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[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: APR 07 2006
SRC 05 091 51586

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 earned sustained national or international acclaim at the very top level.

This petition, filed on February 10, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a researcher. At the time of filing, the petitioner was working as a postdoctoral research fellow at the University of Arkansas for Medical Sciences.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence pertaining to the following criteria.

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 a Radiobiology 2000 Best Poster Award issued by the Regional Cancer Center, Trivandrum, India on February 19, 2000. It is noted that the petitioner worked as a research fellow at this institution from January 1995 to November 2000.

The petitioner also submitted a Post Graduate Alumni Prize issued by the Department of Biochemistry of the Jawaharlal Institute of Postgraduate Medical Education and Research, Pondicherry, India in 1994. We note that petitioner earned his Master of Science degree from this institution in 1994.

We find that the preceding awards reflect institutional recognition rather than national or international recognition. There is no supporting documentation from the awarding entities or the print media establishing that the petitioner's awards are nationally or internationally recognized awards for excellence in the research field. The record includes no evidence that would demonstrate the number of awards given, the geographic area from which the individuals eligible for consideration for these awards were drawn from, the criteria for granting these awards, the level of expertise of those considered, and the number of individuals eligible to compete.

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence of his "Associate" membership in the American Association for Cancer Research. Information submitted on appeal from this organization's website states: "Associate Membership is open to graduate students, medical students and residents, and clinical and postdoctoral fellows who are enrolled in educational or training programs that could lead to careers in cancer research." We do not find that one's enrollment "in educational or training programs that could lead to careers in cancer research" is indicative of outstanding achievement. As stated previously, the immigrant visa classification sought by the petitioner is reserved for those who have already "risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2).

The petitioner also submitted evidence of his membership in the New York Academy of Sciences (NYAS). The promotional material from the NYAS submitted on appeal, however, provides no specific information regarding its official admission requirements or membership bylaws.

On appeal, the petitioner submits evidence of his membership in the DNA Repair Interest Group. Information submitted by the petitioner from this organization's website states that its membership "is open to all interested scientists at NIH or at other institutions." There is no evidence showing that this group requires outstanding achievement as a condition for admission to membership.

We find that the evidence submitted by the petitioner is not adequate to demonstrate that his membership in the preceding organizations required outstanding achievement or that he was evaluated by national or international experts in consideration of his admission to membership.

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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

On appeal, counsel argues that citations of the petitioner's published work represent qualifying evidence under this criterion. We note, however, that the petitioner and his work were not the primary subject of the articles that cited his research findings. If the petitioner is not the main subject of these articles or is not often named in the articles, then such articles fail to demonstrate his individual acclaim. Scientific articles which cite the petitioner's work are primarily about the author's own work, not the petitioner's work. As such, they cannot be considered qualifying published material about the petitioner's work. We cannot ignore that the articles citing the petitioner's work similarly referenced scores of other authors. In the petitioner's field, it is the nature of research work to build upon work that has gone before. In some instances, prior work is expanded upon or supported. In other instances, prior work is superseded by the findings in current research work. In either case, the current researcher normally cites the work of the prior researchers. Clearly this is not the same thing as published material written about an individual's work in the field. This type of material does not discuss the merits of an individual's work, the individual's standing in the field, or any significant impact that his or her work has had on work in the field. Citations of the petitioner's work will be addressed under a separate criterion.

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

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

The petitioner submitted several letters of support. We cite representative examples here.

From December 2000 to December 2004, the petitioner worked as a research associate at the University of Texas Health Center (UTHC) in Tyler, Texas under the supervision of [REDACTED], Associate Professor of Molecular Biology at the UTHC. A January 14, 2004 letter from [REDACTED]

[The petitioner] came to my lab in December 2000, and has been working on the drug resistance of breast cancer cells.

* * *

[The petitioner] has extensively studied the role of p53, NFkB and YB-1 transcription factors in drug resistance of cancer cells. Additionally, he has extended his research in the area of DNA damage and related signaling events due to genotoxic agents. . . . [The petitioner's] publications are in very advanced area of cancer therapeutics that can advance our therapeutic intervention in cancer treatment.

* * *

[The petitioner] is also a co-inventor in one of my patent applications currently pending at the U.S. Patents office.

[REDACTED] Professor of Pediatrics, National Jewish Medical and Research Center (NJMRC), Denver, Colorado, who coauthored several publications with [REDACTED] when they worked together during the 1990's at the NJMRC, states: "In addition to papers published or submitted, [the petitioner] has helped to produce two patent applications aimed at improving treatment of various cancers."

