



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



B2

FILE: WAC 04 111 50674 Office: CALIFORNIA SERVICE CENTER Date: **OCT 21 2005**

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:

SELF-REPRESENTED

INSTRUCTIONS:

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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 in the sciences, specifically in the field of bioinorganic chemistry. The record indicates that at the time of filing the petitioner was employed as a postdoctoral researcher at the University of California, Davis. The petitioner submitted supporting documents including copies of his co-authored articles, conference abstracts, and three letters of recommendation. On appeal, the petitioner submits a letter and additional evidence, much of which we cannot consider 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's

claims and the remaining 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 the petitioner's case.

(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 submitted evidence that he received a ██████████ Fellowship from Michigan State University for the summer semester of 1996. The director noted that fellowships "are generally awarded to support future research rather than to recognize past excellence in the field of endeavor." On appeal, the petitioner contends that his fellowship was awarded based on his "past performance, which can be quantified in terms of grades and past research progress. Hence, I believe I meet this criterion." The petitioner is misguided in two aspects. First, the record contains no evidence that his fellowship was awarded based on his past performance. The submitted letter simply informs the petitioner of his fellowship award and does not state the basis or eligibility criteria for the fellowship. 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)). Second, fellowships and scholarships awarded to support academic study do not meet this criterion because, while they may be competitive and prestigious, such forms of financial aid are only available and granted to students – not established professionals – to further their academic training. They are not equivalent to nationally or internationally recognized prizes or awards for excellence in a given field. Accordingly, the petitioner 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 was a teaching assistant while pursuing his doctoral degree at Michigan State University. However, 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 he has judged of the work of other scientists in his field in a manner significantly outside the general duties of his graduate teaching assistantship and reflective of national or international 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 under this criterion, the petitioner cites three recommendation letters written by his current and past supervisors and a former colleague. 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 field beyond the limited number of individuals with whom he 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 sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

██████████ Professor and Chair of the Department of Chemistry at Michigan State University (MSU) and the petitioner's doctoral advisor, explains that while working in his laboratory, the petitioner built "a unique pulse-programming module that was central to the function of a prototype pulse Electron Paramagnetic Resonance (EPR) Spectrometer used by several researchers." Professor ██████████ also states that the petitioner began research on "the detailed electronic structure of the copper ions of the FET3p protein, an enzyme involved in iron trafficking in yeast. This study has direct relevance to issues of human health because it is analogous to human ceruloplasmin, a key enzyme preventing adventitious iron chemistry in the blood that can lead to several disease states." Professor ██████████ further notes that his laboratory has continued working on "the FET3p work [the petitioner] started in an effort to bring it to fruition."

Aileen Soriano, Associate Principal Scientist at the Schering-Plough Research Institute, states that she also worked with the petitioner when he was a graduate student at MSU. Dr. ██████████ heralds the petitioner's research on metalloproteins as "fundamentally critical to our understanding of how they work inside the cell." Specifically, Dr. ██████████ explains that the petitioner's "work on Photosystem II, a manganese containing enzyme, is critical to the understanding of the important mechanisms involved in the process of photosynthesis in plants. . . . [The petitioner's] work on Photosystem II can lead to the development of successful strategies to 'acclimate' plants to unavoidable environmental stress." Dr. ██████████ also praises the petitioner's work on FET3: "[his] seminal work analyzing the structural as well the [sic] electronic architecture of the copper-containing active site of FET3 is pivotal to the understanding of its important mechanism of action." Dr. ██████████ explains that the petitioner's work on FET3 is "critical to finding effective therapies" for certain neurodegenerative diseases. Dr. ██████████ also states that the petitioner's "work in advanced magnetic resonance, a cutting-edge technique used to study chemical compounds and biological systems at the molecular level (which includes EPR and ESEEM) is crucial to furthering numerous types of research with broad applications in the fields of chemistry and commercially applied sciences."

R. ██████████ Professor of Chemistry and the petitioner's supervisor at the University of California, ██████████ states that the petitioner "has made original scientific and scholarly research contributions to [his] field by examining the roles of metals in a number of enzymes. . . . He has also lent theoretical expertise to simulations of water binding to manganese in PSII, the source of all the oxygen in our atmosphere. PSII is a hot enzyme, in part because people are now engineering photosystems that evolve hydrogen, in order to have a biological source of clean, solar produced hydrogen gas for use in fuel cells." Professor ██████████ notes that he has "used [the petitioner's] water binding studies at the core of something like 50 presentations in the US and Europe over the last three years."

The record does not corroborate the significance of the petitioner's work as described in these letters. The record shows that at the time of filing, the petitioner had co-authored three articles and one abstract that were published in reputable scientific journals. Despite the assertions of Dr. ██████████ and Professor ██████████ the record is devoid of any evidence that the petitioner's articles have been cited in the publications of other researchers. In addition, the petitioner submitted evidence that he presented his research at three scientific conferences between 1998 and 1999, but the record contains no evidence that his papers were invited, selected for oral presentation or otherwise significantly recognized at these conferences. Professor ██████████ Dr. ██████████ and Professor ██████████ clearly value the petitioner's accomplishments, but the record contains no evidence that other researchers have recognized the petitioner's work as making original, 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 experts or other proof that the alien's publications have had a significant impact in his field. In this case, the director found the petitioner met this criterion because "the petitioner's work, as reflected in his published articles, has been cited." However, as noted above under the fifth criterion, the record is devoid of any evidence that the petitioner's work has been cited in the publications of other scientists. The petitioner submitted evidence that, at the time of filing, he had co-authored three articles and one abstract published in reputable scientific journals. On appeal, the petitioner submits evidence of two additional articles that we cannot consider because the 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. The petitioner's minimal publication record and the lack of any published citations of the petitioner's work are inconsistent with the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

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

The petitioner claims to meet this criterion through his work as a graduate student at MSU and his postdoctoral research at the University of California, [REDACTED]. Although the letters of Professors [REDACTED] and [REDACTED] attest to the value of the petitioner's work to their individual laboratories, neither letter demonstrates that the petitioner performed a leading or critical role for MSU or the University of California, [REDACTED] as a whole. On appeal, the petitioner submits evidence regarding a grant proposal submitted by Professor [REDACTED] and listing the petitioner as one of the key personnel involved in the proposed research. We cannot consider this evidence because it arose after the petition was filed. Again, the petitioner must establish eligibility at the time of filing. *Id.* 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 has achieved sustained national or international acclaim as a scientist placing him at the very top of his field. 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.