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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **MAR 31 2008**  
SRC 07 124 51325

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

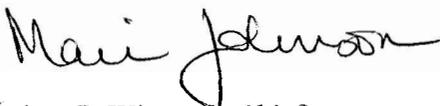
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to  
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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, counsel’s sole assertion is that the director erred in denying the petition because the director’s request for additional evidence (RFE) only asked for evidence of the petitioner’s intent to continue in his field, which the petitioner provided. Counsel does not address the director’s specific concerns, submit additional evidence to address the deficiencies identified by the director in the denial or assert that additional evidence of the petitioner’s alleged acclaim exists. Rather, counsel simply requests that the petition be approved based on the director’s alleged procedural error.

The regulation at 8 C.F.R. § 103.2(b)(8) provides that if there is evidence of ineligibility in the record, an application or petition shall be denied on that basis notwithstanding any lack of required initial evidence. While the director’s RFE could have been more comprehensive by noting the deficiencies raised in the final denial, this omission could most expediently be remedied by considering on appeal any evidence that might have been submitted in response to a more comprehensive RFE. We do not consider approving a petition that lacks supporting evidence of eligibility to be an appropriate remedy. The denial provided notice of the deficiencies in the record. Neither counsel nor the petitioner has made any attempt to address those deficiencies or identify evidence that might have been submitted to address those deficiencies. Thus, counsel has provided no reason why this office should remand the matter to the director for a more comprehensive RFE. As such, the appeal will be adjudicated on the evidence previously submitted. For the reasons discussed below, we concur with the director that the evidence reveals that the petitioner does not enjoy the necessary sustained national or international acclaim.

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 physician. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, he claims, meets the following criteria.<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, counsel asserted that the petitioner was submitting evidence of "Awards and Memberships in Societies." Under this heading, however, counsel only discussed the petitioner's alleged "leading and critical roles," his work as a "prolific teacher," the publication of the petitioner's case studies, his presentations and his memberships. The director concluded that no evidence was submitted of lesser nationally or internationally recognized prizes or awards and we concur with that conclusion. All of the evidence discussed by counsel under this heading relates to other criteria and will be discussed below. None of those claimed accomplishments constitute prizes or awards.

*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.*

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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.

Initially, counsel asserted that the petitioner had been “selected for membership to the most respected and renowned gastroenterology societies in the country and the world.” The petitioner submitted letters from the American Society for Gastrointestinal Endoscopy (ASGE) and the New York Society for Gastrointestinal Endoscopy (NYSGE) affirming his membership in these societies. The petitioner also submitted evidence that ASGE has over 9,000 members “who utilize endoscopy as a diagnostic and therapeutic method of treatment for diseases of the digestive tract.” These materials do not indicate or suggest that ASGE requires outstanding achievements of its members. Rather, it appears to be a professional association open to most if not all members of the profession. The petitioner did not submit the membership requirements for the NYSGE. Regardless, this appears to be a local association.

The petitioner also submitted evidence that the American College of Gastroenterology is open to those who meet certain education requirements. First, the petitioner has not demonstrated that he is a member of the college. Regardless, meeting education requirements is not an outstanding achievement. Rather, the education required appears commensurate with the petitioner’s occupation. Thus, it does not appear that recognized national or international experts in the discipline judge prospective members.

In light of the above, we concur with the director that the societies of which the petitioner is a member do not require outstanding achievements. As such, he 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.*

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 clinical medicine, it can be expected that a new diagnostic procedure would be widely adopted or at least under consideration at a number of hospital or clinics. Otherwise, it is difficult to gauge the impact of the petitioner’s work.

The petitioner relies at least partly on reference letters to meet this criterion. 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. 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 his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

On his curriculum vitae, the petitioner indicated that he had worked as a house staff physician at Coney Island Hospital in Brooklyn from June 2002 through June 2005 and that he has since been working as a physician at the Maimonides Medical Center, which is affiliated with the Mount Sinai School of Medicine in New York.

The petitioner submitted a letter from [REDACTED] who identifies himself as a governor of the American College of Gastroenterology and submits his letter on the college's letterhead. [REDACTED] asserts that his opinion is based on a review of the petitioner's resume and his reputation in the field. A review of [REDACTED] curriculum vitae, however, reveals that he is also currently an assistant professor of medicine at the Mount Sinai School of Medicine. Moreover, the record establishes that he coauthored a study with the petitioner presented at a 2006 meeting of the American College of Gastroenterology. Thus, it would appear that [REDACTED] knowledge of the petitioner actually derives from his personal association with the petitioner.

