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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: DEC 18 2007
SRC 06 183 53262

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, 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 did not seek to enter the United States to continue work in the area of alleged extraordinary ability.

On appeal, counsel and the petitioner assert that the director misinterpreted the petitioner’s prior statements regarding his future plans. For the reasons discussed below, we find that the director’s decision is based on the clear and unambiguous language in the petitioner’s previous statement.

In addition, the director’s decision is inconsistent on the issue of whether the petitioner demonstrated the necessary extraordinary ability, stating initially that the petitioner had demonstrated the necessary ability but concluding in the end of the decision, without any discussion of the regulatory criteria, that the petitioner had not done so. For the reasons discussed below, we withdraw any implication that the petitioner, currently a medical research assistant, has demonstrated the necessary national or international acclaim required for the classification sought. Such a conclusion would be gross error.

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 into the United States will substantially benefit prospectively the United States.

The director’s decision appears primarily based on the petitioner’s failure to demonstrate that he was coming to the United States to continue work in the claimed area of extraordinary ability pursuant to section 203(b)(1)(A)(ii), quoted above. Initially, the petitioner indicated on the Form I-140 petition, Part 6, that the proposed employment would be as a medical researcher. In a signed statement

submitted with the petition, the petitioner indicated that he was currently employed as a medical research assistant but that his future plans were as follows:

My future goals in the United States include establishing a research lab to cooperate with an institutional project or join a prominent Nanomedicine research group in an effort to share my research with them and work as a team. My specific research goals include finding a new treatment for specific types of diseases by means of Nanomedicine. This progress will ultimately lead [to] lowering medical expenses for treating diseases such as heart vessel disease which are currently extremely expensive.

In response to the director's request for additional evidence, however, the petitioner stated that he would be presenting his work at a conference in 2006 and continued:

Moreover, I would like *to continue my education* with a study that will help me gain a deeper understanding of nanotechnology. In order to achieve that goal, *I plan to attend Harvard University or Washington University*, pioneers in this area as well as major contributors to research in nanotechnology. As a *potential researcher*, I will strive to be a tremendous asset to the area of nanotech science by devoting my entire career to *becoming* an excellent master in this area. I am eager to work as a teammate with researchers at Harvard or other research centers to share our knowledge and experience in order to invent new treatments for disease and benefit human beings. Upon *developing my knowledge*, I will aim to teach and provide information to the public and students in the field of nanomedicine on the treatment for specific types of disease by means of this new technology.

(Emphasis added.) The director concluded that the petitioner seeks to enter the United States to continue his education, not to work in his alleged area of expertise. On appeal, neither counsel nor the petitioner contests that the above statements were made by the petitioner, although we acknowledge that the statement is unsigned. Rather, counsel and the petitioner assert that the director "misunderstood" the statement. The petitioner asserts that he used the word "study" in the research context, not the education context. He asserts that he already has his "doctorate."

The petitioner is not persuasive. While the word "study" can be reasonably used in the research context, the full text quoted above demonstrates that the petitioner was unambiguously using the word in the education context. The petitioner stated that he wanted to "continue" his "education" and named two universities he hoped to "attend." He refers to his *potential* ability to work as a researcher. As noted above, the petitioner was only working as a research *assistant* at the time of filing. Finally, the petitioner's implication that he already has a "doctorate," normally considered a degree equivalent to a Ph.D. issued by a regionally accredited university in the United States, is untrue. The petitioner's foreign degree is called a "doctorate" but it is evaluated as only equivalent to a U.S. baccalaureate. The petitioner has not demonstrated that this degree would even qualify him to work as a researcher, rather than a research assistant, at Harvard or Washington University.

In light of the above, we uphold the director's basis of denial.

On page 2 of the denial, the director concluded, "in the opinion of this adjudicating officer," that the petitioner had demonstrated extraordinary ability through sustained national or international acclaim. On page 3, however, the director stated that the petitioner had "not yet reached a level of expertise warranting alien of extraordinary ability." We find that the conclusion on page 2 is gross error and not supported by the evidence submitted. While we concur with the director's conclusion on page 3, the director failed to support this conclusion with an analysis of the regulatory criteria pertinent to the classification sought. We will provide the necessary analysis below.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29, 1991). 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.

