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U.S. Citizenship
and Immigration
Services

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FILE: LIN 05 022 50757 Office: NEBRASKA SERVICE CENTER Date: MAY 03 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.

for *Maura Deadrick*
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. Specifically, the director concluded that the petitioner meets only one of the regulatory criteria, of which an alien must meet at least three to establish eligibility for the classification sought.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, the petitioner has not overcome the director's valid bases for denial.

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 postdoctoral research associate. While the statute and regulation do not preclude a postdoctoral researcher from establishing eligibility, the petitioner must demonstrate that his accomplishments compare with those at the very top of the field, including those who have long since completed their postdoctoral training. 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.¹

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

In response to the director's request for additional evidence, the petitioner submitted evidence that he received a scholarship from The Ohio State University, that he was a "co-winner" of the Best Fisheries Poster at the 2000 Annual Ohio Fish and Wildlife Conference and that he received a travel grant from the Fisheries Society of the British Isles (FSBI).

On appeal, counsel does not contest the director's conclusion that the record does not support this criterion. Competition for scholarships is limited to other students. Experienced experts in the field are not seeking scholarships. The record does not reveal that either the poster award from a local conference or the travel award is a lesser nationally or internationally recognized prize or award.

In light of the above, 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 initially submitted evidence that he had refereed articles for *Agriculture International*, *AQUI*, *Physiology and Behavior*, the *Journal of Fish Biology* and *Redaktion Aquatic Sciences*. The evidence regarding the reviews for the *Journal of Fish Biology* suggests that petitioner filled in for his supervisor, Dr. [REDACTED]

In response to the director's request for additional evidence, the petitioner submitted a letter from Dr. [REDACTED] one of the petitioner's collaborators at The Ohio State University, asserting that in the summers of 2004 and 2005, he asked the petitioner to review two proposals Dr. [REDACTED] was preparing to submit to the U.S. Department of Agriculture. In addition, the petitioner submitted a letter from Jan Sauris, Program Manager of the Ohio Agricultural Research and Development Center (OARDC) of

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

The Ohio State University, asserting that the petitioner “was identified as a highly qualified individual with necessary expertise to review a proposal on aquaculture submitted” to the OARDC Research Enhancement Competitive Grants Program for 2004. Further, the petitioner submitted letters from staff at *Aquaculture International* and *Physiology and Behavior* discussing the selection of reviewers. [REDACTED] of *Aquaculture International* asserts that manuscripts for the journal are reviewed by “international experts,” while [REDACTED] of *Physiology and Behavior* simply indicates that he relies on personal contacts and Internet searches to locate potential reviewers. Finally, the petitioner submitted evidence of multiple reviews for other journals in 2005, all of which postdates the filing of the petition on October 29, 2004.

The director concluded that the petitioner’s review responsibilities were consistent with his level of education and not indicative of sustained national or international acclaim. The director noted the large number of manuscripts submitted to the journals for which the petitioner has served as a peer-reviewer. On appeal, counsel asserts that the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) only requires evidence that the alien has judged the work of others. Counsel cites *Buletini v. INS*, 860 F. Supp. 1222, 1231 (E.D. Mich. 1994) for the proposition that the director erred in going beyond the regulatory language. The court in *Buletini*, 860 F. Supp. at 1231, held that the regulation at 8 C.F.R. § 204.5(h)(3)(iv) does not require that participating as a judge was the result of having extraordinary ability. *Id.* In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge’s decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Counsel also cites a July 30, 1992 correspondence memorandum from [REDACTED], Acting Assistant Commissioner, to the then Director of the Nebraska Service Center, [REDACTED]. Mr. [REDACTED] issued his correspondence memorandum in response to an inquiry from Mr. [REDACTED] and makes clear that he is discussing his personal inclinations. Moreover, in contrast to official policy memoranda issued to the field, correspondence memoranda issued to a single individual do not constitute official CIS policy and will not be considered as such in the adjudication of petitions or applications. Although the correspondence may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer’s analysis of an issue. *See Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).² While Mr. [REDACTED] stated that “participation by the alien as a reviewer for a peer-reviewed scholarly journal would more than likely be solid pieces of evidence,” he ultimately concluded that “we expect the examiner to evaluate evidence, not simply count it.”

Finally, counsel asserts that the petitioner has reviewed proposals “for several agencies.” The record reflects only that the petitioner has informally reviewed a proposal for his collaborator and more

² Although this memorandum principally addresses letters from the Office of Adjudications to the public, the memorandum specifies that letters written by any CIS employee do not constitute official CIS policy.

formally for a grant program at his own institution. These reviews are not indicative of any recognition beyond The Ohio State University.

