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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date:

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IN RE:

Petitioner:

Beneficiary:

[REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*for*   
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska 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, counsel states:

1. The United States Citizenship and Immigration Services failed to consider the importance of Petitioner's work and the importance of the work that cited to [the petitioner's] published material.
2. The Service abused its discretion by failing to give proper weight to the evidence provided in support of [the petition].
3. The Service misapplied the law to the facts of this case by failing to account for the prestige of the authors of [the petitioner's] referee letters, as well as failing to account for the prestige that is involved in publishing scholarly articles.

Counsel's arguments will be addressed below in our discussion of the petitioner's evidence as it relates to the regulatory criteria 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 into 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 a "Doctor of Neurology."<sup>1</sup> At the time of filing, the petitioner was a resident in the graduate medical training program of Neurology at the Medical College of Wisconsin. Prior to his work there, the petitioner was pursuing his Ph.D. studies at the University of Southern California (USC) under the guidance of ██████████ Professor of Neurobiology.

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, internationally 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 petitioner submitted a certificate issued to him by ██████████ Vice Chair, Academic Programs, Department of Biological Sciences, USC, stating: "The Department of Biological Sciences wishes to acknowledge the outstanding contribution of [the petitioner] as a Teaching Assistant in BISC-307L during the 2003/2004 academic year." We find that this award reflects institutional or departmental recognition for the petitioner's work as a teaching assistant rather than national or international recognition for excellence in the field.

In a May 1, 2006 letter submitted in response to the director's request for evidence, counsel argues that the petitioner's speaking engagements meet this criterion. For example, a May 1, 2002 letter from ██████████ ██████████ Program Director, Med-COR Program, USC, and ██████████ Administrative Coordinator, Med-COR Program, USC, thanks the petitioner "for participating in the Med-COR Program's Annual Science and Health Career Day on Saturday, April 13, 2002." Their letter further states: "The information you provided will help the students to decide which pathway each will take in their pursuit of a health career." The petitioner also submitted information printed from the USC "Neuroscience Graduate Program Web Site" reflecting that he gave a presentation in the "Landing Conference Room" at the Children's Hospital of Los

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<sup>1</sup> The record includes no first-hand evidence of the petitioner's educational credentials (such as a copy of his Ph.D. degree).

Angeles on September 2, 2003.<sup>2</sup> The plain language of this regulatory criterion, however, requires evidence of the petitioner's "receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." The petitioner's selection to present a topic at a weekly speaking engagement organized by USC's Neuroscience Graduate Program is not a prize or award for excellence in the field, nor are any of his other speaking engagements.

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.*

The petitioner submitted a page printed from the American Academy of Neurology's internet site reflecting that he holds "Junior" membership in the Academy. In the September 29, 2005 legal brief submitted in support of the petition and in the May 1, 2006 letter submitted in response to the director's request for evidence, counsel cites an e-mail from [REDACTED] Manager, Member Services, American Academy of Neurology, stating:

In order to become a member of the Academy, an applicant must submit an application for membership detailing training and current work in the field of neurology. The applicant must submit the signatures of two sponsors (for applicants in the U.S. those sponsors must be members of the American Academy of Neurology in the Active or Fellow category, which means they must be certified in neurology by the American Board of Psychiatry and Neurology or one of two accepted Canadian Boards).

The petitioner's failure to submit a copy or photocopy of Michael Bisping's original e-mail (as opposed to counsel's transcription) is a significant omission from the record. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). We cannot ignore that the petitioner holds "Junior" membership in the Academy rather than membership in the more

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<sup>2</sup> The record includes no information regarding the number of individuals who attended the petitioner's presentation or their level of expertise in neurology. In the fields of science and medicine, we find that acclaim is generally not established by the mere act of presenting one's work at a conference. Nothing in the record indicates that the presentation of one's work is unusual in the petitioner's field or that the invitation to present where the petitioner spoke was a privilege extended to only a few top researchers rather than also being open to other graduate students. Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the petitioner above almost all others in his field at the national or international level. The record includes no evidence distinguishing the petitioner from others in his field such as evidence showing that his presentations had significantly higher rates of attendance when compared to those of the other conference participants or that the petitioner has served as a keynote speaker at a national or international medical conference.

restrictive "Active" or "Fellow" categories. Further, based on the above requirements, we do not find that the American Academy of Neurology requires "outstanding achievements" of its Junior members rather than simply training and experience in the field. Moreover, the information transcribed by counsel is not persuasive that the American Academy of Neurology requires its prospective members to be judged by "recognized national or international experts" in the petitioner's or an allied field.<sup>3</sup> Finally, the plain language of this regulatory criterion requires membership in more than one association. The petitioner's single membership does not meet this requirement.

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

*Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

In addressing the evidence submitted for this criterion, the director's decision stated:

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media.

