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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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FILE: EAC 06 059 51924 Office: TEXAS SERVICE CENTER Date: JAN 05 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

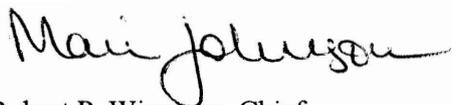
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



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.

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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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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). Without analyzing the evidence under the objective regulatory criteria relevant to the classification sought, the director appears to have made a subjective determination that 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 additional evidence. For the reasons discussed below, we find that the director’s decision cannot be upheld as it essentially renders the regulatory criteria meaningless. Thus, we must remand the matter to the director for a decision based on the regulatory provisions that must be followed in enforcing the statutory provisions in the Act.

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.

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 (November 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 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 fellow. 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 at 8 C.F.R. § 204.5(h)(3) outlines the following 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.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (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;
- (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;
- (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 specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

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

In the final decision, the director stated that the petition, as filed, “lacked any supporting documentation.” This statement is a factual error as the petition was initially supported by nine labeled exhibits, some of which included several documents. Without identifying any specific deficiencies in the evidence submitted, the director issued a request for additional evidence listing the above criteria and stating:

[CIS] understands that the majority of people that apply for this classification will meet three of the ten criteria listed above. What [CIS] looks for is how does the beneficiary’s accomplishment differ or separates themselves from their peers that have met those above criteria.

You will need to explain how the beneficiary is different or above their peers as it relates to their peers. As of right now the beneficiary’s meting of those above criteria is not different from her peers, who have qualified under each of those items.

In the final denial, the director stated:

It is not enough to simply meet three out of the eight criteria. If this were the case every individual who applies for the E11 classification would qualify for the E11 classification since every person meets the eight criteria in some way or another.

First, as quoted above, there are ten regulatory criteria, not eight. Regardless, we are not persuaded that “every person” can meet all of the regulatory criteria or that the petitioner must distinguish herself from other members of the field who do meet the criteria. Rather, the regulation provides that the criteria themselves are a means for evaluating eligibility. The director cites no legal support for the implication that a subjective and general finding that the alien does not enjoy sustained national or international acclaim can replace an evaluation of the evidence under the regulations. That said, a petitioner cannot establish eligibility for this classification merely by submitting evidence that simply *relates* to at least three criteria. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim, the statutory standard in this matter. In other words, while the director is correct that the evidence submitted must set the petitioner apart from other members of the field, that analysis is an appropriate consideration when determining whether the petitioner meets a given criterion, not in a generic manner that essentially renders the regulatory criteria meaningless.

The director’s discussion suggests a finding that the petitioner has not received lesser nationally or internationally recognized awards pursuant to 8 C.F.R. § 204.5(h)(3)(i). We concur with this finding; a visiting fellow “award,” consisting of a stipend to support future research, is not an award in recognition of past excellence. We note that the regulation at 8 C.F.R. § 204.5(h)(3) does not specify

which criteria need to be met, so long as three are satisfied. Thus, the petitioner's failure to satisfy the awards criterion is not a sufficient basis for denying the petition without consideration of the remaining criteria claimed.

The director acknowledges the petitioner's publication record, but fails to reach a conclusion as to whether the scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi) is satisfied. As implied by the director, the publication of scholarly articles is inherent to the field of scientific research. That fact, however, does not suggest that every researcher "meets" this criterion. At issue in analyzing whether the petitioner's publication record is indicative of or consistent with national or international acclaim is the community's reaction to her published articles. In this matter, the petitioner has been heavily cited. Thus, we find that the petitioner meets this criterion and need establish only that she meets an additional two criteria.

In light of the above, this matter will be remanded for consideration of the evidence as it relates to the remaining regulatory criteria. In evaluating the evidence submitted to meet the remaining criteria claimed, the director shall consider the following:

1. The regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires membership in associations that require outstanding achievements of their members. The director shall consider whether the petitioner has established that the American Association of Immunologists and the American Society for Cell Biology *require* outstanding achievements of their members. As part of this analysis, the director may consider what is inherent within the field. For example, "achievements" such as advanced degrees and securing a reference from a current member are not outstanding if widespread within the field.
2. The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published materials be "about" the alien. The director shall consider whether the articles that cite the petitioner's work are primarily "about" the petitioner.
3. If it is the director's contention that the petitioner has not made contributions of major significance to her field, pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the director should provide specific reasons for this conclusion. Possible considerations include the source of the reference letters and the contents of those letters. For examples, letters from independent sources who were previously aware of the petitioner's work and have been influenced by her work carry the most weight. We note, however, that the petitioner's heavy citation record is also relevant evidence that the director does not appear to have considered.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.