Regarding the petitioner's manuscript reviews for journals, we can only consider reviews conducted prior to the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Moreover, we do not find it violates the reasoning in *Buletini*, 860 F. Supp. at 1231, to examine the evidence submitted as to whether it is indicative of or inconsistent with national or international acclaim. The court in *Buletini* was concerned that an alien would need to first demonstrate "extraordinary ability" in order to meet this criterion. We are not following this "circular exercise" that troubled the court. Rather, we are looking at the type of review responsibilities inherent to the field and what review responsibilities might be indicative of or at least consistent with national acclaim. Specifically, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles.³ 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, *as of the date of filing*, he had 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 director acknowledged the petitioner's work in the field and concluded that the record demonstrated a certain amount of awareness of this work, but found that the petitioner had not demonstrated through objective evidence that he had made contributions of *major* significance. On appeal, counsel once again cites *Buletini*, 860 F. Supp. at 1232.

As stated above, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). While we accord weight to the reference letters submitted, the opinions of experts in the field 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.

³ According to information posted at Elsevier.com, the science, technical and medical professions produce 1.2 million peer-reviewed articles annually, each of which is presumably peer-reviewed by more than one peer-reviewer.

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, vague claims of contributions or predictions of future applicability 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.

Also on appeal, counsel asserts that the reference letters indicated how the petitioner's work "would provide invaluable assistance and *would* make a practical contribution to scientific education and research." (Emphasis added.) 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.

The petitioner received his Ph.D. from the Universitaires Notre-Dame de la Paix, Namur in 1996 under the director of Dr. [REDACTED]. The petitioner then worked as a visiting scholar and then as a postdoctoral research associate at The Ohio State University under the supervision of Dr. [REDACTED]. From 2001 to 2003, the petitioner was a postdoctoral research associate at Texas Tech University under the direction of Dr. [REDACTED]. Finally, the petitioner returned to Dr. [REDACTED] laboratory at The Ohio State University as a postdoctoral research associate where he remained as of the date of filing.

Dr. [REDACTED] asserts that the petitioner's student work demonstrated high competence and that the international appreciation of his work during this time is evident from the petitioner's publication of eight articles. We will not presume the major significance of a contribution based on its publication alone. It is the petitioner's burden to demonstrate the impact his work has had beyond mere publication.

Dr. [REDACTED] asserts that he recruited the petitioner from Belgium based on his knowledge of ecophysiology and food/web interactions and characterizes him as "among the best young researchers." The petitioner must establish that he compares with the most renowned members of the field, including those with extensive experience in the field. Dr. [REDACTED] explains that the petitioner is the sole inventor of "many techniques" being used in Dr. [REDACTED] laboratory but does not assert that independent laboratories have adopted or are considering adopting the petitioner's techniques. Dr. [REDACTED] mostly discusses ongoing research and the importance of these projects without explaining how the petitioner's completed work has impacted the field. Dr. [REDACTED] notes that the petitioner's

work receives government funding and concludes that they must believe in investing in the petitioner's research. 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 recognize past achievements as having major significance.

Dr. [REDACTED] does discuss some past achievements. Specifically, Dr. [REDACTED] asserts that the petitioner "improved yellow perch and walleye production and health by developing appropriate diet formulations and increasing efficiency of stocking programs that have been documented in improving recovery of stocked fish in inland reservoirs." Dr. [REDACTED] does not assert that this work is being applied elsewhere. While Dr. [REDACTED] provides an account of Brazilian scientists seeking the petitioner's advice at a conference, the record lacks letters from researchers outside the petitioner's immediate circle of colleagues discussing his impact on their own work.

Finally Dr. [REDACTED] asserts that the petitioner played a role in securing a grant for the laboratory's project on sex differentiation in the sea lamprey and that this project "already has resulted in major scientific discoveries pertaining to sex differentiation in the lowest vertebrate ever examined."