\* \* \*

In response [to the director's request for evidence], the petitioner submitted a single internet article from the University of Southern California website. There is nothing to demonstrate that the website is commensurate with major media. The article, which appears under "College News," discusses the work of a professor at the university who was also the petitioner's research supervisor, and briefly mentions the petitioner's work in the research group. A single article on the website of the petitioner's educational institution is not sufficient to meet this criterion.

The petitioner is also claiming the citation of his work in the articles of other researchers. These articles contain only brief references to his work. None of the articles were specifically about either the petitioner or his work. A brief reference to work without evaluation is not sufficient to meet this criterion.

We concur with the director's findings. There is no evidence that an article posted under the "College News" section of USC's internet site constitutes "published material . . . in professional or major trade publications or other major media." Further, this article is primarily about Professor Chien-Ping Ko and his work and only mentions the petitioner's name in passing.

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<sup>3</sup> While an applicant to the Academy requires the recommendation of two sponsors, there is no evidence showing that such sponsors' possession of "certification in neurology by the American Board of Psychiatry and Neurology" rises to the level of being a "recognized national or international expert" in these fields.

Regarding the scientific articles that merely reference the petitioner's published work, we note that the plain language of this regulatory criterion requires that the published material be "about the alien." In this case, the articles citing the petitioner's work are primarily about the authors' work, not the footnoted material identifying the petitioner. With regard to this criterion, a footnoted reference to the alien's work without evaluation is of minimal probative value. Further, we note that the articles citing the petitioner's work similarly referenced scores of other authors. The submitted citations to the petitioner's work do not discuss the merits of his work, his standing in the field, any significant impact that his work has had on the field, or any other aspects of his work consistent with his sustained national or international acclaim. The citations of the petitioner's work are more relevant to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi) and will be further addressed later in this decision.

In light of the above, 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.*

The petitioner submitted four recommendation letters in support of his petition.

[REDACTED], the petitioner's research supervisor at USC, states:

[The petitioner] has made seminal research contributions, which have been of great importance to the neurobiological researchers throughout the world. His findings indicate that the cells at the nerve-muscle junction called [REDACTED] cells are very important for healthy nerve-muscle junction. He found that in the absence of [REDACTED] cells the nerve-muscle junction starts deteriorating. This research gives rise to the hope of finding a chemical from these cells that helps keep the nerve-muscle junction healthy so as to help patients with [REDACTED] disease.

[REDACTED] Professor of Biological Sciences, Neurology and Biomedical Engineering at USC, states:

[The petitioner's] findings have contributed greatly to the efforts of neurobiologists throughout the world directed at developing a cure for neuro-muscular degenerative illnesses. Specifically, his research has led to the discovery that in the absence of [REDACTED] cells, the nerve-muscle junction begins to deteriorate, causing muscular paralysis. This understanding has led to further research directed at discovering which chemical elements produced by [REDACTED] cells could preserve the nerve-muscle junction even in the absence of [REDACTED] cells.

[REDACTED] Professor of Neurobiology, Developmental Biology and Neurology at the Stanford University School of Medicine, states:

[The petitioner's] important contributions to our understanding of [REDACTED] cells, which are glial cells that separate and insulate nerve cells, give hope to the countless Americans who are suffering from neuro-degenerative diseases such as [REDACTED] disease. His research and findings have focused on the potential connection between [REDACTED] cells and the diseases such as [REDACTED]. His research

found that in the absence of [REDACTED] cells, the nerve-muscle junction starts deteriorating. His research offers the future hope that a treatment may be found that can prevent this deterioration.

[REDACTED], Professor of Neurobiology, University of Texas at Austin, states:

No cure to [REDACTED] disease, a neuromuscular illness, has been discovered or developed as of yet. However, over the past years researchers have found that certain cells termed [REDACTED] cells, which wrap nerves issuing from the brain and the synapses they make onto muscle fibers, somehow nourish and support these nerves and synapses. It is now apparent that perturbations in these [REDACTED] cells can lead to degeneration of nerves and synapses that occur during the muscle paralysis observed in victims of [REDACTED] disease. . . . Through keen observation and clever experiments, [the petitioner] has provided the first ever evidence that neuromuscular junctions begin to deteriorate in the absence of [REDACTED] cells. As a result of [the petitioner's] discovery, experiments are being directed at understanding what factor(s) [REDACTED] cells produce that maintain neuromuscular junctions. The discovery of these factors may provide victims of [REDACTED] disease a quality of life heretofore unimagined.

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 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. While the preceding individuals credit the petitioner with providing experimental results showing that in the absence of [REDACTED] cells neuromuscular junctions begin to deteriorate, there is no supporting evidence that this research finding constitutes a contribution of major significance in his field consistent with sustained national or international acclaim. For example, [REDACTED] simply states that the petitioner's work "has led to further research directed at discovering which chemical elements produced by [REDACTED] cells could preserve the nerve-muscle junction even in the absence of [REDACTED] cells."

