



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
SRC 06 164 52241

Office: TEXAS SERVICE CENTER

Date:

JAN 22 2008

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition for abandonment. The petitioner subsequently filed a motion to reopen, whereupon the director withdrew the initial decision and denied the petition on its merits. The matter is now before the Administrative Appeals Office (AAO) 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, the petitioner's curriculum vitae and her academic credentials and resubmits the reference letters submitted previously. For the reasons discussed below, we uphold the director's decision.

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 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a neuropsychologist. 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 record is supported by the petitioner's academic credentials; attestations of the petitioner's employment, wages and symposium participation, manuscripts (many of which do not appear to have been published); certificates of conference participation and reference letters. The record also contains significant documentation that does not relate to the petitioner, including significant documentation that appears to be submitted only to establish the importance of the petitioner's area of employment, voluminous curriculum vitae in Spanish for her references and other documentation in Spanish that is not obviously related to the petitioner. We acknowledge that complete certified translations of the references' curriculum vitae would not establish the petitioner's own eligibility. Moreover, the petitioner's own articles in Spanish are submitted as evidence of her authorship, not the content of the articles, and thus do not require accompanying translations beyond any necessary translation of her authorship role. That said, the record does contain other Spanish language documentation that is not translated. We note that the regulation at 8 C.F.R. § 103.2(b)(3) requires that all foreign language documents be accompanied by complete certified translations. Thus, we will not consider any foreign language documentation, other than the petitioner's articles, that is not accompanied by the necessary translations.

On appeal, counsel notes the positions the petitioner has held and asserts that the AAO "should consider that [the petitioner] could not have earned such a high rank in these elite organizations without being at the top of her field." We note that performing a leading or critical role for an organization is merely one of the regulatory criteria, 8 C.F.R. § 204.5(h)(3)(viii), of which an alien must meet at least three. While we will consider the petitioner's positions below as they relate to that criterion, the petitioner's job titles cannot, by themselves, establish eligibility for the exclusive classification sought.

The petitioner has submitted evidence that, she claims, meets the following criteria.¹

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.

While the petitioner has never claimed to meet this criterion, we acknowledge that she lists association memberships on her curriculum vitae. The record, however, contains no evidence of the official

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

membership requirements for those associations. Thus, she has not submitted the required initial evidence required to meet 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.

Initially, the petitioner relied on a letter from [REDACTED] a neuropsychologist, who asserts that he and the petitioner were the only two neuropsychologists to attend a "Training the Trainers" conference in London sponsored by Novartis Laboratory. According to [REDACTED] upon returning to Argentina, he and the petitioner organized a three-day course to pass on the information learned at the London meeting to neuropsychologists from several Argentinean regions and states.

[REDACTED] Chief of Neurology at Hospital D.F. Santojanni, also confirms the petitioner's participation in the Novartis conference and further asserts that, in addition to organizing the three-day course in Argentina, the petitioner had the responsibility to "determine, evaluate and judge among all the participants, those with the best performance and achievements." [REDACTED] explains that those selected "were hired by Novartis Laboratories to perform the neuropsychological evaluations in the different medical centers." The record lacks confirmation from anyone at Novartis as to the petitioner's exact role in judging course participants for employment at Novartis.

The petitioner did not address this criterion in response to the director's request for additional evidence. The director ultimately concluded that passing on the information gained at a training seminar is not relevant to this criterion.

On appeal, counsel reiterates the claim that the petitioner evaluated course participants for responsibilities with Novartis. In addition, counsel asserts for the first time that the petitioner's academic responsibilities evaluating Ph.D. dissertations at the Universidad de Flores in Argentina serves to meet this criterion.

The record lacks sufficient evidence from Novartis documenting the petitioner's "judging" responsibilities in connection with the "Train the Trainers" course she organized. In addition, while serving as an external Ph.D. reviewer may constitute evidence indicative of national or international acclaim, it is inherent to the position of university faculty to evaluate the work of students. The petitioner was a full professor at the Universidad de Flores. Thus, the fact that she judged the dissertations of the students there is not indicative of any recognition or acclaim beyond her employer.

In light of the above, the petitioner has not established that she 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 concluded that the evidence did not establish the petitioner's overall impact in the field. On appeal, counsel states:

[The petitioner] is one of the leading neuropsychologists from Argentina and her invaluable contributions to the field are as follows (i) early Differential Diagnosis between Dementia and Depression, (ii) Detection of Neuropsychological Impairments on Neurologically Asymptomatic Patients with Systemic Lupus Erythematosus ("SLE") Disease (iii) Neuropsychological approach in Schizophrenic and (iv) the Rehabilitation of Detection of Neuropsychological Outcomes in a very rare and unique neurological disease named "Marchiafava-Bignami."

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).

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 medicine, 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.

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. Citizenship and Immigration Services (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. 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 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 her reputation and who have applied her 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.

██████████, Head of the Neurology Department at D.F. Santojanni Hospital, asserts that the petitioner worked under him from 1995 through 1999. He asserts that she served on his research team investigating differential mnemonic diagnosis between beginning Alzheimer's disease and depression and the potential to improve the effectiveness of the drugs Exelon and Eranz. While ██████████ asserts that the team presented their results at conferences, he does not explain how their results have impacted the field. For example, the record lacks evidence that the makers of Exelon or Eranz have utilized the petitioner's findings to improve their drugs or that improved drugs are in progress based on the petitioner's work.