Dr. [REDACTED] praises the petitioner's professionalism and experience. Dr. [REDACTED] explains that in his laboratory, the petitioner studied the effects of perchlorate and environmental contaminant on thyroid function in fish. Dr. [REDACTED] discusses the importance of this area of research and asserts that other researchers in his laboratory are continuing projects that the petitioner started, which would not have been possible without the petitioner's "pioneering research." Dr. [REDACTED] acknowledges, however, that the five to six papers authored by the petitioner during his time at Texas Tech University had yet to be published and, thus, widely disseminated within the field. The petitioner's curriculum vitae, submitted in response to the director's request for additional evidence, reflects no articles coauthored with Dr. [REDACTED] published prior to 2005. As stated above, the petition was filed in October 2004 and, thus, the petitioner must establish eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Dr. [REDACTED], a research biologist at the Texas Cooperative Fish and Wildlife Research Unit who worked with the petitioner in Texas, asserts that the petitioner's "findings on the effects of perchlorate on fish health and reproduction yielded novel information that is now being used as part of an effort to assess the risk of perchlorate contamination in the environment." Dr. [REDACTED] Assistant Director for Science at Texas Tech University, asserts only that the perchlorate project on which the petitioner worked "has the potential for saving taxpayers millions of dollars in cleanup costs while reducing the risks associated with drinking contaminated water." On appeal, the petitioner submits a document from the National Center for Environmental Assessment listing the references associated with the U.S. Environmental Protection Agency's review of perchlorate contamination. The petitioner is credited on only one of 32 reports listed.

Dr. [REDACTED], Director of the Lake Michigan Biological Station in Illinois and a collaborator on the petitioner's projects at The Ohio State University, asserts that the petitioner's contributions:

have been invaluable to the progress we have made to examine change in Great Lakes food webs related to increased Greenhouse Gas emissions and establishment of invasive species that cascade through the food web to impact reproductive success of commercially important fishes. These results have far-reaching implications that 1) extend to legislation pending in Congress to protect the integrity of aquatic systems from invaders, and 2) confirm that depletion of ozone via Greenhouse Gas emissions can be detrimental to commercially important fish populations in the United States. Without his efforts and insight, project on this collaborative project would have stopped.

* * *

Other research on stemming the tide of invasive fishes has been conducted by [the petitioner]. He has developed unique methods to sterilize male sea lamprey such that the reproductive success of these invaders is reduced. Success of such sterilization programs means that fewer commercially important fishes will be lost to mortality from sea lampreys. Instead, various salmon, trout and whitefish populations will be more readily available for harvest.

Finally, Dr. [REDACTED] discusses the petitioner's work on substituting cottonseed meal for fish meal in the aquaculture industry, which "can save the aquaculture industry millions of dollars each year."

Dr. [REDACTED] asserts that the petitioner played a "pioneering role" in the production of all-female populations of a popular sport fish and that this research was published in a prestigious journal. We will not, however, presume the significance of a contribution from the journal in which it was published. It is the petitioner's burden to demonstrate the significance of the individual article.

The petitioner submits several similar letters from other collaborators. The petitioner does not submit any letters from fish breeders, cotton growers, fish food developers, the aquaculture industry or other independent sources affirming their familiarity with the petitioner's work and attesting to the impact of the petitioner's work on their own work. Dr. [REDACTED] a researcher at the National Institute for Research in the Amazon, Brazil, asserts that he has known of the petitioner's work "since long ago" and recently met the petitioner in the laboratory of Dr. [REDACTED]. Dr. [REDACTED] however, does not explain how the petitioner's work influenced his own work.

Dr. [REDACTED] a coauthor, asserts that the number of citations demonstrates that the petitioner's work has formed the foundation of work by others. The record, however, while demonstrating the number of citations, does not include a list of these citations. Thus, the petitioner has not established that the bulk of the citations are from independent sources. Self-citation, while a

normal and expected process, cannot establish that independent researchers are relying on the petitioner's work. While one of the reference letters submitted on appeal asserts that the petitioner has been cited nearly 200 times, the petitioner did not submit a citation index or other evidence corroborating that claim. The regulation at 8 C.F.R. § 103.2(b)(2) requires the submission of primary evidence over affidavits unless primary and secondary evidence are both demonstrably unavailable or do not exist.

On appeal, the petitioner submits letters from Dr. [REDACTED] Center Director of the [REDACTED] Science Center, and Dr. [REDACTED] Executive Secretary and Chief Executive Officer of the [REDACTED]

[REDACTED] While both letters affirm the petitioner's selection to lead a Thiamine Deficiency Syndrome initiative, it is not clear that this selection had taken place prior to the date of filing in October 2004 or that the petitioner has already impacted the field in this position.

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. Without letters from a broader spectrum of experts in the field, the petitioner cannot establish that his contributions are recognized nationally or internationally as having 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 director concluded that the petitioner's lengthy publication history and moderate citation record serves to meet this criterion and we concur.

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 postdoctoral 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.

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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.