According to the Form I-140 petition, Part 6, this petition seeks to classify the petitioner as an alien with extraordinary ability as a medical 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). Throughout the proceeding, counsel has asserted that the petitioner has a one-time achievement sufficient to warrant approval of the petition. Counsel relies on an "Appreciation Letter" issued by the Sustained Enhancement of Non-Oil Exports Project (SENOX) of the Iranian Ministry of Commerce "in cooperation with the United Nations development program." The appreciation letter advises that the petitioner's project was ranked first as "the best project among others, at the National level" and that the petitioner would receive "10 gold coins." In response to the director's request for additional evidence, the petitioner submitted an official translation of a letter (original not provided) from the "Director General of Commerce for Province." The translation certifies that the petitioner participated "in a technical training course" sponsored by the Ministry of Commerce in cooperation with the United Nations in 1999, that there were more than 400

participants nationally who took the course and that the participants presented a project at the end of the course. The translation further states that the petitioner's project was selected as the top project and that the petitioner was presented with "14 gold coins."

Congress' example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large (currently exceeding \$1 million) cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the alien's field as one of the top awards in that field.

While SENOX managed the training course in cooperation with the United Nations, the selection of the top project was clearly limited to Iranian course participants. Thus, the award was not global or even otherwise international in scope. As such, the petitioner has not demonstrated a one-time achievement.

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

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

The petitioner relies on his SENOX "Letter of Appreciation" to meet this criterion. As stated above, the petitioner presented his project as a final project for a training course he was taking. While the course may have been sponsored by the Iranian Ministry of Commerce in cooperation with the United Nations and the student participation in the course may have been national, it remains that the petitioner only competed against other students in a training course. The petitioner has not demonstrated that the most experienced and renowned members of the field competed for the selection of best project.

More significantly, the project's subject was "How to improve [the] non-Oil export program in Iran." The petitioner seeks to work as a medical researcher in nanotechnology. The petitioner has not demonstrated that the SENOX "Letter of Appreciation" is a lesser nationally or internationally recognized prize or award for *excellence in the field of nanotechnology or medical research*.

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

In light of the above, the petitioner has not demonstrated 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.

Initially, the petitioner submitted a letter from [REDACTED] President of the [REDACTED] Association. Mr. [REDACTED] asserts that the petitioner is a member of the association, "a non-governmental organization which tries to increase social respect of young elites and making some facilities for its members." Mr. [REDACTED] further asserts: "Members are among young elites who have shown their intelligency [sic] in scientific matters including scientific Olympiads, international contests and festivals, inventions, and international conference paper and/or scientific book publication." The petitioner also submitted evidence that his membership application for "NANO" was approved because the petitioner demonstrated "a published article in scientific publications."

In response to the director's request for additional evidence, counsel asserts that the petitioner is a member of the Iranian Nanotechnology Initiative, which requires a published article, a Master's degree or Ph.D., a registered patent or a presentation at an international congress. The petitioner submitted materials about the initiative authored by the petitioner but no evidence to support counsel's assertions regarding the initiative's membership requirements. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record lacks the exact membership requirements for the Young Iranian Elites Association, including the association's official definition of "elites." The letter from Mr. [REDACTED] implies membership can be gained based on a conference paper, which we do not consider an outstanding achievement in the field of science. Even if we accept counsel's list of membership criteria for the Iranian Nanotechnology Initiative, a published article, conference presentation or even merely a Master's degree or Ph.D. are not outstanding achievements. Rather, they would appear inherent to the field and even expected to continue in the field.

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

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.

Counsel has never asserted that the petitioner meets this criterion. We acknowledge, however, the submission of the article "Emergency of Nanotechnology" in *Iran Newspaper*. The article is about nanotechnology in general and references the petitioner as one of the "most renowned physicians" in this field. The remaining information in the article, however, is not supported by the record. Specifically, the article states that the petitioner "has presented the outcome of his research studies on

nano-tube systems and upcoming achievements of medical science with the application of nanorobotics.” The examples provided are the petitioner’s article on grafting DNA onto a nano-tube and his development of a “new scientific method in a way that respiratory cells carrying oxygen can be modulated on nano-tubes with the aim of better conveyance of enough oxygen to other tissues of [the] body as well.” None of the petitioner’s articles in the record, however, address nano-tubes and DNA or oxygen. As will be stated in more detail below, the petitioner’s articles are all general in nature, reporting on the potential of nanotechnology in medicine rather than reporting the results of his own work. The record also lacks evidence that the petitioner is a named inventor on a nanotechnology patent or a patent in any other field.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record does not resolve the inconsistencies between the article about the petitioner and the rest of the record. Thus, we cannot conclude that this single article can serve as evidence indicative of sustained national or international acclaim as a nanotechnology *researcher*, the field the petitioner intends to eventually pursue.

