

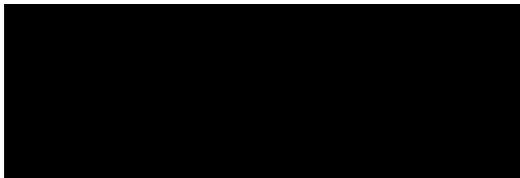


U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

B2



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **FEB 22 2006**
EAC 04 034 55635

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.

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 “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 asserts that the reference letters provided “must be accorded their appropriate weight in the context of the application,” and submits additional evidence. For the reasons discussed below, while we are persuaded that the petitioner meets the regulatory criterion relating to the authorship of scholarly articles, 8 C.F.R. § 204.5(h)(3)(vi), we are not persuaded that he meets at least two additional criteria as required.

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 research scientist. 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, he claims, meets the following criteria.¹

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

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 petitioner meets this criterion based on fellowships and examination scores. The director noted the lack of evidence supporting these claims and further concluded that academic fellowship and test scores were insufficient to meet this criterion. Although not referenced as evidence for this criterion, the director further concluded that the petitioner's patent could not serve to meet this criterion, as patents are a proprietary right, not an award for excellence in the field.

On appeal, counsel does not challenge any of the director's conclusions. The petitioner submits the program for the 2000 Annual Meeting of the American Society for Bone and Mineral Research listing the petitioner's presentation as being recognized with a Young Investigator Award. The petitioner also submitted his Investigator Award from 2005, after the date of filing the petition. The petitioner did not submit any evidence regarding the pool of competitors for these awards, how many are issued or how they are selected.

First, we cannot consider the 2005 award because it was issued 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 (Reg. Comm. 1971). In addition, we concur with the director that patents are property rights, not awards for excellence. We further concur with the director that fellowships and examination scores cannot serve to meet this criterion, as experienced experts in the field are not competing for these honors. Thus, they cannot establish that a petitioner is one of the very few at the top of his field. Similarly, awards designed to recognize promising young researchers are insufficient, as the most experienced and renowned members of the field do not aspire to win such recognition. The petitioner has not demonstrated that he has won awards or prizes for excellence chosen from a large pool of competitors including the most experienced and renowned members of the field. As the petitioner has not demonstrated that his awards are indicative of national or international acclaim, the petitioner has not established that he 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.

As noted by the director, the petitioner initially failed to submit evidence of his claimed membership in the American Society for Bone and Mineral Research (ASBMR) or the membership requirements for this association. Thus, the director concluded that the petitioner had not demonstrated that this association requires outstanding achievements of their members.

On appeal, the petitioner submits evidence of his membership in ASBMR and the American Association for Cancer Research (AACR). The petitioner was not admitted to active membership in AACR until 2005, after the date of filing. The materials from ASBMR reflect that ASBMR requires a doctoral degree or experience equivalent to such a degree and an interest in the field of bone and mineral metabolism. According to additional materials submitted, AACR requires a "record of scholarly activity resulting in original, peer-reviewed publications relevant to cancer and biomedical research."

Obtaining a degree or publishing research results in the field are not outstanding achievements. As will be discussed below, published research is expected even of doctoral students. Thus, both ASBMR and AACR

appear to be professional associations that are not particularly exclusive. Moreover, we cannot consider the petitioner's membership in AACR, as he was not a member as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49.

In light of the above, the record does not reflect that the organizations of which the petitioner is a member require outstanding achievements of their general membership. Thus, the petitioner has not demonstrated 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.

Counsel did not initially assert that the petitioner meets this criterion and the director concluded that the record lacked evidence that the petitioner's work has been "publicly recognized" in the media. Counsel does not challenge this conclusion on appeal and we concur with the director. We note, however, that the petitioner did submit evidence that other researchers have cited his work. Articles which cite the petitioner's work are primarily about the author's own work, not the petitioner. As such, they cannot be considered published material about the petitioner. Nevertheless, we shall consider the citations below in evaluating the petitioner's publication record.

In light of the above, 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 had reviewed manuscripts for three journals. The petitioner did not submit any evidence to confirm that assertion. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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). Thus, the director concluded that the record lacked evidence relating to this criterion.

On appeal, the petitioner submits evidence that he has refereed articles for several journals. The requests are all from Dr. [REDACTED] in whose laboratory the petitioner works at the University of Massachusetts Medical School. Being requested to review an article by one's own supervisor is not evidence of national or international acclaim.

Moreover, 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.** For example, one of the petitioner's supervisors, Dr. [REDACTED] serves on six editorial boards, suggesting that the top of the petitioner's field is significantly higher than the level he has attained. Thus, 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 relies on his patent application, several reference letters and his publication record to meet this criterion. As stated above, on appeal, counsel asserts that the reference letters must be accorded significant weight.