We note [REDACTED] observation that the petitioner's "research offers the future hope that a treatment may be found that can prevent this deterioration" of the nerve-muscle junction. With regard to the witnesses of record, we note that they discuss what "may" someday result from the petitioner's work as it relates to finding a treatment for neuromuscular illness, rather than discussing how his findings at USC already rise to the level of contributions of major significance in his field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Individuals seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. *Id.*

In this case, the letters of support submitted by the petitioner's professional contacts are not sufficient to meet this criterion. 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 (Commr. 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 a researcher who has sustained national or international acclaim.

In the May 1, 2006 letter submitted in response to the director's request for evidence, counsel cites the petitioner's published articles as evidence of his original contributions of major significance. The journal articles coauthored by the petitioner, however, 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 articles coauthored by the petitioner under the next criterion.

The petitioner also submitted documentation printed from the internet showing that one of his articles was posted and evaluated on the "Faculty of 1000" website, a subscription-based "online research service." In addressing this evidence, the director's decision stated:

It appears that the article was selected by only one person, and that it was given a rating of "Recommended." The information provided indicates that the site allows any of the numerous scientists on the faculty to "highlight and review the most interesting papers published in the biological sciences." While it appears that one person found this article to be "interesting," there is nothing to show that this correlates to a contribution of major significance. The Service accessed the website, which states that the papers may receive one of three ratings: "Recommended" for papers of interest to just one section or subject area, "Must read" for papers of interest to more than one subject or section, and "Exceptional" for landmark papers representing the top 5% of publications each year. The petitioner's paper was given the lowest rating, and was rated by only one faculty member. Thus, this does not demonstrate . . . that the paper had major significance in the field.

We concur with the director's observations. The evidence does not show that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of contributions of major significance. As such, 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 petitioner submitted evidence of his coauthorship of articles appearing in publications such as *Journal of Neurocytology*, *The Journal of Neuroscience*, and *Neuron*. We take administrative notice of the fact that

authoring scholarly articles is inherent to scientific research. For this reason, we will evaluate a citation history or other evidence of the impact of the petitioner's research articles when determining the significance of a petitioner's published work to his or her field. For example, numerous independent citations would provide solid evidence that other researchers have been influenced by the petitioner's work and are familiar with it. On the other hand, few citations of an alien's work may indicate that his work has gone largely unnoticed by the neurology field.

The petitioner submitted citation indices and copies of articles citing his work demonstrating that his body of work was cited an aggregate of eight times as of the petition's filing date, including two self-citations by his coauthor [REDACTED]. Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers. While the six independent cites demonstrate a small degree of interest in the petitioner's published work as of the petition's filing date, he has not shown that an aggregate of six independent citations over a research career spanning almost a decade is consistent with sustained national or international acclaim. We accept that the petitioner has coauthored some published papers over the last several years, but the weight of this evidence is diminished by a lack of evidence showing these articles were frequently cited by or otherwise significantly influenced other scientists in his field.

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.*

Counsel initially claimed that the petitioner "performed in a leading role" for both USC and the Medical College of Wisconsin. The petitioner submitted evidence showing that he pursued his Ph.D. studies under the guidance of [REDACTED] at USC, but no evidence addressing his role as a trainee in the residency program at the Medical College of Wisconsin. We cannot ignore that the petitioner's role at USC was that of a graduate student. This subordinate role is intended to provide temporary scientific training for a future professional career in one's field. While we accept that USC has a distinguished reputation, there is no evidence showing that the petitioner's work as a graduate student was equivalent to performing a leading or critical role for the university as a whole or was of significantly greater importance than that of the other researchers employed there (including tenured professors such as [REDACTED]). We find no evidence that the petitioner was responsible for his educational institutions' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

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

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<sup>4</sup> Two citations of the petitioner's work submitted in response to the director's request for evidence appeared in articles published subsequent to September 30, 2005. 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 49. Accordingly, the AAO will not consider these two cites to the petitioner's work in this proceeding.

<sup>5</sup> According to the biographic information attached to their letters, we note that the achievements of [REDACTED] and [REDACTED] indicate that the top of the petitioner's field is a level far above his own level of achievement.

On the Form I-290B, Notice of Appeal to the AAO, counsel indicated that a brief and/or evidence would be submitted to the AAO within 30 days. The petitioner's appeal was filed on July 17, 2006. As of this date, more than one year later, the AAO has received nothing further.

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 sustained national or international acclaim necessary to qualify as an alien of extraordinary ability. 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.

Review of the record does not establish that the petitioner has distinguished himself as a neurobiological researcher to such an extent that he may be said to have achieved sustained national or international acclaim and 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) 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.