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

Counsel initially asserted that the petitioner meets this criterion because he has been “bringing the science of Nanotechnology to the forefront of Iran and the United States through both his research and scholarly work, as his numerous scientific and scholarly articles are of major significance to the field of Nanotechnology.” Counsel then references the petitioner’s articles published in Iranian general newspapers. These articles, however, are general journalistic coverage of the nanotechnology field. They do not report the petitioner’s own research but on the overall potential of nanotechnology in the medical field.

The record lacks evidence that the petitioner has made any *original* contributions to the field of nanotechnology. For example, there is no evidence that he has published original research in peer-reviewed science journals or that he is a named inventor on a patent. The record also lacks evidence from medical researchers explaining the novel nature of the petitioner’s research findings.

Even assuming the petitioner’s work resulted in original research findings, the record lacks evidence that these findings constitute contributions of *major significance*. 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.

The record lacks evidence that the petitioner is a widely cited author in the field of nanotechnology or letters from major nanotechnology researchers independent of the petitioner who have been influenced by his research.

Simply reporting on the field of nanotechnology is not original or scholarly. The petitioner has not demonstrated that his original research, assuming he has done any, constitutes a contribution of *major significance*. Thus, the petitioner has not demonstrated 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.

As stated above, the petitioner's articles are general journalistic reportage on the potential of nanotechnology. They do not constitute *scholarly* articles in the field of nanotechnology.

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

Counsel has never asserted that the petitioner meets this criterion. Nevertheless, we acknowledge the submission of letters from the [REDACTED] regarding the petitioner's prior positions with that company. One letter reflects that the petitioner was the Manager of Research Affairs and [REDACTED] at the company. Another letter asserts that the petitioner was actually the Chairman of the Director's Board. Regardless, while these roles may be leading or critical for the Tehran Saei Gol Company, the record lacks evidence that the company enjoys a distinguished reputation nationally.

In light of the above, the petitioner has not demonstrated that he 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.

One of the letters from the [REDACTED] asserts that the petitioner earned a salary of 50,000,000 Rials monthly, ten times that of other employees and four times that of other directors. In response to the director's request for additional evidence, the petitioner submitted evidence that 50,000,000 Rials is equivalent to \$5,450 and provided the average wages of other employees and directors at the [REDACTED]. The petitioner has not, however, provided evidence of the upper level of remuneration in the petitioner's occupation nationally in Iran. Without such evidence, we cannot conclude that the petitioner's remuneration is indicative of sustained national or international acclaim.

Even if the petitioner had established that his remuneration in what appears to be primarily a marketing position was significantly high, the petitioner did not earn this remuneration as a medical researcher, the area of claimed expertise. Thus, the petitioner has not established that this evidence relates to his alleged acclaim in the field of medical research.

Comparable evidence

As noted by counsel, the regulation at 8 C.F.R. § 204.5(h)(4) permits the submission of comparable evidence where the regulatory criteria at 8 C.F.R. § 204.5(h)(3) are not “readily applicable.” Counsel references an unsigned letter purportedly from ██████████ President of the petitioner’s current employer, Borzal. First, the letter is unsigned and, thus, has no evidentiary value. Moreover, counsel has not explained how a letter from the petitioner’s employer is “comparable” to the ten objective criteria designed to demonstrate sustained national or international acclaim. In addition, counsel has not explained how the criteria at 8 C.F.R. § 204.5(h)(3) are not “readily applicable.” In fact, counsel asserts that the petitioner meets several of those criteria. While we find that the petitioner does not, in fact, meet any of those criteria as discussed above, the failure to meet a criterion does not necessarily mean that the criterion is inapplicable to the petitioner’s field. Finally, the letter from Dr. ██████████ does not suggest that the petitioner enjoys any acclaim in the field. Rather, the letter characterizes the petitioner as “able” and “talented” with “creative energies.”

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 medical researcher 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 has experience as a science reporter and marketing executive, but is not persuasive that the petitioner’s achievements as a researcher set him significantly above almost all others in the field of nanotechnology medical research. 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.