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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUL 18 2005

EAC 03 218 51445

IN RE: Petitioner:
Beneficiary [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

Robert P. Wiemann, 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 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 she has sustained national or international acclaim at the very top level.

According to Part 6 of the petition, it seeks to classify the petitioner as an alien with extraordinary ability as an instructor. 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.[1]

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

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

In his initial cover letter, counsel asserts that in 1998, the petitioner received the "International Renaissance Foundation – Open Society Institute (New York) Award (George Soros)." Counsel characterizes this award as "a highly competitive international award with a significant monetary stipend attached to it." The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Several of the petitioner's references assert that the petitioner received a 1998 "International Science Foundation prize." None of the references attest to any personal knowledge of this award. Exhibit C includes the petitioner's academic diplomas and a second place diploma in the VII Scientific Competitive Conference of Young Investigators of the South Regional Scientific Center of the Academy of Science of the Soviet Union. Exhibit D includes a 1994 grant from INTAS and a foreign language document with a partial translation. The partial translation, which is not certified as required pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), reflects that the document is a letter to the petitioner advising him of "a grant for scholars and educators" from the Board of International Science and Education Program (ISEP). The top of the translation reads:

> International Renaissance Foundation
> Open Society Institute (New York)
> International Science and Education Program

The uncertified partial translation does not include any information as to the size of the monetary "award."

The director concluded that the petitioner had not established that the two "grants" in the record were nationally or internationally recognized awards or prizes.

On appeal, counsel states:

> Pure boilerplate garbage. In appendix D, a copy of the International Renaissance Foundation Award letter was copied, with a translation of the opening paragraph in English. This was a monetary award based on an international competition. This award, and two others were described in more detail in the cover letter as well as the letters from various referees. All of this evidence was ignored by the examiner.

We cannot fault the director for failing to consider documentation of a "prize" that does not meet the regulatory requirements for foreign language evidence. Specifically, as stated above, the regulation at 8 C.F.R. § 103.2(b)(3) requires a full certified translation for all foreign language documentation. Moreover, the claims regarding the significance of this recognition are unsupported in the record.[2] Finally, counsel's personal

[2] While we are under no obligation to research information that should have been provided in support of the petition, and do not fault the director for not having done so, we have verified, via the Internet, that the website on the foreign language document is for the International Renaissance Foundation in the Ukraine, which is funded by George Soros. We emphasize that such information is not necessarily commonly known such that the director should have taken administrative notice of such a relationship. Rather, the petitioner should have provided the evidence we so easily obtained. The foundation, however, "makes its grants only to non-governmental organizations." As such, it appears that the award, while funded by the foundation, may be directly from the ISEP. Our Internet research into the ISEP reveals that it actually stands for the International Student Exchange Program. We were unable to find any information about the "Board of

assertions regarding the significance of this "prize" cannot be considered evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Finally, while several references mention a 1998 "International Science Foundation's prize" they do not discuss its significance as claimed by counsel. The record does not establish the relationship of the "International Science Foundation" to the "International Renaissance Foundation."

Regarding the other grants, research grants simply fund a scientist's work. 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.

In light of the above, the petitioner 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.

The director acknowledged the submission of witness letters and published articles. The director concluded that the letters were not sufficiently independent and that the petitioner's publication record, without evidence of citation, could not establish the petitioner's impact in the field.

On appeal, counsel's only response is that the director's use of the phrase "national interest" nullifies the director's entire analysis of this criterion. Counsel asserts that the director's use of this phrase, which relates to a lesser classification, constitutes a "vast use of meaningless boilerplate [language]" indicating that the adjudicator is "incompetent, or lazy or both." While the national interest waiver relates to a lesser classification, an evaluation of whether an alien has a track record of success with some degree of influence on the field as a whole is not unrelated to the type of evaluation necessary for this criterion, although the standard is less stringent. As the national interest waiver is a less stringent standard, we can hardly conclude that the petitioner was prejudiced by the director's apparently inadvertent use of the phrase. Of more concern would be an extraordinary ability analysis in a national interest waiver decision. We further note that on page 3 of counsel's initial cover page that accompanied *this* petition, counsel asserts that the petitioner's work "is clearly in the national interest." Other references make similar statements, also using the phrase "national interest."

