



U.S. Citizenship
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FILE: [REDACTED]
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Office: NEBRASKA SERVICE CENTER

Date: **JAN 28 2008**

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:

SELF-REPRESENTED

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, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner submits a personal statement and additional evidence. For the reasons discussed below, while we withdraw the director’s adverse finding regarding the significance of the petitioner’s publication record, we uphold the director’s overall conclusion that the petitioner has not demonstrated his eligibility for the exclusive classification sought.

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 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 biomedical researcher. 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.

On appeal, the petitioner notes that he submitted letters from a Nobel Laureate and a member of the National Academy of Sciences and that their opinions "can not be doubted or challenged at all." The letters all focus on one criterion, contributions of major significance, set forth at 8 C.F.R. § 204.5(h)(3)(v). The director concluded that the petitioner meets this criterion based on the letters, supported by the petitioner's publication and citation record. Thus, it does not appear that the director ignored the reference letters. We concur with the determination that the petitioner meets that criterion. To hold that meeting one criterion creates a presumption of eligibility, however, would be to render meaningless the statutory requirement for "extensive documentation" and the regulatory requirement that an alien meet at least three of the regulatory criteria. For the reasons discussed below, we find that the petitioner meets only one other criterion, the scholarly articles criterion. As will be explained further, the evidence falls far short of meeting any other criterion.

The remaining criteria follow.

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

Initially, the petitioner asserted that his graduate/postdoctoral travel award from the American Society for Biochemistry and Molecular Biology (ASBMB) and a Japanese research grant serve to meet this criterion. The petitioner submitted a Certificate of Participation in the ASBMB "Graduate/Postdoctoral Travel Award Program." The petitioner also submitted a copy of his research grant from the Sasakawa Health Science Foundation (SHSF).

In response to the director's request for additional evidence, the petitioner asserted that the travel grant was only awarded to a limited number of attendees and that the recipients of these grants "represent the next generation of researchers in the global scientific community." The petitioner further asserted that the research grant considers the applicant's past achievements that the petitioner used part of the grant money to purchase expensive books. The petitioner submitted a letter from [REDACTED] Meetings Manager at ASBMB, asserting that ASBMB issues a "limited number" of travel awards in the graduate/postdoctoral category "to help defray travel related costs associated with attendees' presenting a current research abstract at the annual meeting."

The director concluded that the petitioner had not established that his awards were nationally or internationally recognized. On appeal, the petitioner submits additional documentation regarding the

entity that issued his research grant, SHSF. The petitioner asserts that the grantees must be Ph.D. students, postdoctoral researchers or visiting scholars; be recommended by a mentor or principal investigator at the hosting Japanese institution and have substantial research achievements. The petitioner further asserts that the applications are carefully considered and only a "small percentage" of the applications are approved for funding. The English portion of the website materials submitted does not support the petitioner's assertions. The petitioner did not submit a complete certified translation of the foreign language website materials as required under 8 C.F.R. § 103.2(b)(3). The petitioner also submits the detailed statement of his expenses, asserting that they covered personal expenses such as textbooks. The list of expenses, however, reveals that they all related to his project, albeit travel and reference materials such as textbooks. While the expenses confirm that the research grant also included a stipend to assist with the costs of coming to Japan and pursuing the proposed research, they do not suggest that the petitioner received a cash award in recognition of past achievements independent of future obligations.

The SHSF research grant simply funded the petitioner's research and incidental costs. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement. Moreover, even if we accepted the petitioner's unsupported list of requirements for the grantees, those requirements suggest that grantees work under mentors and principal investigators and, thus, are not mentors and principal investigators themselves. Where the most experienced and renowned members of the field are not eligible to compete for grant money, the grantees cannot be presumed to be within the small percentage that has risen to the top of the field.

Competition for graduate/postdoctoral travel grants is limited to graduates and recent graduates. The most experienced experts in the field do not compete for these stipends. Thus, they cannot establish that a petitioner is one of the small percentage who has risen to the 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.

Initially, the petitioner claimed to meet this criterion through his prior membership in the American Heart Association (AHA), ASBMB, the American Society for Cell Biology, the American Diabetes Association and the Japan Diabetes Society (JDS), although he concedes that the annual fees for these associations have caused him to let his memberships lapse. The petitioner remained, however, a member of the North American Association for the Study of Obesity (NAASO). The petitioner submitted his membership card for NAASO.

In response to the director's request for additional evidence, the petitioner asserted that he was submitting evidence regarding some of his past memberships and evidence regarding NAASO's requirements for membership in the fellow category. The petitioner does not assert that he is a fellow and the petitioner's membership card, submitted initially, does not indicate that the petitioner is a fellow. The director concluded that the evidence was insufficient to meet this criterion.

On appeal, the petitioner resubmitted his membership card for NAASO, which does not identify him as a fellow; the petitioner's 1998 membership card for JDS and foreign language Internet materials about JDS. The petitioner asserts that the Internet materials state that JDS members must be six-year medical school graduates or master degree holders, be first author on an article appearing in a journal with international scope and obtain a reference from a JDS board member. The petitioner did not submit a complete certified translation of the Internet materials as required under 8 C.F.R. § 103.2(b)(3). Even if we accepted the petitioner's assertions about JDS membership, completed education, authorship of an article and a reference letter are not outstanding achievements.

