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U.S. Citizenship  
and Immigration  
Services

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FILE: LIN 05 121 51264 Office: NEBRASKA SERVICE CENTER Date: JUN 07 2007

IN RE: Petitioner:  
Beneficiary:



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.

*Laura Deadrick*  
fr Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska 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 additional evidence. For the reasons discussed below, we uphold the director’s findings. We reach our conclusion that the petitioner has not established sustained national or international acclaim both by considering the evidence under each criterion to which it relates and in the aggregate.

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 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.<sup>1</sup>

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

██████████ the petitioner's Ph.D. advisor at the Bogomoletz Institute of Physiology, asserts that in 1994 the petitioner received a grant from the International Science Foundation and that in 1995 he received the "Grant of President of Ukraine to the [O]utstanding Young Scientists." The petitioner did not submit the grants themselves or any information about these grants. The petitioner also submitted a notice advising him that he had been approved for a Scientist Development Grant from the American Heart Association.

As discussed by the director, research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement.

On appeal, counsel does not challenge the director's conclusion that the petitioner's research grants cannot serve to meet this criterion and we uphold the director's finding on this issue. Thus, 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.*

The petitioner submitted evidence of membership in the following associations: the Biophysical Society, the American Heart Association and the New York Academy of Sciences. In addition, ██████████ asserts that the petitioner took "an active part in the founding [of] the Ukrainian Physiological Society and in the organization of [the] 1<sup>st</sup> Meeting of [the] Ukrainian Physiological Society in 1995. He is [a] member of [the] Ukrainian Biophysical Society from 1998." The petitioner did not submit

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

membership confirmation of his Ukrainian memberships from the societies themselves or the program for the 1995 conference listing him as an organizer.

The materials from the Biophysical Society reflect that the society is “open to scientists who share the stated purpose of the Society and who have educational, research, or practical experience in biophysics or in an allied scientific field.” While the society does elect emeritus members, the petitioner did not submit evidence that he is an emeritus member or documentation regarding the membership criteria for emeritus members. While the petitioner did not submit the membership criteria for the New York Academy of Sciences, the materials submitted reveal that it has approximately 20,000 members. The record contains no information about the other associations of which the petitioner is a member.

The director concluded that the petitioner had not established that he was a member of an association that requires outstanding achievements of its members. Counsel does not challenge this conclusion on appeal. We concur with the director that the petitioner has not established that any of the associations of which he is a member require outstanding achievements of their members. Thus, the petitioner has not established 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.*

The petitioner submitted citations, acknowledgements in articles by colleagues at Texas Tech University and his inclusion in *Who's Who in America*. The director concluded that articles which cite the petitioner's work, which are primarily about the author's own work, not the petitioner, cannot be considered published material about the petitioner. The director further concluded that inclusion in a “vanity press” cannot serve to meet this criterion.

Counsel does not challenge the director's conclusions on appeal and we concur with the director. Thus, 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.*

The petitioner submitted two letters from a colleague at Texas Tech University requesting that the petitioner review manuscripts for *Neurocomputing* and materials about that journal. The director concluded that these minimal review duties in a separate field could not serve to meet this criterion. On appeal, counsel does not challenge this conclusion.

We concur with the director. 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.

*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 publication record and reference letters to meet this criterion. The director concluded that that the majority of the letters were from the petitioner's immediate circle of colleagues and did not set the petitioner apart from others in his field. On appeal, counsel reviews the reference letters and the petitioner's publication 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. 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. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

The petitioner received his Ph.D. in Biophysics from the Bogomoletz Institute of Physiology in 1995. The petitioner then worked as a research associate at the University of Cologne, Germany, through 1997. According to his curriculum vitae, the petitioner then spent one year as a senior research associate at the Bogomoletz Institute of Physiology. The petitioner then joined the laboratory of [REDACTED] at Texas Tech University. The petitioner ultimately followed [REDACTED] to The Ohio State University.

██████████ indicates that he was the petitioner's Ph.D. scientific advisor at the Bogomoletz Institute of Physiology. He asserts that the petitioner "used electrophysiological patch-clamp technique and morphological methods to study alterations in the process of differentiation in primary neuronal culture and in cancer transformed neuronal cell lines." While ██████████ asserts that this research "is still important for understanding the basic mechanisms of cell differentiation and cancer cell proliferation," he provides no examples of specific projects that have been influenced by or resulted from the petitioner's Ph.D. research. None of the petitioner's other references discuss the impact of this work with neuronal cells and the petitioner is now a cardiac researcher.

██████████, in whose laboratory the petitioner worked in Cologne, asserts that the petitioner was one of the few researchers experimenting with cardiomyocytes derived from embryonic stem cells. During his time in Cologne, the petitioner "showed that cardiac muscle cells have an intracellular trigger mechanism at the very early developmental stage." ██████████ speculates that this research "could" explain the initiation of spontaneous beating and cellular mechanisms responsible for arrhythmias. In addition, the petitioner studied the developmental build up and expression pattern of ion channels during the early stages of cardiomyogenesis. ██████████

██████████ explains that these studies can provide novel ideas about diseases because pathologically altered tissue "can recapitulate early embryonic features." ██████████ another collaborator in Cologne, simply asserts that their joint work was "important and successful." While he characterizes the petitioner as a "well trained electrophysiologist" who has sufficient experience to lead a scientific group and asserts that the petitioner made "substantial contributions during his reports in the institute seminar and during our scientific discussions daily," ██████████ does not provide any examples of specific contributions or explain their impact in the field.

