



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
disclosure of personal privacy



B2

FILE: EAC 03 091 52044 Office: VERMONT SERVICE CENTER Date: AUG 01 2005

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:

PUBLIC COPY

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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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 in the sciences. 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.

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 to the United States will substantially benefit prospectively the United States.

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 earned sustained national or international acclaim at the very top level.

This petition, filed on January 27, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a Research Scientist. At the time of filing, the petitioner was working as a Research Scientist in the Mouse Cancer Genetics Program, Center for Cancer Research, National Cancer Institute at Frederick, National Institutes of Health (NIH).

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 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.

We note here that the plain wording of this criterion requires “nationally or internationally recognized” prizes or awards for excellence in the field. The burden is on the petitioner to demonstrate the level of recognition and achievement associated with his awards.

The petitioner submitted a certificate presented to the “National Institute of Virology, Chinese Academy of Prevention Medicine” in 1993. The plain wording of the regulation, however, requires evidence of the “alien’s receipt of . . . prizes or awards for excellence.” It cannot suffice that the petitioner was one member of a large group that earned collective recognition. If the petitioner himself is not named on the certificate, then it is not apparent how such an award would demonstrate his individual acclaim.

The petitioner submitted two additional certificates:

1. “2nd Prize for Promoting National Science and Technology,” [REDACTED] September 1993
2. “3rd Prize . . . for Promoting National Science and Technology,” [REDACTED] December 1985

The record contains no information regarding the scope of these awards or how many other scientists were similarly recognized. The certificate numbers and fill-in-the-blank sections on the certificates suggest multiple recipients. There is no information regarding the total number of certificates annually distributed by the entities that recognized the petitioner, the criteria used in determining recipients for each particular prize, or the level of media coverage associated with the award presentations. We note here that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide adequate evidence to establish that the certificates presented under this criterion enjoy significant national stature. Simply alleging that an award is nationally recognized cannot suffice to satisfy this criterion. Contemporaneous evidence of national recognition associated with the awards is of far greater evidentiary value, particularly when the statute requires “extensive documentation” of sustained national or international acclaim. In this case, the petitioner has not shown that the above prizes were widely recognized beyond the organization that presented them.

The petitioner submitted a June 14, 1995 letter from the Executive Director of the Canadian Cystic Fibrosis Foundation stating: “Although our Foundation was originally unable to support your application for a Fellowship, I am very pleased to inform you that additional funding has now become available. It is my pleasure to advise you that you have been awarded a two-year Fellowship commencing 1 July 1995.”

Documentation pertaining to the above fellowship states that “Fellowships are offered by the Foundation each year for basic or clinical research training, in areas of the biomedical or behavioral sciences pertinent to cystic fibrosis.”

The petitioner submitted an August 5, 1998 letter from [REDACTED] Director, Fogarty International Center, NIH, stating:

It is a pleasure to send you this official notification of your award as a postdoctoral Visiting Fellow in the NIH Visiting Program. This award will enable you to gain biomedical research experience at NIH under the sponsorship of [REDACTED]

* * *

The period of this award is two years, effective September 28, 1998 through September 27, 2000.

Documentation pertaining to the above award states: "The Visiting Fellow award provides research training experience."

The preceding letters from NIH and the Canadian Cystic Fibrosis Foundation reflect the petitioner's selection for temporary scientific training opportunities rather than nationally or internationally recognized prizes or awards for excellence in the field. Fellowship appointments such as the petitioner's are presented not to established scientists with active professional careers, but rather to individuals seeking to further their research training and experience. The petitioner cannot artificially restrict his field to exclude all those researchers who have long since completed their advanced scientific training and therefore do not compete for such temporary positions. Therefore, it is implausible for the petitioner to argue that his eligibility for the above research fellowships elevates him to a level above almost all others in his field.