In addition, the petitioner submitted an undated letter inviting the petitioner to apply for membership in the American Society for Nutrition (ASN). While the letter indicates that over eighty years, ASN has had three Nobel Laureates as members, nothing in the letter suggests that membership is limited to those with outstanding achievements. Rather, ASN appears to be a professional society that provides forums for sharing recent research in nutrition. Regardless, the record lacks evidence that the petitioner had been accepted to membership in ASN as of the date of filing, the date as of which the petitioner must demonstrate his eligibility. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

In light of the above, the petitioner has not demonstrated 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.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about" the petitioner. Initially, the petitioner submitted evidence downloaded from the "Web of Science" listing the citations of seven of the petitioner's articles. In response to the director's request for additional evidence, in which the director acknowledged the submission of citation evidence, the petitioner asserted that the citations were sufficient to meet this criterion. The director concluded that the articles citing the petitioner's work were not primarily "about" the petitioner. The petitioner does not contest this conclusion on appeal and we concur with the director.

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 director concluded that an invitation to review manuscripts submitted for publication could not serve to meet this criterion. As noted by the petitioner on appeal, however, the petitioner did not submit such evidence. Rather, he submitted an invitation to present his as of yet unpublished research at a conference. We will consider that invitation under a more appropriate criterion below. It remains, however, that the record lacks evidence to meet 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 a book chapter, eight published articles and several abstracts and conference presentations. As stated above, the petitioner was also invited to give a 10-minute presentation on his unpublished research at the 2006 Gordon Research Conference. In response to the director's request for additional evidence, the petitioner asserts that his work appeared in prestigious journals and discusses his citation record. The petitioner submitted an electronic mail notice from [REDACTED] of Humana Press asserting that the book carrying the petitioner's chapter sold 253 print copies in 2005, 33 print copies in 2006 and one eBook copy in 2006. The director concluded that the petitioner had not established that his publication record set him apart from others in the field. The petitioner does not address this criterion on appeal.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." Moreover, for biological scientists, the Department of Labor's Occupational Outlook Handbook 151 (2006-2007 ed.) reflects that a "solid record of published research is essential in obtaining a permanent position involving basic research." This information reinforces CIS's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

The record establishes that one of the petitioner's articles is widely and frequently cited while other articles are moderately cited. Less significantly, but also worth noting, the petitioner was invited to prepare a presentation at the Gordon Research Conference. We are persuaded that the petitioner meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

Initially, the petitioner noted that he had been invited to present his work at the Gordon Research Conference held at the University of New England in June 2006. The petitioner submitted the invitation, which advised that the petitioner would have a maximum of 10 minutes to present his work

to be followed by a five-minute discussion. The petitioner, however, only expressly asserted that this evidence was relevant to this criterion in response to the director's request for additional evidence. The director concluded that the petitioner had not established the reputation of the conferences where he presented his work.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires evidence of display at an *artistic* exhibition or showcase. A scientific conference is not an artistic exhibition or showcase. Thus, we find that this criterion is not applicable to the petitioner's field. We find that conference presentations are far more comparable to scholarly articles than artistic exhibitions and showcases. Thus, we have already considered the petitioner's conference presentations under the scholarly articles criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi).

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

While the petitioner did not claim to meet this criterion initially, in response to the director's request for additional evidence, the petitioner asserts that he played a critical role "ensuring the research project being conducted smoothly, effectively, and successfully in the Intramural Research Program" at the National Institutes of Health (NIH). The director concluded that the petitioner had not established that he played a leading or critical role for NIH.

The petitioner does not address this criterion on appeal. We have considered the petitioner's contributions above. At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim. The petitioner's pay statements reflect that his position with NIH is that of "research fellow." The petitioner has not established that the "research fellow" position is a leading or critical role for NIH as a whole beyond the obvious need for NIH to employ competent research fellows.

In light of the above, the petitioner has not established that he 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 did not initially claim to meet this criterion. In response to the director's request for additional evidence, however, the petitioner asserted that he earned above the "Average Annual Stipend" for a postdoctoral researcher, which the petitioner asserted was \$37,123.45. He also noted that he has received four performance cash awards from NIH. The petitioner submitted evidence that, as of the date of filing, his basic rate of pay was \$52,083 and that he received four cash incentives of between \$967 and \$1,500. The petitioner did not submit any evidence supporting his assertion that the average remuneration for a postdoctoral research is \$37,123.45. The director concluded that the

petitioner had not submitted evidence of wages in the field for comparison purposes. The petitioner does not address this criterion on appeal.

We will not narrow the petitioner's field to postdoctoral researchers, an inherently entry-level position. Even assuming that the petitioner's remuneration is above that of the average postdoctoral researcher, he must demonstrate that his remuneration compares with the most experienced and renowned members of his field nationally. Without such evidence, the petitioner cannot demonstrate that he meets this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

As acknowledged by the petitioner, this criterion does not apply to him.

Finally, the conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. In addition to the subjective letters and the petitioner's publication record, which we have acknowledged as noteworthy above, the petitioner, a research fellow with NIH, relies on his travel and research grants, his professional memberships and his employment with NIH. While this may distinguish him from other postdoctoral researchers and research associates, we will not narrow his field to others with his level of training and experience. According to the petitioner, the references in this matter include a Nobel Laureate (██████████ makes no such claim and his curriculum vitae is not in the record) and a member of the National Academy of Sciences, a highly exclusive membership. In addition, the references include Department Chairs, Section/Division Chiefs and directors of research centers. Two references indicate that they have authored more than 200 published articles. One reference serves on the council of the JDS. Thus, it appears that the highest level of the petitioner's field is far above the level he has attained.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a biomedical 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 biomedical researcher, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.