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**U.S. Citizenship
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FILE: WAC 04 143 50979 Office: CALIFORNIA SERVICE CENTER Date: MAY 02 2006

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

Σ Robert P. Wiemann, Chief
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 as a medical doctor and hematopathologist. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability. The petitioner was unrepresented below. On appeal, counsel submits a brief and additional evidence. Counsel's claims and the evidence submitted on appeal fail to overcome the deficiencies of the petition and the appeal will be dismissed for the following reasons.

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).

We address the evidence submitted and counsel's contentions in the following discussion of the regulatory criteria relevant to the petitioner's case. Neither counsel nor the petitioner claims that the petitioner meets any criteria not discussed below.

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

In his letter responding to the director's Request for Evidence (RFE), the petitioner stated that he received a scholarship to study at the University of Claude Bernard of Lyon I in France and received a fellowship award from the Myeloma Institute for Research and Therapy at the University of Arkansas for Medical Sciences (UAMS). Scholarships, fellowships and other forms of competitive financial aid do not satisfy this criterion because they are awarded to support an individual's studies or advanced training. Because only students and researchers in the early stages of their careers apply for such funding, scholarships and fellowships generally do not indicate sustained national or international acclaim as a scientist at the top of his or her field. The petitioner has submitted no evidence to the contrary in regards to his specific scholarship and fellowship.

On appeal, counsel claims that the petitioner meets this criterion through his selection as a fellow of the College of American Pathologists (CAP). Counsel states, "Being designated as a *Fellow* in the CAP is an impressive accomplishment, as selection requires devotion to the practice of pathology, nomination by at least two other Fellows in good standing, and certification by the *American Board of Pathology*." The record does not support counsel's claim. First, the petitioner submitted no evidence that he is a Fellow of CAP. The record contains a copy of the petitioner's 2004 CAP card, which identifies him as a "Junior Member." Second, the record is devoid of any documentation of CAP membership criteria, the selection process for Fellows, or other evidence that being designated a CAP Fellow is a nationally or internationally recognized award, rather than a prestigious grade of membership in CAP. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. **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). Accordingly, the petitioner does not meet this criterion.

(ii) 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 addition to his CAP junior membership, the petitioner submitted evidence that he was a member of the American Society for Clinical Pathology (ASCP), the United States and Canadian Academy of Pathology (USCAP), and the American Medical Association. As discussed above, the record contains no documentary evidence of the petitioner's alleged CAP Fellow membership. The record is also devoid of any documentation of the membership criteria for these organizations or other evidence that they require outstanding achievements of their members, as judged by recognized national or

international experts. On appeal, the petitioner submits a copy of his American Society of Hematology membership certificate. We cannot consider this evidence because it is dated May 1, 2005 and arose after this petition was filed on April 23, 2004. 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). Even if the petitioner was a member of the American Society of Hematology before this petition was filed, the record contains no evidence that outstanding achievements are prerequisite to membership in the Society. Accordingly, the petitioner does not meet this criterion.

(iii) Published material 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.

On appeal, counsel claims that the petitioner meets this criterion because one of his articles “was referenced extensively in a review article in the European Respiratory Journal.” The record does not support this claim. On appeal, the petitioner submits a copy of an article published in the *European Respiratory Journal* in 2003. An article co-authored by the petitioner is cited once in the *European Respiratory Journal* article, which lists a total of 149 references and does not discuss the petitioner’s work at length or in depth. This single citation to one co-authored article by the petitioner does not demonstrate sustained national or international acclaim. Consequently, 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.

In his RFE response letter, the petitioner claimed he met this criterion because he judged the work of medical and nursing students as a chief medical intern when he was a medical student; taught pathophysiology while a pathology resident at UAMS; judged the work of junior residents while he was a senior resident at UAMS; judged the work of pathology residents during his hematopathology fellowship at Cedars-Sinai Medical Center and evaluated candidates for the hematopathology fellowship position; and because of his work associated with developing an immunohistochemistry lab at Quest Diagnostics. We cannot consider the latter work because it was performed after the petition was filed. Again, the petitioner must establish eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49.

