



U.S. Citizenship
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Services

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FILE:

SRC 05 197 51008

Office: TEXAS SERVICE CENTER Date: AUG 14 2006

IN RE:

Petitioner:
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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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.

On appeal, counsel submits a brief and new evidence. For the reasons discussed below, we do not find that the petitioner has overcome the director's bases for denial.

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 she 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 research assistant professor. On appeal, counsel notes that the petitioner is not a postdoctoral researcher, but holds a faculty rank. While this position demonstrates more experience than a postdoctoral researcher, it does

not follow that every research assistant professor is nationally or internationally acclaimed. We will consider this position below as it relates to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(viii).

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 that, she claims, meets the following criteria.¹

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

The petitioner initially submitted (1) a 1995 "Certificate of Honor" from the Chinese Neuroscience Society documenting her "Nomination Award of [REDACTED] Neuroscience Scholarship" based on her thesis, (2) a 1997 Science and Technology Award of Chongqing City from the People's Government of the Municipality of Chongqing City and (3) a 1992 "Award Certificate" confirming that the petitioner's thesis was awarded as a "Sichuan Province Outstanding Youth Scientific and Technologic Thesis." In the request for additional evidence, the director noted that the awards were in recognition of student work or local.

In response, counsel asserted, with no explanation, that the petitioner won both provincial and national awards, citing her award from the Chongqing Municipality and the Chinese Neuroscience Society. 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). Subsequently, counsel asserted that Appendix D contains an "explanation of two of [the petitioner's] awards." Appendix D includes an unsigned and un-credited statement discussing the size of Chongqing Municipality and asserting that the Chinese Neuroscience Society is a national organization and that "more than a hundred young scientists in neuroscience field from all over the country" competed for a prize given to only two winners.

The director concluded that the explanation was the petitioner's own statement but accepted the information in that statement. The director further concluded that the statement did not contradict the director's initial finding that the Chongqing Municipality award was provincial and dismissed the award from the Chinese Neuroscience Society as it was based on academic study and was not open to the most experienced experts in the field.

On appeal, counsel acknowledges that the explanation of the awards is from the petitioner herself. He asserts that scholarships at the national level should serve to meet this criterion and asserts that

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

provincial awards from China have as large a pool of competitors as national awards in small European countries. Counsel requests that the regulations not be interpreted literally.

It is the petitioner's burden to meet every element of a given criterion. Thus, it is the petitioner's burden to establish not only that she won an award but that the award is nationally or internationally recognized. Going on record without supporting documentary evidence is not sufficient for purposes of meeting 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)). Without evidence that the information in the unsigned explanation, apparently compiled by the petitioner herself, comes from an official source, the document has little evidentiary value.

Moreover, we concur with the director's reasoning and conclusion. We stress that the concern is not that the petitioner won the awards while a student, but that, as a scholarship based on student work, the competition was limited to other students. Without evidence that the most experienced and renowned experts in the field aspire to win these awards, we cannot conclude that they serve to meet this criterion. Regarding the provincial award, counsel provides no legal authority, and we know of none, for the proposition that awards from larger countries need not be national level awards. The statutory standard is national or international acclaim regardless of the size of the country. In implementing this statute, the regulation at 8 C.F.R. § 204.5(h)(3) provides ten examples of evidence that might demonstrate such acclaim. Thus, the regulation requires that the award or prize be nationally or internationally recognized. The regulation as written is binding on us. While the petitioner's explanation discusses the size of Chongqing Municipality, neither she nor counsel asserts that the Science and Technology awards from this municipality are recognized outside Chongqing Municipality. Such an assertion would need to be supported by evidence of such recognition, such as wide coverage of the award selections in the national media or the media of several other municipalities.

In light of the above, the petitioner has not established that she meets this criterion.

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 initially submitted evidence of her membership in the Society for Neuroscience (SFN). Citing the website of this society, the director noted in the request for additional evidence that the society has over 36,000 members and is open to basic researchers. Counsel no longer asserts that the petitioner meets this criterion and the evidence is not persuasive that SFN requires outstanding achievements of its members. Thus, the petitioner has not established that she 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.

