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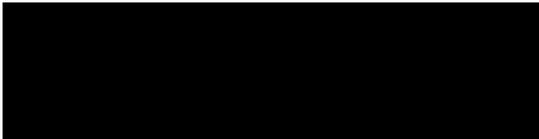


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: MAY 02 2007
SRC 06 001 51472

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.

Maura Deadrick
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) 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. 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, the petitioner argues that he meets at least three of the regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3).

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, filed on September 30, 2005, seeks to classify the petitioner as an alien with extraordinary ability as an epidemiology research scientist. At the time of filing, the petitioner was employed as a Research Assistant Professor in the Department of Pediatrics at Vanderbilt University's School of Medicine, where he is also "a Ph.D. candidate under the tutelage of Dr. [REDACTED] Director of Vanderbilt University's [REDACTED]. 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the 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. 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). The petitioner has submitted evidence pertaining to the following criteria.

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

The director's decision stated:

With the petition, the petitioner submitted a list of awards given to him. The list includes six awards that were granted by organizations in Hebei Province in China. The petitioner was requested to submit evidence that the awards won by the petitioner qualify as nationally or internationally recognized awards. In response, the petitioner submitted a letter from counsel. The letter states "We apologize but we have not been able to contact the award committees to obtain letters describing the criteria for the awards. However, [the petitioner's] awards obtained in China were recognized in the testimonial letters we have already provided."

Some of the letters of support mention the awards won by the petitioner. The letter from [REDACTED] states "[The petitioner] has received numerous honors and award for his accomplishments and service related activities." The specific awards won are not mentioned and additional information about the awards is provided. The letter from [REDACTED] states "... his team won the first prize in medical science and technology from [REDACTED]" No other information regarding this award is provided. The letter from John Wakefield mentions three awards won by the petitioner and the research he did to win them. Specific information about the awards is not given. The letter from [REDACTED] states "His academic and professional standing is confirmed by the large number of awards he has received from prestigious national and international organizations." Mr. [REDACTED] does not list the awards to which he is referring or provide any additional information. The letter from [REDACTED] states "[The petitioner's] expertise is not only apparent from his many publications in this area, but also from his numerous awards for excellence." Mr. [REDACTED] does not list the awards or provide any additional information regarding them. The letters of support state that the petitioner has won awards. However, the letters of support do not clearly establish that the petitioner has been awarded national or internationally recognized awards for excellence in the field.

On appeal, the petitioner does not dispute the director's findings. We concur with the director's observations. We further note that there is no first-hand evidence documenting the petitioner's receipt of awards from organizations in China's Hebei Province. Rather than submitting primary evidence of these awards, the

petitioner instead submitted letters of support from third parties attesting to the existence of the awards and a resume listing the awards prepared by the petitioner himself. In this instance, the petitioner has not complied with the regulation at 8 C.F.R. § 103.2(b)(2) regarding the submission of secondary evidence. Specifically, the petitioner has not demonstrated that the awards from organizations in Hebei Province are unavailable or do not exist. Nevertheless, we find that these awards reflect provincial recognition rather than national or international recognition.

The director's decision further stated: "Counsel also indicates that the petitioner is the recipient of numerous grants. Grants are routinely awarded to researchers to support their research." We agree with the director that the petitioner's receipt of research funding is not adequate to satisfy this criterion. In regard to the research grants for which the petitioner or his employer applied and received funding, it is noted that research grants simply fund a scientist's work. 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 scientific research, and is not a national or international award to honor or recognize past achievement. Furthermore, we note that a substantial amount of scientific research is funded by research grants from a variety of public and private sources. Therefore, we do not find that the receipt of a research grant automatically places a scientist at the very top of his field.

In light of the above, 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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence showing that he is a full member of Sigma Xi, The Scientific Research Society. On appeal, the petitioner submits an undated letter from [REDACTED], Executive Director for the society, stating that Sigma Xi confers full membership "upon those who have demonstrated noteworthy achievements in research." These achievements must be evidenced by "publications, patents, written reports or a thesis or dissertation, which must be available to the Committee on Admission if requested." A noteworthy achievement is not necessarily an outstanding achievement. In fact, the record reveals that the society does not take a particularly strict view of noteworthy achievements. Specifically, [REDACTED] states that the "Committee on Qualifications and Membership interpreted this qualification to include primary authorship of two

papers." Dr. [REDACTED] continues that an earned doctoral degree may be substituted for one paper. We cannot conclude that primary authorship of one or two papers is indicative of outstanding achievement.