Regarding the patent application, this office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* The petitioner filed his patent application in India. The record lacks evidence that any company has licensed or marketed the petitioner's patent-pending innovation. Thus, the impact of the innovation is not documented in the record.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. 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 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.

The letters focus on the petitioner's research at the University of Massachusetts Medical School where the petitioner has been working with Dr. [REDACTED] and Dr. [REDACTED] investigating bone proteins since 1998. Dr. [REDACTED] asserts that the petitioner characterized the Runx2 protein as "absolutely essential for the growth and differentiation of stem cells that will form bone tissue." Specifically, mice without this protein lack any bone formation. The petitioner's research indicates "that subnuclear targeting and the associated regulatory functions are essential for control of Runx2-dependent genes involved in tissue differentiation during embryonic development." In addition, the petitioner "developed a transgenic mouse to understand the factors regulating the integrity of bone mass." On appeal, Dr. [REDACTED] provides a new letter discussing the petitioner's achievements in the past year. As discussed above, we cannot consider any accomplishments after the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Dr. [REDACTED] provides similar information, explaining that the petitioner's transgenic mouse "will be a very useful model to study bone diseases such as osteoporosis and osteopenia." Specifically, understanding "the Runx2

dependent mechanism by which proliferation of osteogenic cells are regulated will permit development of clinical applications in which deliberate modifications in osteoblast growth are used to support bone directed cell therapy and the treatment of skeletal disease and bone fractures.” Dr. [REDACTED] does not, however, identify any other research groups using the petitioner’s transgenic mouse as a model. Dr. [REDACTED] further discusses the petitioner’s work with another protein, CDP. The petitioner demonstrated that CDP “may regulate bone-specific gene transcription in immature proliferating osteoblasts.”

The petitioner also submitted letters from other coauthors of his work at the University of Massachusetts Medical School providing similar information. In addition, the petitioner submitted three letters from independent researchers. While the three references all investigate gene expression, none of them focus on the petitioner’s area of research, bone proteins.

Dr. [REDACTED] an associate professor at Wayne State University in Detroit, asserts that his is “familiar” with the petitioner’s career, but fails to explain how he came to know of the petitioner’s work. Dr. [REDACTED] concludes that the petitioner’s studies and mouse models “will be very useful to understand skeletal disorders and can be extended to genetically regulate these diseases.” Dr. [REDACTED] does not, however, indicate that he has relied on the petitioner’s work or used the petitioner’s transgenic mouse model. Dr. [REDACTED] a research chemist at the Overton Brooks VA Medical Center in Shreveport, Louisiana who has cloned genes in Dr. [REDACTED] laboratory, provides similar information, including five paragraphs with language nearly identical to the language used by Dr. [REDACTED]. While both Dr. [REDACTED] and Dr. [REDACTED] sign their letters, attesting to the information in the letters, the identical language in the two letters suggest that the language is not their own. Thus, the letters have somewhat diminished evidentiary value.

Finally, Dr. [REDACTED] an associate professor at Vanderbilt University, provides similar information to that discussed above but does not claim to be applying the petitioner’s work or to have been otherwise influenced by the petitioner.

On appeal, the petitioner submits six new letters from independent researchers. The letters all reiterate the work discussed above. Some of the references also discuss his doctoral work with streptokinase. The references assert that this work “helped further development of more effective drugs for the treatment of blood clots associated with heart problems.” The record contains no letters from pharmaceutical companies in India or anywhere else confirming the petitioner’s role in the development of new drugs. The letters also reference the petitioner’s publication and presentation record as evidence of the significance of his work.

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. While the record includes numerous 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. The petitioner’s publications, including one that had been moderately cited as of the date of filing, are not as widely and frequently cited as would be expected of a contribution of major significance. 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.

The petitioner submitted evidence that he has authored several published articles and book chapters and has presented his work at scientific conferences. 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; we must consider the research community's reaction to those articles.

The record contains evidence that, as of the date of filing, the petitioner's articles, especially his article in the *Proceedings of the National Academy of Sciences*, were moderately cited. Thus, we are persuaded that the petitioner meets this criterion.

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

The plain language of this criterion reveals that it relates to the visual arts. While the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of "comparable" evidence where a criterion is not "readily applicable," we find that conference presentations are far more comparable to published articles and, thus, we have considered the petitioner's conference presentations under the criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi), discussed above.

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

The petitioner is an instructor at the University of Massachusetts Medical School, although he was not promoted to this position until after the petition was filed. As discussed above, the petitioner must establish eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. Regardless, while this university may have a distinguished reputation, we cannot conclude that every instructor who plays an important role in a distinguished university's laboratory plays a leading or critical role for the university as a whole. Thus, 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 research scientist 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 research scientist, 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.