██████████ asserts that the petitioner joined his laboratory in 1998 and has become "an essential member of our research team." The petitioner's work "reveals significant findings that have substantially improved our understanding [of] the cellular and molecular mechanism of regulation of contractility in normal and diseased hearts." ██████████ further asserts that researchers with the petitioner's experience in electrophysiological and other techniques are rare.<sup>2</sup>

██████████ a professor at Texas Tech University, asserts that ██████████ group is internationally recognized for their pioneering work defining calcium-signaling mechanisms responsible for connecting the electrical depolarization of heart cells with the contraction of the muscle walls. ██████████ further asserts that the group uses cutting edge techniques, many of which they developed, to rapidly advance this area of knowledge. ██████████ however, provides few specifics regarding the petitioner's work individually other than that it is funded. While ██████████ asserts that the petitioner has assisted him with surgeries, he does not explain how the petitioner has impacted cardiac research beyond his immediate circle of colleagues.

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<sup>2</sup> The issue is not whether there is a shortage of workers with the petitioner's skills, an issue that falls under the jurisdiction of the Department of Labor, but whether the petitioner is acclaimed in his field. See *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 (Comm. 1998),

██████████, a professor at Texas Tech University, provides more detail about the petitioner's work. Specifically, the petitioner "discovered what might be the key reason for the diminished heart contractions of patients who have congestive heart failure." ██████████ concedes, however, that this work had yet to be published. More relevant to the petitioner's eligibility as of the date of filing, the petitioner "uncovered the probable cause of 'effort-induced ventricular arrhythmia and sudden death' in human patients." Specifically, the petitioner discovered that "genetic mutations in a calcium-binding protein called calsequestrin could impair the protein's ability to buffer calcium within cellular storage sites." ██████████ notes the relevance of this work to children with a specific genetic mutation.

Most of the remaining letters are from researchers who have worked with the petitioner or at the same institutions as he has at some point in time. They provide general praise with few specifics as to how the petitioner has already influenced the field.

██████████ professor at Loyola University Chicago, appears to be independent of the petitioner but fails to explain how he learned of the petitioner and his work. ██████████ provides no specific examples of the petitioner's impact and does not claim to have been influenced by the petitioner. Rather, ██████████ asserts generally that the petitioner's work provides a better understanding of how cells of the heart and the nervous system work and how they are regulated.

██████████ of the University of Bern Medical School, a longtime friend of ██████████ provides somewhat more notable information. ██████████ asserts that he met the petitioner at a conference and asserts that the petitioner "generated some of the **most stunning science of the last few** years in our field. His seminal contributions to the understanding of cardiac calcium signaling and excitation-contraction coupling also had a marked influence on our projects and our scientific work here in Switzerland." The record reflects that ██████████ has authored an article citing two of the petitioner's articles.

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 discussed above, the petitioner's letters are almost all from his immediate circle of colleagues and his independent references do not claim to be influenced by his work.

The petitioner did submit copies of 16 published articles and a book chapter and evidence that his work has been moderately cited. While the petitioner's citation record is a positive factor, without more specific letters from independent experts explaining *how* the petitioner's work has impacted the

field, we cannot conclude that the petitioner's contributions to the field rise to the level 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 director concluded that the petitioner meets this criterion and we concur with that determination.

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

The director did not address this criterion because the petitioner did not previously claim to meet it. Counsel raises the claim that the petitioner meets this criterion for the first time on appeal. Specifically, counsel asserts that the petitioner played a leading or critical role for The Ohio State University, Texas Tech University, the University of Cologne, the Bogomoletz Institute of Physiology and the Ukrainian National Academy of Science.

We have already considered the petitioner's contributions while working at the above institutions. At issue for this criterion is the role the petitioner was hired to fill and the reputation of the entity that hired him. More specifically, the role itself should be so intrinsically leading or critical that the very selection for the role is indicative of or at least consistent with national or international acclaim.

A review of the petitioner's reference letters suggest that he has held the position of postdoctoral fellow, instructor and research scientist with the potential for promotion to research assistant professor. Neither [REDACTED] nor [REDACTED] provides the petitioner's position title at the University of Cologne, although [REDACTED] of the University of Liverpool suggests the petitioner worked there as a postdoctoral researcher. [REDACTED] indicates that the petitioner was an engineer and a Ph.D. trainee at the Bogomoletz Institute of Physiology. The petitioner did not submit the organizational hierarchy for any of these institutions. While the above institutions may have distinguished reputations, we cannot conclude that every Ph.D. student, engineer, postdoctoral researcher, instructor, research scientist or even research assistant professor plays a leading or critical role at his institution beyond the institution's obvious need to employ competent individuals in those positions. Rather, it would appear that the organizational hierarchy at these institutions includes far more leading and critical roles, such as department heads, center directors and deans.

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

Finally, the conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner, a research scientist, relies on his research grants, publications, moderate citation record, two requests to review manuscripts from his own colleague and the praise of his immediate circle of colleagues. While this may distinguish him from other research scientists and research assistant professors, we will not narrow his field to others with his level of training and experience. ██████████ is the director of the Imaging Core Facilities at The Ohio State University. ██████████

██████████ served on review panels for the National Institutes of Health and the American Heart Association. Similarly, Professor Fleishmann has served on the board of several funding agencies in Germany and Switzerland. ██████████ is head of a department, co-editor of a journal and founding editor of another journal. Thus, it appears that the highest level of the petitioner's field is far above the level he has attained.

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 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 shows talent as a research associate, 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.