The petitioner submitted a September 23, 2005 letter of support from Dr. [REDACTED], Professor of Pathology and Cell Biology, School of Medicine, University of Alabama at Birmingham, stating:

[The petitioner] . . . has held many esteemed memberships including being a member of the Office of Disease Preventive Project of the World Bank Loan, member of the Committee of Technology and Consultant of the Disease Preventive Project of the World Bank Loan, member of the Committee of Technology and Consultant of Immunization Program, member of the Committee of Technology of Polio Eradication Program, member of the Red Cross committee, full member of Sigma Xi, and member of the American Public Health Association.

Aside from the petitioner's Sigma Xi membership card, there is no first-hand evidence documenting the petitioner's membership in the preceding organizations. Rather than submitting primary evidence of his membership credentials for these organizations, the petitioner instead submitted a letter of support from a third party attesting to the existence of the memberships and a resume listing the memberships prepared by the petitioner himself. Once again, the petitioner has not complied with the regulation at 8 C.F.R. § 103.2(b)(2), as he has not demonstrated that primary evidence of these memberships are unavailable or do not exist. Nor has the petitioner submitted evidence showing that the aforementioned organizations qualify as "associations in the field . . . which require outstanding achievements of their members." Aside from Sigma Xi, the record does not include evidence of the membership bylaws or the official admission requirements for the preceding organizations.

In this case, there is no evidence that the petitioner holds membership in an association requiring outstanding achievement or that he was evaluated by national or international experts in consideration of his admission to membership. Therefore, the petitioner has not established 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.

We withdraw the director's finding that the petitioner meets this criterion.

The petitioner submitted several letters of support. We cite representative examples here.

Dr. [REDACTED] Head of the Division of Pediatric and Infectious Disease, and Professor of Pediatrics, Pathology, and Microbiology and Immunology, Vanderbilt University Medical Center, states:

[The petitioner's] capacity to contribute to this field has been well-demonstrated by a number of significant achievements: numerous invitations to participate in conferences, educational seminars and projects designed to enhance professional understanding of the discipline of infection control; experienced outbreak investigator in various settings, including internationally; investigation of specific health-care acquired infections in China; design and implementation of an infection control intervention in China to prevent HIV/AIDS and vaccine preventable diseases.

Dr. [REDACTED], Associate Professor of Medicine, School of Medicine, University of Alabama at Birmingham (UAB), where the petitioner pursued a doctoral degree in public health and worked from 2000 to 2005, states:

[The petitioner's] work on HIV molecular biology has been highly innovative. In particular, he has successfully reconstructed vectors, with HIV as the backbone, for effective and stable transfection of human cell lines. These vectors are now being widely used by other investigators for research on viral diseases and human malignancies. In addition, his work on HIV reverse transcriptase can reveal pathways suitable for novel, therapeutic intervention.

Dr. [REDACTED] states that the petitioner's "vectors are now being widely used by other investigators," but there is no evidence in the record to support this assertion.

Dr. [REDACTED] State Epidemiologist, Tennessee Department of Health, and Assistant Clinical Professor, Vanderbilt University School of Medicine, states:

[The petitioner's] works have generated more 30 [sic] papers and abstracts, identified, quantified and provided valuable recommendations regarding taking actions for preventing HIV/AIDS and several vaccine preventable diseases. His actions on this account have already had a profound effect on the epidemics of HIV/AIDS and other infectious diseases in China.

The record, however, includes no citation history showing that the petitioner's published work was particularly influential in his field, nor is there evidence demonstrating the impact of the petitioner's work outside of China's Hebei Province. When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner himself has cited sources in his own articles. Numerous independent citations would provide solid evidence that other researchers have been influenced by the petitioner's work and are familiar with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the greater field, then it is reasonable to conclude that the alien's work is not nationally or internationally acclaimed as a contribution of major significance. In this case, there is no evidence showing that the petitioner's work is widely cited by independent researchers.

Dr. [REDACTED], now Associate Research Professor, Department of Medicine, Duke University Medical Center, who previously worked at UAB along with the petitioner, states:

One of [the petitioner's] research focuses was to develop methods for direct visualization of HIV-1 using fluorescence microscopy. [The petitioner] was able to accomplish this by genetic engineering the green fluorescence protein (GFP) into the HIV genome, resulting in the expression of HIV-1 particles that could be used to study specific interactions with host target cells and tissues.

In his September 22, 2005 letter accompanying the petition, Dr. [REDACTED], the petitioner's Ph.D. supervisor, states:

[The petitioner] has extensive experience as a physician in preventative medicine, a medical microbiologist, epidemiologist, and health communicator. [The petitioner] has provided novel approaches to the investigation of vaccine preventable diseases. He has communicated these novel approaches to other epidemiologists and public health researchers to help further the science of applied public health practice.

