the petitioner's publication record adequately supports the reference letters. Counsel further asserts that the petitioner's articles were published in top ranked journals. Counsel then quotes from several reference letters. The petitioner submits citation evidence and new reference letters.

While letters from colleagues are important in explaining the petitioner's role in various projects, they cannot, by themselves, establish the petitioner's recognition beyond his immediate circle of colleagues. Moreover, letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field.

In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. Finally, as with letters from colleagues, independent letters identifying specific contributions and explaining how they have impacted the field are far more persuasive than letters providing general assertions of ability and acclaim.

While Dr. [REDACTED] asserts that the petitioner has "provided many significant contributions to the field of neurochemistry," his discussion of those contributions suggests that while the petitioner's work has potential, it has yet to impact the field in a significant way. Dr. [REDACTED] first discusses the petitioner's area of research, cocaine addiction, and the potential for the petitioner's work to result in a drug to treat such addiction. Specifically, the petitioner's research focuses on the development of "a transport inhibitor that will control the activity of the dopamine neurotransmitter, reversing the chemical processes that cause addiction." Dr. [REDACTED] predicts that once the petitioner's work "is fully developed, it will be the basis for a novel drug to control the chemical imbalances that cause cocaine addiction." While we do not question the importance of this goal, Dr. [REDACTED] does not identify a single specific accomplishment towards this goal. Regarding the petitioner's separate investigation of the function of sugars attached to the dopamine transporter, Dr. [REDACTED] asserts that the petitioner "was the first to discover the unique effects sugar has on the dopamine transporter using a molecular mutation technique." Dr. [REDACTED] then asserts that the petitioner has unique expertise with the use of sophisticated techniques. Dr. [REDACTED] however, does not explain how the petitioner's sugar discovery and expertise with sophisticated techniques has influenced the field.

Dr. [REDACTED] Chief of the Clinical Psychopharmacology Section of the National Institute on Drug Abuse, National Institutes of Health, asserts that the petitioner's work has been groundbreaking and that the petitioner is one of the few neurochemists who advances the field. Dr. [REDACTED] however, fails to support these general assertions with concrete examples of contributions and their proven influence in the field. For example, Dr. [REDACTED] asserts that the petitioner's discoveries are significant because they contribute to the development of a drug to treat addiction. Dr. [REDACTED] then explains that the petitioner's investigation into the physiological effects of cocaine abuse "will enable researchers to develop inhibitors targeting the specific chemical reactions that cause addiction." This statement appears highly speculative, as it does not explain how results the petitioner has already achieved are currently being used in academia or the pharmaceutical industry to develop an addiction treatment.

Dr. [REDACTED], Chief of the Division of Neuroscience at the [REDACTED] Research Center at [REDACTED] University, provides similarly vague and speculative assertions. For example, Dr. [REDACTED] asserts that the petitioner “was one of the first to discover *potential* inhibitors that will stop the chemical process in the brain that causes addiction.” (Emphasis added.) Dr. [REDACTED] concludes that this research “is novel and original, as the inhibitors will be the basis for drugs to combat addiction.” Dr. [REDACTED], however, does not provide examples of the petitioner’s results being used by academic institutions or pharmaceutical companies. Dr. [REDACTED] does not assert that his own laboratory has been influenced by the petitioner’s work, although we note that the petitioner lists a one-year visiting researcher position at Emory on his curriculum vitae.

Dr. [REDACTED] further asserts that the petitioner’s work, such as his discovery regarding sugars, is important because it has enhanced our overall understanding of cocaine addiction. On appeal, Dr. [REDACTED] discusses the petitioner’s work with glutamate transporters, relevant to stroke, Alzheimer’s, epilepsy, brain ischemia and amyotrophic lateral sclerosis. Specifically, the petitioner “devised a method by which scientists can manipulate glutamate transporters, which are the means through which critical neurotransmitter activity is regulated.” Dr. [REDACTED] provides similar information in his new letter submitted on appeal. Dr. [REDACTED] asserts that this method is being used to develop new pharmacological approaches to treat those suffering from these conditions, but does not claim to be pursuing this work himself. Dr. [REDACTED] fails to identify the research teams relying on the petitioner’s work to development treatments for these conditions.

Dr. [REDACTED], a professor at Yale University, asserts that the petitioner is recognized worldwide for making some of the “latest” discoveries regarding cocaine addiction and that experts around the world “depend on [the petitioner] for his research accomplishments.” Dr. [REDACTED] does not claim to be impacted by the petitioner’s work or provide any specific examples of research teams implementing the petitioner’s results. On appeal, Dr. [REDACTED] asserts that the petitioner has developed “a transport inhibitor that can control the activity of the dopamine neurotransmitter, thereby reversing the chemical processes that cause addiction.” Dr. [REDACTED] asserts that the petitioner is extending this work to develop a pharmaceutical treatment for cocaine abuse. Dr. [REDACTED] basis for concluding that this work is a “definitive reference” in the field, however, is flawed. Specifically, he asserts that the petitioner’s two articles in the *Journal of Neurochemistry* were cited 25 times. A cursory review of the citations, however, reveals overlap (some of the citing articles cite both of the petitioner’s articles and cannot credibly be counted twice) and significant self-citation by the petitioner and his coauthors.<sup>2</sup> Taking this information into account, the record only establishes that five articles by independent research groups cite one or both of the petitioner’s articles in the *Journal of Neurochemistry*. Thus, Dr. [REDACTED] assertion that the petitioner’s articles are definitive references in the field is not supported.