██████████, Chief of the Abnormal Movements Division in the Neurology Department at the University Hospital in Buenos Aires, Argentina, asserts that the petitioner was the Head of the Neuropsychological Area of the department from 2000 through 2002. ██████████ asserts that the petitioner performed research on cognitive impairment in idiopathic Parkinson's Diseases and in Huntington's Chorea. He does not describe the results of this research or explain how it has influenced the field of neurology. Finally, while ██████████ notes the distinguished reputation of two of the petitioner's colleagues and collaborators, we will not presume the petitioner's own acclaim by affiliation. The petitioner must demonstrate her own acclaim.

██████████ Chief of the Institute of Biological Psychiatry in Argentina, notes the petitioner's expertise in diagnosing dementia and depression and thereby distinguishing the two. He does not explain how this clinical ability has impacted the field of neurology beyond the institutions where the petitioner has worked. The remaining letters from Argentinean collaborators provide general accolades with few specifics.

██████████, Chair of the Department of Neurology at the University of Miami, asserts that the petitioner "came" to him highly recommended by a colleague in Argentina and that he in turn recommended the petitioner to his colleague, ██████████. ██████████ does not indicate whether the petitioner actually worked for him. Rather, he asserts that the petitioner is currently conducting important research with ██████████. ██████████ does not identify any specific contributions the petitioner has made at the University of Miami or explain how the petitioner's work is influencing the field. ██████████ asserts generally that the petitioner has "made incomparable strides" in the field and has "conducted numerous studies and collaborated with distinguished neurologists." Once again, ██████████ does not identify any specific contribution to neurology or explain how it has impacted the field of neurology.

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 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. While we acknowledge that the petitioner is also a practicing clinician, simply demonstrating ability as a clinician is not, by itself, a contribution of major significance. Rather, the petitioner must demonstrate an impact on the practice of neuropsychology as a whole.

In light of the above, the petitioner has not established that she 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 has submitted evidence of a published abstract; an article published in *Revista Neurologica Argentina*; three book chapters; a list of titles and what appear to be authors identifying the petitioner as the author of "Trastornos Cognitivos en Psicosis" without evidence of whether this document represents a list of journal articles, conference presentations or book chapters; published correspondence commenting on another researcher's article; what appears to be a newspaper article in an unidentified newspaper; evidence of participation in two conferences and what appear to be unpublished manuscripts. Counsel lists additional articles in his appellate brief. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

We will only consider those documents that clearly represent published scholarly articles or scientific conference presentations rather than unpublished manuscripts, a letter to the editor commenting on the work of someone else and a newspaper article that has not been demonstrated to be "scholarly." Moreover, we cannot ignore that publication is inherent to the field of research and scientific academia. We acknowledge that the petitioner has held predominantly clinical positions, but she has also held academic faculty positions. The Department of Labor's Occupational Outlook Handbook 224 (2006-2007 ed.) provides that university faculty spend a significant amount of their time doing research and often publish their findings. In addition, the handbook acknowledges that faculty face "the pressure to do research and publish their findings." *Id.* at 225. The petitioner must demonstrate that her publication record sets her apart from other academic neuropsychologists in order to meet this criterion. The petitioner's publication record is not extensive. Regardless, without evidence that the petitioner has been well cited or other evidence of the impact of the publications, we cannot conclude that she meets this criterion.

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

We have already considered the petitioner's alleged contributions above. At issue for this criterion are the nature of the position the petitioner was hired to fill and the reputation of the entity that hired her. The nature of the position must be such that selection to fill the position, in and of itself, is indicative of

or consistent with national or international acclaim. [REDACTED] a neurologist who “has been working” for the Swiss Medical Group, confirms that the petitioner was the sole provider in neuropsychology with that group from 2001 to 2002. The fact that this group only required the services of one practitioner of the petitioner’s specialty does not elevate the petitioner to a more critical or leading role than the remaining medical staff.

On appeal, counsel asserts that the petitioner’s participation as a panelist and speaker at several conferences serve to meet this criterion. We are not persuaded that every panelist and speaker at a scientific conference serves a leading or critical role for the entity organizing the conference or even the conference itself. Rather, we have considered the minimal evidence of conference presentations as comparable evidence relating to the authorship of scholarly articles pursuant to the criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi). Counsel then reviews the petitioner’s past employment.

As stated above, [REDACTED] asserts that the petitioner was the Head of the Neuropsychological Area of the Neurology Department at University Hospital from 2000 through 2002. Without an organizational chart or other evidence of the hierarchy at the hospital, we cannot determine whether this role is leading or critical for the hospital as a whole beyond the obvious need to employ competent physicians.

Finally, [REDACTED] confirms that the petitioner was the Head of Neuropsychology at the Instituto de Psiquiatria (IPBI) from 1996 through 2000. The record, however, does not establish that medical facilities and hospitals routinely have a large neuropsychology divisions or departments. Rather, given that the petitioner was the sole practitioner of neuropsychology with the Swiss Group, it would appear that it is a specialty with a limited number of practitioners at a given medical facility. Without additional evidence regarding the size of the neuropsychology division at the Instituto de Psiquiatria and an organizational chart or other evidence of the hierarchy at the institute, we cannot determine whether the petitioner’s role was leading or critical.

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

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submitted a letter from [REDACTED] confirming:

[The petitioner] received an annual financial compensation of USD \$70,000. For a neuropsychologist of her caliber, the specified pay reflects her advanced level of expertise in her field of specialty.

The director specifically requested evidence that would allow a comparison of the petitioner’s remuneration with that of others in the field nationally. The petitioner did not submit the requested evidence and, thus, the director concluded that the petitioner had not demonstrated how her remuneration compared with other remuneration in the field nationally. Counsel does not address this

criterion on appeal and we concur with the director. Without evidence that the petitioner's remuneration compares with the top neuropsychologists nationwide in Argentina, we cannot conclude that she meets this criterion.

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 herself as a neuropsychologist to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a neuropsychologist, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.