[REDACTED] asserts that the petitioner is "one of our nation's foremost experts" in the most advanced form of endoscopy, endoscopic ultrasound (EUS), "whereas the vast majority of his peers rely on conventional methods." [REDACTED] explains that EUS is less invasive than traditional endoscopy and discusses the importance of EUS as a diagnostic test. [REDACTED] acknowledges, however, that the Maimonides Medical Center "is one of only [a] few centers equipped with this novel modality and they have performed over many [sic] procedures." While [REDACTED] asserts that the petitioner is one of the few physicians with the expertise to perform the procedure, he does not explicitly rule out the possibility that the limited number of these procedures might be due more to the lack of equipment than expertise. He does not explain how having more physicians with this expertise can overcome the lack of equipment at most facilities. We note that the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, the issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 (Commr. 1998). Moreover, [REDACTED] does not explain how learning to use technology developed by others or even passing on that knowledge to interns is an *original* contribution.

[REDACTED], Director of the Division of Liver Diseases at the Mount Sinai School of Medicine, discusses the petitioner's work at that institution. Specifically, [REDACTED] asserts that the petitioner's case studies "continue to lead to improvements in the course of treatment for gastroenterology patients." [REDACTED] discusses the details of a few studies, noting their potential benefit. [REDACTED] provides no examples of independent hospitals adopting new techniques or strategies based on the petitioner's case studies.

[REDACTED], Program Director for the Division of Gastroenterology at the Maimonides Medical Center at the Mount Sinai School of Medicine, has coauthored studies with the petitioner. [REDACTED] discusses the importance and complexity of colorectal screening. We do not contest the importance of the petitioner's *area* of employment or the general value of having doctors who are trained in the latest diagnostic technology.<sup>2</sup> At issue for the classification sought is whether the petitioner is one of the small percentage who has risen to the top of the field and who enjoys sustained national or international acclaim in the field. [REDACTED] provides a similar discussion for other procedures the petitioner has mastered. [REDACTED] does not, however, explain how using technology developed by others is an *original* contribution or provide any examples of how the petitioner's ability to perform procedures developed by others has impacted the field.

[REDACTED], an associate professor of medicine at the Indiana University School of Medicine and another governor for the American College of Gastroenterology, does not explain how he came to know of the petitioner and his work. We note that, according to his curriculum vitae, he was an invited speaker at the Mount Sinai School of Medicine in 2006. [REDACTED] asserts that there is a shortage of qualified gastroenterologists in the United States. As stated above, however, the question of labor shortages does not fall under our jurisdiction. *NYS DOT*, 22 I&N Dec. at 221. Rather, the issue of shortages in a given occupation falls under the jurisdiction of the Department of Labor through the alien employment certification process. *Id.* [REDACTED] further asserts that the petitioner's expertise in both hepatology and advanced therapeutic "ERCP" allows the petitioner to identify and manage cirrhosis and end stage liver disease as well as Hepatitis. Merely having a diverse skill set, however, would not appear to be an original contribution of major significance in and of itself. Rather, the record must be supported by evidence that the petitioner has already used those combined skills to impact the field at the national or international level in an original way.

While [REDACTED] asserts that the petitioner is "far more qualified than the vast majority of his peers" to keep patients alive while waiting for a liver transplant and after receiving the transplant, he does not provide examples of unique treatments developed by the petitioner or explain how they are being adopted nationwide or worldwide. [REDACTED] does assert that the petitioner uses "the latest

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<sup>2</sup> Congress has devised the alien employment certification process, under the jurisdiction of the Department of Labor, to address the issue of whether there are sufficient workers who are able, willing, qualified and available. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a). Congress has also designed a program to address the need for physicians in designated shortage areas or veterans facilities. Section 203(b)(2)(B)(ii) of the Act. The petitioner in this matter does not seek benefits under either program.

medications.” [REDACTED] does not explain why prescribing medications developed by others is either original or of major significance to the field of medicine. Rather, it would appear that even the most minimally competent physician would take advantage of the latest medicines where appropriate. Finally, [REDACTED] asserts that the petitioner took part in a liver study that “provided critical insight into the field” of gastroenterology. [REDACTED] does not discuss the results of this study or explain how it has impacted the treatment of liver disease. We will discuss the petitioner’s publication record and the lack of evidence of its impact in the field below.