The petitioner also submitted evidence of funding he received from the Canadian Government's Networks of Centers of Excellence program. In regard to the research grants for which the petitioner or his employer applied and received funding, it is noted that research grants simply fund a scientist's work. 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 scientific research, and is not a national or international award to honor or recognize past achievement. Furthermore, we note that a substantial amount of scientific research is funded by research grants from a variety of public and private sources. Therefore, we are not persuaded that obtaining financial support for one's research is a rare mark of acclaim or extraordinary ability.

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence of his membership in the American Association for Cancer Research (AACR). The petitioner also provided information from the AACR's website indicating that this society has more than 19,000 members. The AACR's website further states:

Active membership in the AACR is open to investigators worldwide. Individuals who have conducted two years of research resulting in peer-reviewed publications relevant to cancer or and cancer-related biomedical science, or who have made substantial contributions to cancer research in an administrative or educational capacity, are eligible. Evidence of patents relevant to cancer research may be submitted as qualifications for membership in lieu of peer-reviewed publications.

Therefore, an individual who "conducted two years research resulting in peer-reviewed publications" is eligible for membership in this society. As publication is an inherent duty of researchers, the mere publication of scholarly articles is not adequate to demonstrate "outstanding achievement" in one's field.¹ The above guidelines make it clear that "outstanding achievement" is not a prerequisite for membership in the AACR.

The petitioner also submitted evidence of his membership in the American Society for Microbiology (ASM) and information from its website. According to its website, full membership in the ASM "is open to any person who is interested in microbiology and holds at least a bachelor's degree or equivalent experience in microbiology or related field."

The petitioner also submitted evidence of his membership in the American Breast Cancer Research Faculty Association. The record, however, includes no evidence of the bylaws or official membership requirements for this association showing that it requires outstanding achievement.

The preceding evidence is not adequate to demonstrate that membership in the above organizations required outstanding achievement in the petitioner's field or that he was evaluated by national or international experts in consideration of his membership. The record contains no evidence to establish that the preceding organizations require outstanding achievement of their members in the same manner as highly exclusive associations such as the U.S. National Academy of Sciences.

Published materials 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.

¹ 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 were the acknowledgement 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." This report reinforces Citizenship and Immigration Service's (CIS) conclusion that publication of scholarly articles is not presumptive evidence of outstanding achievement.

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. To qualify as major media, the publication should have significant national or international distribution.

The petitioner initially submitted two citations of his published work under this criterion.² The petitioner's appellate submission includes six additional citations that came into existence subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

On appeal, the petitioner argues that citation of his work by others in the field represents qualifying evidence under this criterion. We note, however, that the petitioner and his work were not the primary subject of the articles that cited his findings. Scientific articles which cite the petitioner's work are primarily about the author's own work, not the petitioner's work. As such, they cannot be considered qualifying published material about the petitioner's work. We cannot ignore that the articles citing the petitioner's work similarly referenced numerous other authors. In the petitioner's field, it is the nature of research work to build upon work that has gone before. In some instances, prior work is expanded upon or supported. In other instances, prior work is superseded by the findings in current research work. In either case, the current researcher normally cites the work of the prior researchers. Clearly this is not the same thing as published material written about an individual's work in the field. This type of material does not discuss the merits of an individual's work, the individual's standing in the field, or any significant impact that his or her work has had on work in the field. Citations of the petitioner's work will be addressed under a separate criterion.

We find no evidence to support the conclusion that the petitioner has been the primary subject of *sustained* national or international media attention.

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.

As previously noted, the regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. For example, evaluating the work of accomplished professors as a member on a national panel of experts is of far greater probative value than evaluating graduate students from one's research institution.

The petitioner submitted a December 13, 2002 e-mail indicating that he volunteered to evaluate abstracts at the 2003 Center for Cancer Research "Postdoc Retreat." According to the e-mail, it appears that the judges and participants in this event were all from NIH. The e-mail lists eight "Chief Judges" and sixteen judges. The petitioner was listed as a judge.

It has not been explained how evaluating abstracts prepared by postdoctoral researchers at NIH, the petitioner's immediate employer, elevates him above almost all others in his field at the national or international level.

² We note that both citations were self-citations by his co-authors, Dong-Yan Jin and Dr. Ilona Linnoila.