As consistently stated in our decisions, letters from one's colleagues are important and necessary to explain the alien's role on various projects. Such, letters, however, are more persuasive when supported by other evidence of the petitioner's influence beyond those colleagues, such as independent letters from researchers who have applied the alien's work or frequent citation of the alien's work.

Equally important as the source of the letter is the content of the letters. General claims of ability and notoriety in the field are far less persuasive than concrete examples of the petitioner's contributions in the field and an explanation of the impact of those contributions. We will now consider the content of the letters submitted.

International Science and Education." If from the ISEP, it appears that the "award" may be a fellowship for recent graduates. Fellowships for which only recent graduates can apply cannot establish the petitioner's reputation in relation to the most experienced and renowned members of the field. Regardless, it is the petitioner's burden to demonstrate the significance of the grant and he failed to submit such evidence.

The petitioner obtained a degree in physics from Mechnikov State University in 1981. In 1995, the petitioner obtained his Candidate of Science diploma from the Bogatsky Physico-Chem Institute of the National Academies of the Ukraine (Bogatsky Institute). The petitioner worked for the Bogatsky Institute until 1998, when he went to work as a postdoctoral research fellow at the Institute of Biomedical Sciences in Taipei, Taiwan. In 2001, the petitioner accepted another postdoctoral position at the University of Connecticut Health Center where he was promoted to an instructor in February 2003. The petitioner remained in that position at the time of filing.

Dr. Yury Shaprio, the petitioner's collaborator at the Bogatsky Institute, attests to the petitioner's skill and creativity. He asserts that the petitioner developed "new NMR methods, experimental techniques and the research methodology" and "provided a number of improvements for the methodology and instrumentation." More specifically, Dr. Shapiro asserts that the petitioner's work with bioactive organic compounds and supramolecular complexes resulted in the identification of "the bioactive confirmation of neuropeptides toward the drug discovery." The petitioner "contributed substantially to the fundamental understanding of the receptor recognition of peptide hormones and neurotransmitters and has contributed to the novel and more effective neurotropic medicine substances." Dr. Shapiro does not identify any medicines developed based on the petitioner's work. The record does not include a letter from any Ukrainian pharmaceutical companies attesting to their reliance on the petitioner's work.

Dr. Tai-Huang Huang, Director of the National NMR Facility at the Institute of Biomedical Sciences in Taipei, asserts that while working at that institute, the petitioner "solved an NMR structure of onconase to 0.34 A – the resolution which allows scientists to model an interaction of molecules and thus to understand the mechanism of a protein bioactivity." Dr. Chen, another researcher at this institute, provides similar information, asserting that because of this work, "scientists can figure out a mechanism of antitumor activity of onconase and they can go further toward development of new effective therapeutic agents for cancer treatment." Both Dr. Huang and Dr. Chen explain that onconase is in phase three trials as an anti-tumor drug, but they do not indicate that the petitioner's work led to these trials. Rather, they appear to be saying that the petitioner's work on a drug already in trials as an anti-cancer agent will allow researchers to develop other such agents with similar properties. The record does not include letters from high-level officials of pharmaceutical companies expressing their interest in the properties of onconase in order to develop other anti-cancer agents.

Dr. Glenn King, the petitioner's supervisor at the University of Connecticut, provides the following information:

> [The petitioner] discovered the biologically active conformation of several neuropeptides. Based on this result it has been possible to predict new neurotropic agents with selective antiamnesic and antidepressive potency. By elucidating the three-dimensional structure of onconase, a potent anti-cancer protein, the extremely high atomic resolution, [the petitioner] has significantly contributed to the design of effective agents for cancer and AIDS treatment. His work will greatly help biologists and therapists to better understand the nature of these diseases. His work is clearly in the national interest.
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> [The petitioner's] current project involves determining the three dimensional structure of the complex between cofilin and phospholipids molecules. Cofilin regulates the formation of actin filaments, which constitute the intracellular scaffold of most cells and are critical in eukaryotic cytokinesis. Cofilin regulates actin polymerization, but its interaction with cofilin is abrogated

> when it binds phosphoinositides. [The petitioner] has already identified NMR properties of every magnetic nucleus of cofilin and he published the results in the high impact *Journal of Biomolecular NMR*. He subsequently determined an atomic resolution structure of cofilin and has mapped the surface of the molecule that is responsible for binding phosphoinositides. Based on this information he has developed a novel model for how phosphoinositides regulate the interaction between actin and cofilin.

