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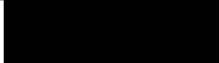
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FILE:



Office: NEBRASKA SERVICE CENTER

Date: **MAR 06 2008**

EAC 06 011 53385

IN RE:

Petitioner:



Beneficiary:

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*  
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 (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, the petitioner submits a personal statement and additional evidence, most of which relates to achievements that postdate the filing of the petition on October 17, 2005. For the reasons discussed below, we uphold the director’s decision. As explained at the end of this decision, the conclusions we reach in evaluating the evidence as it relates to individual criteria is consistent with a review of the evidence in the aggregate.

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 postdoctoral fellow. While neither the statute nor the regulations explicitly preclude an alien in an entry-level position from establishing eligibility, the petitioner bears a heavy burden. We will not narrow the petitioner's field to those who have received their doctoral degrees in the last few years. Rather, the petitioner must establish that she is one of the small percentage at the top of her field, including the most experienced and renowned members of her field.

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 director concluded that the petitioner meets two of the regulatory criteria: contributions of major significance pursuant to 8 C.F.R. § 204.5(h)(3)(v) and authorship of scholarly articles pursuant to 8 C.F.R. § 204.5(h)(3)(vi). We will not contest those conclusions. Thus, the petitioner must establish that she meets a third criterion. For the reasons discussed below, we concur with the director that the remaining evidence falls far short of meeting any other criterion. The remaining criteria that are claimed follow.<sup>1</sup>

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

Initially and in response to the director's request for additional evidence (RFE), the petitioner relied on a Fight For Sight (FFS) postdoctoral research fellowship and a travel award from the Association for Research in Vision and Ophthalmology (ARVO) to meet this criterion. According to the materials submitted in response to the director's RFE, FFS fellowships are restricted to "those who are within 3 years of the awarding of their doctorate." The stipends are designed to fund future research. The materials submitted in response to the director's RFE also establish that ARVO travel grants are limited to those in full-time training for a medical degree or Ph.D. or recent doctoral recipients.

The director concluded that the travel grant was designed to provide financial assistance in attending a meeting to those with limited means and that the fellowship was designed to fund future research rather than recognize past excellence.

The petitioner no longer claims to meet this criterion on appeal and we concur with the director. Awards limited to those who are still in school or who have only recently completed their academic training are not consistent with that small percentage at the top of the field. In addition, we concur with

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

the director that fellowships are principally designed to fund future research rather than recognize past excellence in the field.

In light of the above, the petitioner has not established that she 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 and in response to the director's RFE, the petitioner claimed to meet this criterion through her postdoctoral membership in the Society for Developmental Biology and her regular membership in the Genetics Society of America (GSA), the American Association for the Advancement of Science (AAAS) and ARVO. According to the materials submitted in response to the RFE, ARVO requires that members demonstrate "a serious interest in or making [sic] significant contributions to visual science." Evidence to establish eligibility for membership includes evidence of scientific publications, attendance at meetings or direct involvement in research. None of these accomplishments appear outstanding for a researcher engaged in his field of endeavor. While the petitioner submitted evidence that AAAS membership includes Nobel Laureates, at issue are the membership requirements. The materials submitted in response to the RFE reflect that AAAS is "open to all." The materials about the Society for Developmental Biology reveal that its membership includes "developmental biologists at all stages of their careers." Finally, the petitioner's RFE response includes evidence that GSA is open to "all persons interested in genetics."

The director concluded that none of the associations of which the petitioner is a member require outstanding achievements of their members. The petitioner does not challenge this conclusion on appeal and we concur with the director's analysis and conclusion.

*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.*

Initially, the petitioner relied on an editorial commentary in *Neuron* discussing the petitioner's article in the same issue. In the RFE, the director noted that the petitioner was not mentioned by name in the *Neuron* editorial commentary. In response, the petitioner affirmed her role in the research discussed in *Neuron* and submitted evidence that an editorial commentary in *Developmental Cell* discussed another article of hers and mentioned her by name. This new commentary postdates the filing of the petition. The petitioner also submitted evidence that her work was mentioned in the *JHU Gazette*, also after the date of filing.

The director concluded that the petitioner had not established that the *JHU Gazette*, which appears to be a campus newspaper at the university where the petitioner works, is major media. The director

further concluded that the petitioner had not established that the commentary in *Developmental Cell* afforded the petitioner any exposure beyond the publication of her article in the same issue.