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. While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or published research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance to the field as a whole.

In his January 31, 2006 letter submitted in response to the director's request for evidence, Dr. [REDACTED] states:

[The petitioner's] expertise in molecular biology has been demonstrated in his scientific publication with Dr. [REDACTED] at the University of Alabama at Birmingham, "Identification of Amino Acid Residues in the HIV-1 Reverse Transcriptase Tryptophan-repeat Motif that are Required for Subunit Interaction Using Infectious Virions" published in *Journal of Molecular Biology* (JMB). On our recent collaborative initiative to improve the measurement of HIV incidence and helping complete the picture of current trends and the dynamics of HIV epidemics, "Estimating HIV Incidence Using a Population-Based Serologic Method in China," [the petitioner] is demonstrating his scientific expertise in infectious disease epidemiology, molecular biology, and immunology.

Regarding the latter collaborative initiative mentioned by Dr. [REDACTED], there is no evidence that the results of this work were published as of the petition's filing date. A petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Accordingly, the AAO will not consider this work in this proceeding. Nevertheless, the petitioner's publications relate to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, CIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. We will fully address the petitioner's published works under the next criterion.

In regard to the letters of support submitted with this petition, we note that almost all of the petitioner's recommendation letters were written by individuals who have had close contact with him. With regard to the personal recommendation of individuals with ties to institutions where the petitioner has studied and worked, the source of the recommendations is a highly relevant consideration. These letters are not first-

hand evidence that the petitioner has earned sustained acclaim for his contributions outside of his affiliated institutions. The statutory requirement that an alien have "sustained national or international acclaim," however, necessitates evidence of recognition beyond direct acquaintances of the petitioner. *See* section 203(b)(1)(A)(i) of the Act.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. 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. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of an epidemiology researcher who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that his work rises to the level of a contribution of major significance.

In light of the above, 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 regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's authorship of scholarly articles must be evaluated within the context of the controlling regulation.

The petitioner submitted evidence showing that he authored several published papers and abstracts during his research career. However, we find that authorship of scholarly articles is inherent to scientific research. For this reason, evidence showing the influence of the petitioner's articles becomes necessary to set him apart from other epidemiology researchers. In the present case, there are no citation indices or other evidence showing that the petitioner's articles were widely cited. While we accept that the petitioner has authored scholarly research publications, the weight of this evidence is diminished by a lack of evidence showing that the greater field regards his published findings as especially significant.

On appeal, the petitioner submits evidence of articles published in *Clinical Cancer Research* and *The Journal of Immunology* in 2006. These articles were published subsequent to the petition's filing date. As stated previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak*, 14 I&N Dec. at 45. Accordingly, the AAO will not consider these articles in this proceeding.

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

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

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted a letter from Dr. [REDACTED] Professor and Director, Department of Internal Medicine, Affiliated Hospital of Hebei University, stating that the petitioner served as an Associate Chief Physician and Associate Professor in the Department of Immunization at Hebei University and as a Deputy Director of the Center for STDs and AIDS Prevention and Control in Hebei Province. The record, however, includes no evidence showing that the preceding organizations had a distinguished reputation (such as independent press reports) during the petitioner's employment. Nor has the petitioner submitted evidence showing his specific duties for these organizations and that his role was of primary importance to their overall success.

The letter of support from Dr. [REDACTED] states that the petitioner "joined UAB in 2000 to pursue a doctoral degree in public health." The record reflects that the petitioner worked as a Research Assistant in the School of Medicine at UAB from 2000 to 2002 and as a Research Associate from 2002 to 2005. In 2005, the petitioner began working as Research Assistant Professor in the Department of Pediatrics at Vanderbilt University's School of Medicine, where he is also "a Ph.D. candidate under the tutelage of Dr. [REDACTED]." When comparing the roles and responsibilities of the petitioner with those of his superiors from UAB and Vanderbilt who have offered letters of support, it becomes immediately apparent that the importance of their roles and responsibilities far exceeded that of the petitioner. While we accept that these organizations have earned a distinguished reputation, there is no evidence showing that the petitioner's role was of significantly greater importance than that of the other researchers employed by these universities (including tenured professors such as Dr. [REDACTED]). Thus, we do not find that the petitioner's roles at Vanderbilt University or UAB were tantamount to a "leading or critical role" for either organization.

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

In this case, we concur with the director's finding that the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A)(i) 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.

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ORDER: The appeal is dismissed.