Neither the petitioner nor counsel has asserted that the petitioner meets this criterion. The petitioner submitted an article in an unidentified newspaper discussing the expansion of the brain-imaging center at the University of New Mexico. The article does not mention the petitioner by name or identify any specific stroke research. Thus, the article cannot be considered to be about her relating to her work. Moreover, the petitioner has not established that the article appeared in a nationally circulated newspaper. Thus, the petitioner has not established that she 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.

Neither the petitioner nor counsel has asserted that the petitioner meets this criterion and the record contains no evidence relating to it.

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

The petitioner obtained her Ph.D. from Chongqing University in 1998. She served on the faculty there through 1998. From September 1998 through February 2001, the petitioner was a postdoctoral fellow at the University of Hong Kong. The petitioner has worked at the University of New Mexico since March 2001, first as a postdoctoral fellow and then as a research assistant professor. The petitioner submitted several reference letters and copies of her published articles and conference presentations. Most of the letters attest to the national interest inherent in the petitioner's work. We note that the statutory standard for the classification sought with this petition is national or international *acclaim*. The letters focus on the petitioner's research on strokes conducted at the University of New Mexico in the laboratories of [REDACTED] and [REDACTED]. Noting this work had yet to be published, the director concluded that the petitioner had not established the impact of this work outside of her immediate circle of colleagues.

On appeal, counsel notes that the petitioner presented this work at a professional conference. Counsel further asserts that the petitioner is in a small field and, thus, the top members of the field are familiar with one another. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also 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)).

In evaluating the reference letters, we note that letters containing mere assertions of contributions and important results 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 her reputation *and who have applied her 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.

The letters submitted initially mostly discuss the importance of the petitioner's area of research, praise the petitioner's skills, attest to her contributions to the understanding of brain damage from strokes due to the breakdown of the blood-brain barrier and assert that she is vital to [REDACTED] projects. While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance to the field as a whole. None of the initial letters, including those from independent researchers who met the petitioner at a conference, explain how the petitioner's work has impacted the direction of stroke research or their own research.

The most detailed letter is from [REDACTED] in response to the director's request for additional evidence. According to [REDACTED] the petitioner's Ph.D. research involved analgesia effects of lithium salt on rat brains. He asserts that it was this work, pursued from 1995 to 1998, that won the Nomination Award in 1995. If true, it appears that the award was based on the promise of the proposal rather than the significance of the final results. At the University of Hong Kong, the petitioner's research involved cDNA microarray analysis of gene expression associated with motor neuron death after different spinal cord injuries. As of the date of filing the petition, this work had yet to be published.

[REDACTED] then discusses the petitioner's work at the University of New Mexico. In the laboratory of [REDACTED], the petitioner used DNA microarray analysis to investigate changes in gene expression in different brain regions during learning and memory in an animal model of alcoholism. The results of this work demonstrated that the genes for proteosomal components are involved in memory consolidation in the brain. Once again, this work had yet to be published as of the date of filing the petition.

Finally, in [REDACTED] laboratory, the petitioner focused on stroke research. [REDACTED] explains that stroke is very difficult to research because animal models are difficult to achieve. The petitioner created a unique Middle Cerebral Artery Occlusion (MCAO) in mice and rats, allowing her to discover that "the early opening of the blood brain barrier (BBB) induced by reperfusion after 60 minute MCAO in mouse and 90 minutes MCAO in rat is associated with matrix metalloproteinases-2 (MMP-2) and -9 (MMPs) and that the extent of proteolysis of tight junction proteins of BBB by the MMPs determines the degree and duration of the leakiness of the BBB." According to [REDACTED] the petitioner was the first person to describe this new mechanism at

the early stages of the disruption of the BBB. While [REDACTED] an associate professor at the University of Hong Kong, asserts that this work aims to find a new target for drug therapies in stroke patients [REDACTED] asserts that the work's significance is that it strengthens the argument for using MMP inhibitors in the early treatment of stroke, "the only treatment for stroke approved by the [Food and Drug Administration (FDA)]."