On appeal, the petitioner asserts that the director failed to consider the witness letters that establish the significance of her role in the research discussed in *Neuron*. The petitioner further asserts that the director erred in concluding that the commentary in *Developmental Cell* did not distinguish the petitioner's research as more significant than other research in the field. Finally, the petitioner submits evidence that a press release from Johns Hopkins reporting on the petitioner's recent findings has been posted on several scientific websites. This press release, which appears on the different websites with the exact same language, includes no byline and lists its source as Johns Hopkins, postdates the filing of the petition.

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) is unambiguous; it requires evidence of published materials "about the alien" relating to his work, not simply "about" the petitioner's work in the field. *Cf.* 8 C.F.R. § 204.5(i)(3)(i)(C) (relating to outstanding researchers under section 203(b)(1)(B) of the Act). Thus, the director was justified in finding that a commentary that does not mention the petitioner by name cannot be considered "about" the petitioner.

Regardless, we are not persuaded that the commentary is indicative of or consistent with national or international acclaim or status within that small percentage at the top of the field. We note that these standards are set forth in the statute at section 203(b)(1)(A) of the Act. Thus, any evidence submitted to meet a given criterion must be indicative of or consistent with these standards if they are to have any meaning. The commentary in *Neuron* is more akin to a promotion of the petitioner's article by the publisher than independent journalistic coverage of the petitioner and her work. It does not garner her any recognition in the field beyond those already reading the issue of *Neuron* in which her article appears.

The article in the *JHU Gazette*, the commentary in *Developmental Cell* and the press releases submitted on appeal all postdate the filing of the petition. The petitioner must establish her eligibility as of the filing date in this matter. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Thus, we cannot consider this new evidence.

In reaching our conclusion regarding this criterion, we do not contest that the evidence submitted to meet this criterion has relevance. We are persuaded that the evidence reflects on the significance of the petitioner's contributions and scholarly articles, criteria the director acknowledged that the petitioner meets. We are not persuaded, however, that the evidence can serve to meet this criterion, which requires published material in major media about the petitioner and relating to her work.

*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 submitted a letter from [REDACTED] Editor-in-Chief for the *Chinese Journal of Gastroenterology and Hepatology* asserting that the petitioner was a “specially invited reviewer” for that journal. In response to the director’s RFE, the petitioner submitted copies of the journal, articles in the journal and its requirements for manuscript submissions. The director concluded that peer review is not unique in the petitioner’s field and that the petitioner had not established that her peer review duties set her apart from others in the field. On appeal, the petitioner challenges the director’s statement that peer-review is common and asserts that the director applied a standard that goes beyond the regulation. Finally, the petitioner further asserts that she has reviewed manuscripts for the *Journal of China Medical University*.

We cannot ignore that the thousands of quality scientific journals in existence are peer reviewed and rely on many scientists to review submitted articles. Thus, we concur with the director that peer review is routine in the field and that not every peer reviewer enjoys sustained national or international acclaim. Without evidence that sets the petitioner apart from others in her field, such as evidence that she has 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 display of the alien’s work in the field at artistic exhibitions or showcases.*

Initially, the petitioner asserted that her presentations at scientific conferences serve to meet this criterion. In the RFE, the director noted that the regulation relates to artistic exhibitions or showcases. The petitioner no longer claims to meet this criterion. We concur with the director that this criterion is not applicable to the petitioner’s field and that the petitioner’s conference presentations are better considered as comparable to scholarly articles pursuant to 8 C.F.R. § 204.5(h)(3)(vi), a criterion the petitioner meets.

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. The petitioner, a postdoctoral fellow, relies on her publications, citation record, the publication of a promotional commentary about her work in the same issue in which it was published and service as a peer-reviewer. While this may distinguish her from other postdoctoral researchers, we will not narrow her field to others with her level of training and experience. [REDACTED], a senior scientist at SAIC and one of the petitioner’s references, was a member of the Editorial Board for the *Chinese Journal of Arteriosclerosis*. [REDACTED], Chair of the Department of Cell Biology at Harvard Medical School and another of the petitioner’s references, is a member of the Institute of Medicine and the National Academy of Sciences and has served on numerous scientific advisory boards, National Institutes of Health (NIH) review panels and editorial boards. [REDACTED] Chairman of the Department of Biological Chemistry at Johns Hopkins and a third reference, has served on multiple NIH grant review panels and is an editor for two journals. Thus, the top of the petitioner’s field is far above the level she has achieved.

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 researcher 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 postdoctoral fellow, 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.