The petitioner’s field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien’s contributions must be not only original but of major significance. We must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. See *Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner’s work. As discussed above, the petitioner’s independent references do not claim to be influenced by the petitioner’s work and, for the most part, provide little

<sup>2</sup> The exact overlap and self-citation cannot be determined as the petitioner only provided a list of 10 of the 16 citations for one of the articles.

explanation for how they know of the petitioner's work. While the record includes attestations of the potential impact of the petitioner's work, none of the petitioner's references provide examples of how the petitioner's work is already influencing the field. While the evidence demonstrates that the petitioner is a talented researcher with potential, it falls short of establishing that the petitioner had already made contributions of major significance. Thus, the petitioner has not established that he 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.*

On his curriculum vitae, the petitioner listed eight published articles and eight presentations. The petitioner submitted four published articles, four abstracts from conference presentations, evidence of another conference presentation and an unpublished manuscript. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces our position that publication of scholarly articles is not automatically evidence of sustained acclaim.

On appeal, counsel asserts that we should consider the prestige of the journals that accepted the petitioner's work for publication. Dr. Reith asserts that the petitioner's publication record is beyond that of an "up and coming scientist." First, the petitioner has not submitted evidence of the rankings for the journals that published the petitioner's work. Regardless, we typically will not infer the influence of an individual article from the journal in which it appeared. Rather, we must consider the research community's reaction to the actual article.

On appeal, several references attest to the significance of the petitioner's citation record. The record does not support these attestations. As discussed above, the record establishes no more than three independent citations for any one of the petitioner's articles prior to the date of filing. Even if we considered the citations up until the time of appeal, the petitioner has established no more than six independent citations for any one article. This number of citations is not evidence that the petitioner's work is widely cited. Thus, we find that the petitioner has not established that the petitioner meets this criterion.

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

The petitioner did not initially claim to meet this criterion and the director concluded that the record contained no evidence relating to it. On appeal, counsel claims for the first time that the petitioner does meet this criterion through his conference presentations.

This criterion is not applicable to the petitioner's field, as is obvious from the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii). While the regulation at 8 C.F.R. § 204.5(h)(4) allows the use of comparable evidence where a criterion is not readily applicable to the alien's field, we consistently hold that conference presentations are much more comparable to the publication of scholarly articles. The petitioner's conference presentations have been considered above. As such, no further discussion of his presentations is necessary under this criterion.

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

Counsel initially asserted that the petitioner meets this criterion through his roles as a principal investigator for the University of Pennsylvania, the University of Illinois at Chicago, and the Beijing University of Chinese Medicine; as a research scientist at Emory University; as a research fellow at the Physiological Chemistry Institute of Tübingen University in Germany and as a lecturer and instructor at the Beijing University of Chinese Medicine.

On his curriculum vitae, the petitioner indicated that he was currently a postdoctoral fellow at the University of Pennsylvania. From 1998 to 2002, he was a Ph.D. student at the University of Illinois at Chicago; for a few months in 1997, he was a visiting scholar at the University of Illinois College of Medicine in Peoria; from 1996 to 1997, the petitioner was a visiting scholar at Emory University; for a few months in 1996, the petitioner was a visiting research fellow at Tübingen University; from 1994 to 1995, the petitioner was an "official exchange visiting scholar" at Zagreb University; and from 1984 to 1993, the petitioner was an instructor and research associate at the Beijing University of Chinese Medicine.

Dr. Reith asserts that the petitioner is the principal investigator in a "ground-breaking" project at the University of Pennsylvania. Dr. Reith further attests to the importance of the petitioner's research at the University of Illinois, but does not explain how the petitioner's position at that institution constitutes a leading role for the institution as a whole.

The director concluded that the petitioner's contributions were typical of a researcher. On appeal, counsel reiterates his initial claim regarding the petitioner's roles. We have already considered the petitioner's claims of contributions above. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix), the two factors for consideration under this criterion are the reputation of the organization for which the petitioner worked and the nature of the position the petitioner was hired to fill.

On appeal, counsel focuses on the distinguished reputation of the universities where the petitioner has worked. We do not contest those reputations, although the petitioner has provided little evidence to support these claims. Of more concern is the nature of the petitioner's positions with these universities. The record contains little confirmation of the petitioner's position with any university prior to the University of Pennsylvania. Regardless, we cannot conclude that every instructor, visiting scholar or postdoctoral researcher who plays an important role in a distinguished university's laboratory plays a leading or critical role for the university as a whole. Thus, we find that the petitioner has not established that he meets 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 himself as a neuroscience researcher to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a postdoctoral fellow, but is not persuasive that the petitioner's achievements set him significantly

above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.