In a later section, [REDACTED] asserts that the petitioner's MCAO induced mice make it possible to study the roles of MMP-s, MMP-3 and MMP-9 as well as tissue inhibitor of metalloproteinase-3 (TIMP-3). The petitioner herself "found a new mechanism of edema caused by disruption of BBB after MCAO, which is a significant breakthrough in stroke research." The petitioner presented this work at a Society for Neuroscience Annual Meeting in 2004 and submitted it for publication in *The Journal of Neuroscience* [REDACTED] Director of the Biomedical Research and Integrative NeuroImaging Center at the University of New Mexico, asserts that this work "represents a significant advance on previous work in this field."

The petitioner submitted a few e-mail messages designed to demonstrate the impact of her work. One e-mail chain is between the petitioner and another individual at the University of New Mexico. Another e-mail chain begins with a question to [REDACTED] for his "support staff" that he forwarded to the petitioner for a response. The final e-mail chain is from [REDACTED] at the University of California, San Francisco, who met the petitioner during the petitioner's poster presentation at SFN's 2004 annual meeting, requesting details of the petitioner's protocol. The petitioner responds that she used a "ready-to-go" kit from Molecular Probes. With regard to the in situ zymography, the petitioner asserts that she "referred [sic] to several papers to make a protocol [sic]." The petitioner attached the papers on which she relied in her response. This e-mail chain suggests that while the petitioner's results were original, as is true with all published research, she did not personally develop the protocol used to obtain these results. Rather, the petitioner's protocol follows from the work of others to such an extent that she sent the articles on which she relied to [REDACTED] without embellishment.

Finally, [REDACTED] discusses the petitioner's research at the time of filing, which involved working with TIMP-3 knockout mice. While [REDACTED] asserts that any "breakthrough in this research would result in new avenues for stroke therapy," he does not identify any such breakthroughs in this area as of the date of filing.

The letters submitted on appeal go beyond the claims in the previous letters. For example, two letters from faculty at the University of New Mexico discuss the petitioner's influence in other laboratories at the University of New Mexico. Specifically, [REDACTED] an associate professor at the university's school of pharmacy, asserts that the petitioner's data "has helped us to design better pharmacological intervention strategies to minimize the brain damage caused by stroke by providing vascular protection." [REDACTED] an associate professor at the university's school of medicine, asserts that the petitioner "will help my laboratory to establish the use of In Situ Zymography for our studies on stroke-induced neurogenesis."

In addition, [REDACTED] a Canada Research Chair in Neuroimmunology at the University of Calgary, asserts that his laboratory has "consulted [the petitioner] on a number of occasions in order to bring in situ zymography on line in our studies of Multiple Sclerosis (and also spinal cord injury and brain tumors)." [REDACTED] states that the petitioner was "instrumental" in the development of in situ zymography and in refining that technology to "identify the particular type of neural cell that expresses the active protease activity." [REDACTED] concludes that "many laboratories" in the United States are applying this work. Similarly, [REDACTED] an associate professor in the Department of Oral and Maxillofacial Surgery at Kagawa University in Japan, asserts that the petitioner's work "has provided our research a novel approach to design better therapeutic strategies of cancer," such as oral squamous cell carcinomas.

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. 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 noted by the director, the record contains no evidence that the petitioner has been widely and frequently cited. Requests for reprints carry far less weight than citations as the requestor is only expressing an interest in the work and has yet to fully evaluate its usefulness. We acknowledge that the petitioner has now provided letters attesting to the petitioner's help in establishing protocols outside the University of New Mexico. As stated above, however, the petitioner's response to [REDACTED] e-mail strongly suggests that the petitioner's in-situ zymography is derived from the work of others and that a reading of the articles by those researchers is sufficient to use this procedure. While the evidence demonstrates that the petitioner is a talented researcher with potential whose work is gaining national exposure, it falls short of establishing that the petitioner had already made contributions of major significance. Thus, the petitioner has not established that she 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.