[REDACTED], an assistant professor of medicine at the University of Arkansas, asserts that his **opinion is an independent** one based on the petitioner’s “reputation in the field as well as a review of his CV.” [REDACTED] does not state whether or not he had ever heard of the petitioner prior to being asked to provide a letter of support. We note that, according to his own curriculum vitae, [REDACTED] did his residency training at Our Lady of Mercy Medical Center in New York from July 2001 through June 2003. [REDACTED] provides general praise of the petitioner, asserting that his expertise with the most modern and complex procedures has resulted in the survival of patients who might otherwise not have lived. [REDACTED] discusses a single patient treated by the petitioner but does not explain how the petitioner’s treatment of this patient has impacted the field of gastroenterology nationally or internationally. [REDACTED] also notes that the petitioner instructs interns. Participation in the routine training of interns in the latest procedures developed by others is not original and cannot establish that the petitioner has already impacted the field nationally or internationally.

The record also contains evidence that the petitioner has published and presented case studies in distinguished journals and conferences. The petitioner has not established that the mere authorship of case studies is indicative of or consistent with a contribution of major significance. The Internet materials for *Chest*, submitted by the petitioner, indicate that it publishes “cutting edge clinical investigations” in addition to “case studies,” suggesting that not every case study represents a cutting edge clinical investigation.

More persuasive than the case studies themselves would be objective evidence of their influence in the field, such as evidence that they are widely and frequently cited on a level consistent with sustained national or international acclaim. The petitioner submitted an exhibit entitled “citations.” The evidence included in the exhibit, however, does not establish that the petitioner has ever been cited. Rather, the petitioner simply searched for his own last name on Scholar.google.com and the name of his coauthor on Yahoo.com and submitted the results. The Scholar.google.com results pulled up articles *by* the petitioner but the links below the individual articles, which will list the number of citations when there are any, do not list any citations. While the search results may include several hits for the petitioner’s last name, without submitting a list of all of the results, we cannot conclude that any of them represent citations of the petitioner’s articles or even relate to the petitioner as opposed to other individuals with the same last name. The petitioner has not explained the significance of the Yahoo.com search for his coauthor’s last name.

While the petitioner is well trained and his case studies are no doubt of value, it does not follow that every well-trained physician who writes up case studies that add to the general pool of knowledge has inherently made an original contribution of major significance to the field as a whole. Without letters from a wide selection of independent hospitals or clinics who have adopted the petitioner's original procedures, if, in fact, the petitioner has even developed any original procedures, evidence of wide and frequent citation of his case studies or comparable evidence of an impact on the field, we cannot conclude 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.*

While counsel has not explicitly asserted that the petitioner meets this criterion, the petitioner did submit evidence relating to this criterion. As stated above, the petitioner has published and presented several case studies in journals and at conferences. Several of the petitioner's references assert that the invitations to present his work at different locations demonstrate his widespread notoriety. As stated above, however, the record lacks any evidence that other clinicians have cited or otherwise relied on his case studies. Even if we were to conclude that the petitioner meets this criterion because publication is not necessarily inherent to the occupation of a physician, the petitioner falls far short of meeting any other criterion for the reasons discussed above and below.

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

While the petitioner may have performed a "leading role" on a particular case study, the criterion requires us to look at his role for a specific organization or establishment. We have already considered the petitioner's alleged 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 indicates on his curriculum vitae that he has worked as a physician and house staff physician for hospitals in New York City. We are not persuaded that either position is leading or critical beyond the obvious need for a hospital to employ competent physicians. Thus, the petitioner has not established that he meets this criterion.

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 physician, relies on his professional memberships, publication and presentation of case studies and the accolades of colleagues. [REDACTED] is the Director of Medical Education and Research at the Maimonides Medical Center, Vice President of the New York State Society of Gastrointestinal Endoscopy and a fellow of the American College of Gastroenterology and the American College of Physicians. [REDACTED] has also authored 13 books and book chapters in addition to numerous articles and abstracts. [REDACTED] has similar leading roles and fellowships and

serves on the editorial board of four journals. Thus, the top of the petitioner's field appears to be far higher than 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 physician 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 physician, 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.