Furthermore, in this instance, we note that [REDACTED] a “Chief Judge,” rather than the petitioner, was the final authority for evaluating abstracts submitted under the “Pharmacology and Chemistry” category. There is no evidence showing that the petitioner was sought out because of his national recognition as an expert in the field. Rather, the petitioner, as an employee of NIH, simply volunteered to rank abstracts in the category of his choice. Peer review of manuscripts is a routine element of the process by which articles are evaluated for presentation at a scientific conference. Occasional participation in the peer review process does not automatically demonstrate that the petitioner has earned sustained national or international acclaim at the very top of his field.

Without evidence that sets the petitioner apart from others in his field, such as evidence that he has peer-reviewed an unusually large number of manuscripts for publication in various scientific journals, received multiple independent requests for his services from a substantial number of journals or conference committees, or served in an editorial position for distinguished journals (in the same manner as some of his witnesses), we cannot conclude 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 several letters in support of the petition.

[REDACTED], Head of the Experiment Pathology Section, Cancer and Cell Biology Branch, Center for Cancer Research, National Cancer Institute, NIH, states:

[The petitioner] worked as a NIH-visiting fellow in my laboratory from September 1998 to September 2000, and conducted innovative research aimed at discovering the role of CC10 protein in the lung carcinogenesis. The discoveries from those studies, we believe, ultimately, will be translated into developing novel therapeutic approaches for lung cancer treatment and prevention.

* * *

[The petitioner] has potential for making significant contributions to reducing the burden of cancer

[REDACTED] Head of Genetics of Cancer Susceptibility Section, Mouse Cancer Genetics Program, National Cancer Institute at Frederick, NIH, states:

[The petitioner] is a full research scientist/research fellow in my laboratory since 2000 October.

* * *

One of [the petitioner’s] exciting findings has been published in *Journal of Virology*, and rest of them are being submitted to *Cancer Research*, both are highly prestigious international scientific journals. . . . [The petitioner’s] another additional contribution to lung cancer research is that he is first person who revealed the role of Clara Cell 10 kD secretory proteins as caretaker to maintain cellular stability in

suppression of lung carcinogenesis. . . . This truly novel scientific finding is going to be submitted to *Nature Genetics*, another highly prestigious world top scientific journal.

The record, however, contains no evidence showing that the findings submitted to *Cancer Research* and *Nature Genetics* were published as of this petition's filing date. A petitioner, however, must establish eligibility at the time of filing. *See Matter of Katigbak* at 45, 49. We accept that the petitioner's work has yielded some useful and valid results; however, it is apparent that any scientific manuscript, in order to be accepted in for publication, must offer new and useful information to the pool of knowledge. It does not follow that every individual whose scholarly research is accepted for publication has made a major contribution in his field. Without extensive documentation showing that the petitioner's findings have been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that he meets this criterion.³ The petitioner's publications will be further addressed under the next criterion.

Letters from [REDACTED] Director, Mouse Cancer Genetics Program, National Cancer Institute at Frederick, NIH, and [REDACTED] Senior Investigator, Mouse Cancer Genetics Program, National Cancer Institute at Frederick, NIH, conclude by stating: "Overall, I have found [the petitioner] to be an enthusiastic, well-trained young scientist with excellent potential. He is studying important problems in cancer research and is making very good progress."

Many of the witnesses discuss the petitioner's "potential" to make future contributions. Speculation regarding the future impact of the petitioner's work is not adequate to demonstrate that his work is already nationally or internationally acclaimed as a major contribution. The petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

In regard to the initial letters of support, we note that all of them were written by either the petitioner's former research supervisors or his immediate colleagues at NIH. This fact indicates that while the petitioner's work is valued by those close to him, others outside his immediate circle are largely unaware of his research and do not attribute the same importance to his work. With regard to the personal recommendation of individuals from institutions where the petitioner has studied or worked, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the petitioner has earned sustained acclaim outside of his affiliated institutions. If the petitioner's reputation is mostly limited to those institutions, then he has not achieved national or international acclaim regardless of the expertise of his witnesses.