The petitioner submitted evidence of her authorship of eight published articles, seven abstracts and poster presentations at four conferences. The petitioner also submitted unpublished manuscripts. In the request for additional evidence, the director noted the lack of evidence that other researchers had relied upon or used the petitioner's work in their own research. The director requested evidence of citations.

In response, counsel notes that the regulation at 8 C.F.R. § 204.5(h)(3)(vi) does not explicitly require evidence of citation and postulates that some areas of research are so small that the work does not generate evidence of wide citation. Counsel asserts that so few scientists can perform microsurgery on

mice, wide citation of the petitioner's work cannot be expected. The petitioner also submitted the e-mails discussed above.

The director concluded that while the regulation may not explicitly require evidence of wide citation, the evidence submitted to meet a given criterion must be indicative of national or international acclaim. Thus, the community's reaction to the petitioner's published work is relevant. As the petitioner submitted no evidence of citation, the director concluded that the petitioner had not established that she meets this criterion.

On appeal, counsel reiterates his response to the director's request for additional evidence and asserts that the petitioner submitted letters from other researchers using her results and attesting to their impact. The petitioner submits two requests for reprints of the petitioner's poster presentations that postdate the filing of the petition.

While the regulation does not explicitly require evidence of citation, the regulations are designed to cover several different fields in addition to the sciences. While publication of scholarly articles may not be inherent to the arts, we cannot ignore that publication is inherent to the field of research. The evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim if that statutory standard is to have any meaning. The petitioner submits no evidence to support counsel's assertion that stroke research is so limited that wide citation is not expected. Such evidence might include low impact ratings for the top stroke journals or evidence that more experienced experts, such as Dr. Rosenberg, are not well cited. 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).

As stated above, requests for reprints are not as persuasive as citations as the requestor is only expressing an interest in the work and has yet to rely upon it. The petitioner has not established that her publication record is indicative of or consistent with national or international acclaim. Even if we were to read this criterion as narrowly as counsel requests, the petitioner would meet only one criterion. An alien must meet at least three criteria to be eligible for this highly exclusive classification. For the reasons discussed above and below, the petitioner falls far short of meeting any other criterion.

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

This criterion does not relate to the petitioner's field.

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

Several references attest to the petitioner's important or "key" role in [REDACTED] laboratory and at COBRE, the University of New Mexico's integrative multimodal neuroimaging research facility. The petitioner submits an article in an unidentified newspaper discussing the expansion of the university's brain imaging center, asserting that it will "help" make the university "a world leader in the study of

mental illnesses." The petitioner also submitted grant applications identifying the petitioner as one of the "key personnel," although not a principal investigator or co-investigator. The director concluded that while the University of New Mexico obviously needed competent research assistant professors, not every research assistant professor can be said to play a leading or critical role for the university.

On appeal, counsel quotes from reference letters attesting to the petitioner's unique abilities. Counsel further asserts that the petitioner is a co-principal investigator on more than one grant. As stated above, however, the record does not support that assertion. Regardless, every researcher employed at a university is expected to bring in research dollars through grants in order to remain employed; not every principal investigator plays a leading or critical role for the university where she works.

We have considered the petitioner's contributions while working at the University of Mexico above. At issue for this criterion is the role the petitioner was hired to perform and the reputation of the entity that hired her. The petitioner is a research assistant professor. We cannot conclude that this position is leading or critical role for the University of New Mexico as a whole or even the department in which she works.

In light of the above, the petitioner has not established that she meets this criterion.

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

Neither the petitioner nor counsel has asserted that the petitioner meets this criterion and the record contains no evidence relating to it.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

This criterion does not relate to the petitioner's field.

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 herself as a researcher to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a research assistant professor, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.