Dr. King concedes that the final work discussed had yet to be published. The petitioner's field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field.

Dr. Martin Schiller, another professor at the University of Connecticut, provides similar information, asserting that the petitioner's work "was the first time the complex structure [of Cofilin-lipid] has ever been solved to such a minute atomic level, and thus this work may dramatically improve our understanding of cell life." Such speculation, while clearly based on Dr. Schiller's expertise in the field, cannot establish that the petitioner is already recognized in the field as having impacted the field through a contribution of major significance.

Dr. Alexej Jerschow, an assistant professor at New York University, provides similar information, concluding that the detailed information provided by the petitioner's work allows for "a rational drug design." Dr. Jerschow does not assert that his laboratory or any other laboratory is pursuing such a design.

The most persuasive letter is from Dr. Krishna, a professor at the University of Alabama. Dr. Krishna asserts that he is familiar with the petitioner from his publications and that he has invited the petitioner to give a seminar at the University of Alabama. Even this letter, however, merely speculates that the petitioner's work "is likely to lead to new therapeutic agents against cancer and HIV" and that the petitioner's current work "could eventually be one of the major milestones in the field of biology." While this letter reflects that the petitioner has some recognition beyond his immediate circle of colleagues, the letter is vague as to whether the petitioner's work has already impacted the field to such a degree as to be considered a contribution of major significance. Dr. Krishna does not indicate that his laboratory applied the petitioner's work after the petitioner's seminar. Nor does Dr. Krishna identify any other institution that is applying the petitioner's work.

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. *See Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work. The petitioner has never submitted any evidence that he has been cited.

While the record includes attestations of the potential impact of the petitioner's work, none of the petitioner's references provide examples of how the petitioner's work is already influencing the field. While the evidence demonstrates that the petitioner is a talented scientist with potential, it falls short of establishing that the petitioner had already made contributions of major significance. Thus, the petitioner has not established 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.

The director acknowledged the petitioner's authorship of articles in peer-reviewed journals, but concluded that the record lacked evidence of significance of these articles. Under the previous criterion, the director also noted the lack of citations of the petitioner's work.

On appeal, counsel asserts that there is no legal requirement to demonstrate a specific number of published articles or the significance of the articles. Counsel further asserts that the reference letters sufficiently established the significance of the articles.

Initially, counsel asserted that the petitioner had authored 36 articles and presented his work at 10 international conferences. Exhibit B contains two abstracts and 16 articles. We cannot consider the new articles submitted on appeal, as they do not relate to the petitioner's eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak;* 14 I&N Dec. 45, 49 (Comm. 1971).

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." This report reinforces our position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

While the petitioner's publication record demonstrates that he is a prolific author, the record lacks evidence of the impact those articles have had. Even if we were to conclude that the quantity of articles is more probative that the influence of the articles, which we do not, the petitioner would only meet one criterion. A petitioner must meet three criteria to establish eligibility.

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

The director concluded that the petitioner had not established eligibility under this criterion. On appeal, counsel asserts that the director ignored the reputation of the University of Connecticut and assertions from the petitioner's principal investigator as to the petitioner's role as a leading researcher.

We have already considered the petitioner's contributions while at the University of Connecticut above. At issue for *this* criterion, however, are the role the petitioner was hired to fill and the reputation of the entity that hired him. We do not contest the distinguished reputation of the University of Connecticut as a whole. At the time of filing, however, the petitioner filled the role of instructor. We cannot conclude that the role of instructor, while not temporary, is a leading or critical role for the University of Connecticut as a whole beyond the obvious fact that the university requires the services of its numerous instructors to participate in the research occurring at that institution. Thus, we concur with the director's ultimate conclusion that the petitioner does not meet this criterion.

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

Review of the record, however, does not establish that the petitioner has distinguished himself as a 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 tremendous talent as a 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.