The petitioner’s evaluation of medical and nursing students, residents and fellowship candidates does not meet this criterion. 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 individuals in his field in a manner significantly outside the general duties of his former positions and reflective of national or international acclaim. Accordingly, the petitioner 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 of his eligibility under this criterion, the petitioner submitted letters from three individuals with whom he has worked. On appeal, the petitioner submits an additional five support letters. 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 achieved sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

In his letter dated February 26, 2004, [REDACTED] Professor of Medicine and Director of the Division of Supportive Care at the Myeloma Institute for Research and Therapy at the UAMS, explains that during "his training" with [REDACTED] division, the petitioner worked on clinical trials of "various antimicrobial agents for the treatment of severely immunocompromised cancer patients[,] . . . includ[ing] new antimicrobial agent SCH/56592 and Voriconazole Vs Ambisome in treatment of invasive fungal diseases in cancer patients." [REDACTED] notes that the petitioner contributed to *Cancer Supportive Care*, a textbook being published by the Cambridge University Press. In his letter submitted on appeal, Professor Anaissie discusses the petitioner's article published in the *Archives of Pathology and Laboratory Medicine* in November 2004. We cannot consider this evidence 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), *Katigbak*, 14 I&N Dec. at 49. [REDACTED] also praises the petitioner's co-authored article on oculoglandular tularemia, wherein the petitioner "provided some of the first specific reports of the treatment and management of this condition, which is critical to instructing the field." The record shows that this article was published in *Archives of Ophthalmology* in 1999 and was cited once in the 2003 *European Respiratory Journal* article discussed above under the third criterion.

[REDACTED] Interim Chair of the Department of Pathology at UAMS, states that the petitioner was a resident when [REDACTED] was director of the residency program. [REDACTED] praises the petitioner's work during his residency and believes that "he will ultimately play a key role in our understanding of mechanisms involved in the development of hematologic malignancies." In his letter dated December 11, 2003, [REDACTED] Chairman of the Department of Pathology and Laboratory Medicine at the Cedars-Sinai Medical Center, similarly expresses his belief in the petitioner's potential. [REDACTED] states, "At the end of this year of fellowship he will have exceptional skills in diagnostic hematopathology and laboratory hematology." In his letter submitted on appeal, [REDACTED] praises the petitioner's development of "an innovative screening method to accurately predict whether transplanted stem cells are properly migrating." Specifically, the petitioner's research, [REDACTED]

Geller explains, “shows that a lack of elevation of ‘immature reticulocytes’ in the blood is an indication that the process does not function.” The record shows that the petitioner made a poster presentation of this research at the 2003 meeting of the USCAP.

In his letter submitted on appeal, [REDACTED] Professor of Pathology and Chief of Hematopathology at the Keck School of Medicine in the University of Southern California, also praises the petitioner’s work on “immature reticulocyte” and states that the petitioner’s “novel test has already had a major impact on the field through his presentations at top conferences such as the *Annual Meeting of the United States and Canadian Academy of Pathology*.” Although the record documents the petitioner’s poster presentation of this research at the 2003 meeting of the USCAP, the petitioner submitted no evidence that his research received special or significant attention at the conference, that he presented the research at any other conferences, or that his work was otherwise recognized as making a **major contribution** to his field in a manner consistent with sustained national or international acclaim. [REDACTED] also praises the petitioner’s work published in the *Archives of Ophthalmology* and the *Journal of Cataract and Refractive Surgery* and states that these two journals are highly ranked in the field.

Director of Hematopathology at Quest Diagnostics (hereinafter “Quest”), whose letter is also submitted on appeal, praises the petitioner’s publications, presentations and memberships and describes the petitioner as “an extraordinary and highly talented hematopathologist.” However, [REDACTED] only discusses in detail the petitioner’s work at Quest, which we cannot consider because the petitioner joined Quest 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.