On appeal, the petitioner submits evidence showing that the UTHC is seeking a patent for his work with [REDACTED]. The record, however, includes no evidence showing their patent application represents a contribution of major significance in the cancer research field. We note here that anyone may file a patent application, regardless of whether the invention constitutes a significant contribution. According to statistics released by the United States Patent and Trademark Office (USPTO), which are available on its website at www.uspto.gov, the USPTO has approved over one hundred thousand patents per year since 1991. In 2001, for example, the USPTO received 345,732 applications and granted 183,975 patents. Therefore, given the amount of patent applications that the USPTO receives on an annual basis, we find it implausible that simply filing a patent automatically qualifies as a contribution of major significance in one's field. In this case, there is no evidence showing that the patent application related to the petitioner's research findings was approved by the USPTO at the time of filing, that major pharmaceutical companies have expressed significant interest in the petitioner's invention, or that his invention has provided a measurable national health benefit. Without evidence showing that the petitioner's invention has attracted a substantial level of interest beyond individuals with direct ties to the petitioner, his research mentors, or his affiliated institutions, we cannot conclude that the petitioner's invention meets this criterion.

[REDACTED], Professor, St. Louis University School of Medicine, St. Louis, Missouri, states:

[The petitioner's] publications from graduate work are in highly regarded international journals and indicate that he has gained outstanding training in the areas of Molecular Biology and Cancer Research. Within a short time (since 2000) in the U.S., he has already published three outstanding research papers and has communicated three additional manuscripts.

In the same manner as [REDACTED] additional witnesses from the UTHC, Mahatma Gandhi University (where the petitioner earned his Ph.D.) in India, the Regional Cancer Center in India, and the University of Arkansas discuss the petitioner's publication record. We note, however, that published work falls under the next criterion, a criterion that we find the evidence in this case adequately satisfies. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for published work and contributions, Citizenship and Immigration Services (CIS) clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. We will fully address the petitioner's published works and citations under the next criterion.

We cannot ignore that the witnesses in this case consist almost entirely of individuals from institutions where the petitioner has studied and worked. With regard to the personal recommendation of those with whom the petitioner has studied and worked, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the petitioner has earned sustained acclaim outside of his affiliated institutions. If the petitioner's reputation is mostly limited to those institutions, then he has not achieved national or international acclaim regardless of the expertise of his witnesses. In the present case, we cannot conclude that petitioner's past contributions far exceed those of other capable cancer researchers. The evidence submitted by the petitioner is not adequate to show that his work is nationally or internationally acclaimed throughout his field as a contribution of major significance.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

We concur with the director that the petitioner's publication record and citation history are adequate to satisfy this criterion. The citation history of the petitioner's articles demonstrates that other researchers have been influenced by his published work and are familiar with it.

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

On appeal, counsel states that the petitioner performed in leading or critical role at the UTHC as a cancer researcher. The petitioner's role at the UTHC, however, was that of a Research Associate. This subordinate role at the university is designed to provide temporary scientific training for a future professional career in a field of endeavor. The record includes no evidence showing the extent to which the petitioner exercised substantial control over personnel or research decisions executed on behalf of the UTHC. When comparing the roles and responsibilities of the petitioner with those of his seven colleagues from the UTHC who offered

letters of support, it becomes immediately apparent that the importance of their roles and responsibilities far exceeded that of the petitioner. While we accept that the UTHC has earned a distinguished reputation, there is no evidence showing that the petitioner's role was of significantly greater importance than that of the other researchers employed by this institution (including tenured faculty). In this case, the petitioner's evidence fails to demonstrate that he has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

On appeal, the petitioner submits a letter from the University of Arkansas for Medical Sciences reflecting that he earned an annual salary of \$30,000 in 2005.²

The petitioner also submits a job offer letter dated June 3, 2005 from the Children's Cancer Research Institute offering the petitioner a salary of \$46,000 from July 1, 2005 to August 31, 2006. This evidence came into existence subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Subsequent developments in the alien's career cannot retroactively establish that he was already eligible for the classification sought as of the filing date.

Nevertheless, the plain wording of this criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field. There is no indication that the petitioner earns a level of compensation that places him among the highest paid cancer researchers in the United States.

In this case, we find that the evidence satisfies only one of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. 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.

² The petitioner commenced employment on January 1, 2005.