



U.S. Citizenship
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Services

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FILE: LIN 04 104 50669 Office: NEBRASKA SERVICE CENTER Date: APR 11 2006

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.

Maig Johnson

R Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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.¹ 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 March 1, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a nuclear medicine scientist. The petitioner earned a Master of Science degree in Analytical Chemistry from the University of Cincinnati in 2003. At the time of filing, the petitioner was working as a research associate on a joint project involving the University of Cincinnati and the United States Environmental Protection Agency.

¹ 8 C.F.R. § 103.2(a)(3) specifies that a petitioner may be represented "by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter." In this case, the person listed on the Form G-28 is not an authorized representative.

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.

We find that the evidence showing the petitioner received a First Grade Prize for National Science and Technology Progress from the Ministry of Science and Technology of the People's Republic of China (1998) is adequate to minimally satisfy this criterion.²

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 regular membership in the American Chemical Society. The petitioner also submitted evidence of his membership in the Technologist Section of the Society of Nuclear Medicine. The record, however, does not include the membership bylaws or the official admission requirements for these societies. There is no evidence showing that that admission to membership in these societies required outstanding achievement or that the petitioner 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.

² It is noted that the petitioner shared this award with fourteen other recipients. While a group award certainly does not preclude eligibility under this criterion, the petitioner must still demonstrate that he played a primary role in the research project that was recognized. In this instance, the petitioner submitted evidence of his primary role on the project.

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.

The petitioner submitted two articles that were published in *Science and Technology Daily* and *Chinese Health Pictorial*. In regard to the article appearing in *Science and Technology Daily*, we note that the petitioner's name appears once among a listing of hundreds of award recipients rather than in the body of the main article. The article in *Chinese Health Pictorial* mentions the petitioner only once when listing the fourteen other co-recipients with whom he shared the 1998 National Science and Technology Progress prize. The plain wording of this criterion, however, requires "published materials about the alien." If the petitioner is not the main subject of the preceding articles or is not often named in those articles, then such material is not adequate to demonstrate his individual acclaim at the national or international level.

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.

As previously noted, the regulation at 8 C.F.R. § 204.5(h)(3) provides that a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. For example, evaluating the work of accomplished professors as a member on a national panel of experts is of far greater probative value than evaluating one's coworkers.

The petitioner submitted a "Certificate of Internal Quality Systems Auditing" issued by the China Center for the Training and Information of Quality Assurance on July 6, 1998. Interestingly, this certificate, which was issued in both Chinese and English, misspells the word "Assurance" as "Assuranre." The petitioner also submitted an "Appointment Letter" allegedly issued by the President of the China Institute of Atomic Energy (the petitioner's employer at that time) stating: "[W]e hereby appoint you the Internal Quality Auditor to independently perform the internal auditing duties." This letter includes, no address, phone number, or any other information through which its author may be contacted.

The plain wording of this criterion requires "[e]vidence of the alien's participation . . . as a judge of the work of others." The record, however, includes no evidence of the petitioner's activities as an auditor for the China Institute of Atomic Energy. For example, the record lacks information regarding the nature of his duties in this capacity, the projects he evaluated, the names of individuals he evaluated, and their level of expertise. Further, we do not find that the petitioner's designation as an Internal Quality Auditor for his immediate employer demonstrates sustained national or international acclaim. Without evidence showing that the petitioner participated in evaluating scientific professionals at the national level, we cannot conclude 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 letters of support from one of his professors at the University of Cincinnati, two of his superiors at the China Institute of Atomic Energy, and his current project manager from the United States Environmental Protection Agency. These letters provide details about the petitioner's scientific background and indicate that he has performed admirably on various research projects, but they do not adequately address how the petitioner's past accomplishments rise to the level of a contribution of major significance in his field. With regard to the personal recommendation of individuals from institutions where the petitioner has studied or 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 limited to those institutions, then he has not achieved national or international acclaim regardless of the expertise of his witnesses. Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that his work rises to the level of 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.

The petitioner submitted evidence of his co-authorship of a single article appearing in the *Journal of Radioanalytical and Nuclear Chemistry*. The petitioner, however, has not shown that his publication of a single journal article elevates him to a level above almost all others in his field at the national or international level. Because publication is an inherent duty of scientific researchers, we do not find that publication of a scholarly article is presumptive evidence of sustained national or international acclaim. We must also consider the greater scientific community's reaction to that article. When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner himself has cited sources in his own article. Numerous independent citations would provide solid evidence that other researchers have been influenced by the petitioner's work and are familiar with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the greater field, then it is reasonable to conclude that the alien's work is not nationally or internationally acclaimed. In the present case, there is no evidence showing that the petitioner's article was widely cited.

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

In order to establish that he performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted evidence showing that he briefly served as Director of the Tc-99m Generator and Tc-99m Diagnostic Kits Laboratory of the China Institute of Atomic Energy. We cannot ignore, however, that the China Institute of Atomic Energy has numerous departments and laboratories. While we accept that the China Institute of Atomic Energy has earned a distinguished reputation, there is no evidence showing that the petitioner's role for this institute was of significantly greater importance than that of the numerous other

laboratory directors, department heads, and section chiefs employed by this institution. 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.

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

In a letter accompanying the petition, the petitioner cites the aforementioned letters of support as other comparable evidence of his eligibility for classification as an alien of extraordinary ability. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of comparable evidence, but only if the ten criteria "do not readily apply to the beneficiary's occupation." Therefore, the petitioner must demonstrate that the regulatory criteria are not applicable to his field. Of the ten criteria, at least eight readily apply to the petitioner's occupation. Where an alien is simply unable to meet three of the regulatory criteria, as in the present case, the wording of the regulation does not allow for the submission of comparable evidence.

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.