[REDACTED] Professor and Chief of Anatomic Pathology and Laboratory Medicine at the David Geffen School of Medicine at the University of California, Los Angeles, also praises the petitioner’s “breakthrough clinical study” on how elevated levels of immature reticulocytes in blood alters the outcome of engraftment in stem cell transplantation treatment for cancer patients. Professor Said also notes the petitioner’s presentations at USCAP meetings and his publications in “top ranked journals.”

The record does not fully corroborate the significance of the petitioner’s work, as described in these support letters. The petitioner submitted evidence that, at the time of filing, he had co-authored two articles published in two medical journals in his field in 1999 and 2002, one of which was cited once by a subsequent review article in the *European Respiratory Journal* in 2003. The record documents four poster presentations made by the petitioner at USCAP conferences between 2002 and 2004. However, the record contains no evidence that the petitioner’s articles and conference presentations have been recognized in his field, apart from the authors of the submitted support letters, as making contributions of major significance in a manner consistent with sustained national or international acclaim. Consequently, 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.

The record shows that the petitioner is the co-author of an article entitled "Oculoglandular Tularemia," published in *Archives of Ophthalmology* in 1999. This article has been cited once in a review article on Tularemia published in the *European Respiratory Journal* in 2003. The petitioner co-authored a second article entitled "Short-Acting Peribulbar Anesthesia with 2-Chloroprocaine" that was published in the *Journal of Cataract and Refractive Surgery* in 2002. The record contains no evidence that this article has been cited in the publications of other researchers. The petitioner also submitted a copy of a third article, of which he is the lead author, but which we cannot consider because it was published after the petition was filed. Again, 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. Although some of the support letters state that the *Archives of Ophthalmology* and the *Journal of Cataract and Refractive Surgery* are highly ranked journals in their field, the petitioner submitted no documentation of the journals' standings or impact factors. Despite the praise of the support letters, the record is devoid of evidence that the petitioner's two articles have been widely recognized and influential in his field or are otherwise consistent with sustained national or international 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.

Counsel claims the petitioner meets this criterion because he has performed in leading and critical roles at Quest Diagnostics. As the petitioner was not employed by Quest until after the petition was filed, we cannot consider his work for that company. The petitioner must establish eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. In addition, counsel claims the petitioner satisfies this criterion through his work at UAMS, the Cedars-Sinai Medical Center, and for the Iranian Ministry of Health. The record contains no documentation from the Iranian Ministry of Health regarding the petitioner's work for that governmental agency. Apart from the summary of his work in Iran in some of the support letters, the authors of whom do not purport to have any direct knowledge of this portion of the petitioner's career, the record contains no other corroborative evidence of the petitioner's various duties for the Iranian Ministry of Health.

While ██████████, Smoller and Geller attest to the value and importance of the petitioner's work during his fellowships and residencies, the record contains no evidence that the petitioner performed a leading or critical role for UAMS and the Cedars-Sinai Medical Center as a whole, apart from his contributions to individual projects for specific divisions of these institutions. Accordingly, the petitioner does not meet this criterion.

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

The petitioner submitted evidence that his annual compensation as a “full-time Physician-in Training” at Cedars-Sinai Medical Center was \$50,343. With his RFE response, the petitioner submitted evidence that his annual salary at Quest was \$210,000. We cannot consider the latter salary because the petitioner began his employment at Quest after the petition was filed. Again, 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. Moreover, the record contains no evidence regarding the salaries of other pathologists in the petitioner’s field, from which we could determine whether or not the petitioner’s salary was significantly higher than other hematopathologists or comparable to such doctors at the very top of their field. On appeal, the petitioner submits no additional evidence and counsel does not reassert the petitioner’s eligibility under this category. 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 medical doctor and hematopathologist 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. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.