On appeal, the petitioner submits letters from [REDACTED] of the Armed Forces Institute of Pathology, [REDACTED] of the Sidney Kimmel Comprehensive Cancer Center, and [REDACTED] of NIH. We note here that the single paragraph devoted to the petitioner in each of their letters consists of virtually the exact same observations. It is not clear who is the actual author of their common statements, but it is highly improbable that all three of these individuals independently formulated the exact same wording. It is acknowledged that these individuals have lent their support to this petition, but it remains that at least two of

³ According to the citation history submitted by the petitioner, the greatest number of times one of his published articles had been cited was three times, including a self-cite by [REDACTED]

them did not fully prepare their own observations. We further note that none of these letters specifically identify or discuss any particular research finding of the petitioner's that has had a lasting or wide-ranging impact on the field of human disease pathogenesis.

A simple comparison of the achievements of the witnesses in this case with those of the petitioner shows that the petitioner has not yet amassed a record of accomplishment placing him at or near the top of his field. That these individuals have in some cases demonstrated achievements which far exceed those of the petitioner demonstrates that, however esteemed he may be and whatever future promise his career may hold, the petitioner has not yet reached the top of his field. Even if it were unanimously agreed that the petitioner would one day reach such a level, this visa classification is reserved for those at the top of their field, not for those who are expected eventually to reach that level.

In the present case, we cannot conclude that petitioner's past contributions far exceed those of other capable biomedical researchers. The evidence is not adequate to show that his work is nationally or internationally acclaimed throughout his field as a contribution of major significance.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner initially provided evidence of his authorship of articles appearing in publications such as *Journal of Virology*, *Laboratory Investigation*, *Chinese Journal of Science*, and *Chinese Journal of Virology*. On appeal, the petitioner submitted evidence of additional articles published subsequent to January 2003. This evidence, however, came into existence subsequent to the petition's filing date. See *Matter of Katigbak* at 45, 49. New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date.

We do not find that publication of scholarly articles is presumptive evidence of sustained national or international acclaim; we must also consider the greater scientific community's reaction to those articles. When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner himself has cited sources in his own articles. Numerous independent citations would provide firm evidence that other researchers have been influenced by the petitioner's work and are familiar with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the greater field, then it is reasonable to conclude that the alien's work is not nationally or internationally acclaimed.

On appeal, petitioner submits citation indices showing that his work has been cited by others eight times, including two self-citations by his co-authors. Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers. While the citation indices provided by the petitioner demonstrate a small degree of interest in his published work, he has not shown that an aggregate total of six independent citations over a research career spanning more than a decade elevates him to a level above almost all others in his field at the national or international level. We accept that the petitioner has

authored some published papers over the last several years, but the weight of this evidence is diminished by a lack of evidence showing that his published findings are widely influential.

Several months after filing the appeal, the petitioner has since submitted further documents in June 2005. There is, however, no regulation that allows the petitioner an open-ended or indefinite period in which to supplement an appeal once it has been filed. The regulation at 8 C.F.R. § 103.3(a)(2)(vii) states “[t]he affected party may make a written request to the AAU for additional time to submit a brief. The AAU may, for good cause shown, allow the affected party additional time to submit one.” The petitioner indicated only that further information would be forthcoming within thirty days; he had not requested (let alone been granted) additional time to submit the later submission, nor had he shown good cause to warrant repeated extensions. The regulations do not state or imply that the petitioner may freely supplement the record up until the date of appellate adjudication. In this matter, we have considered only those submissions that were received within the thirty-day period requested by the petitioner. The petitioner’s subsequent submission in June 2005, apart from being untimely, consists of three witness letters that discuss research findings that were published in August and September of 2003, subsequent to the filing of the petition. *See Matter of Katigbak* at 45, 49. Subsequent developments in the petitioner’s career cannot retroactively establish that he was already eligible for the classification sought as of the filing date.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien’s entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate 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.

Review of the record does not establish that the petitioner has distinguished himself 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 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.