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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUL 21 2005
EAC 03 180 51267

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 (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.

On appeal, counsel asserts that the director erred by failing to issue a request for evidence in accordance with 8 C.F.R. § 103.2(b)(8). At this point, the decision already having been rendered, the most expedient remedy for this complaint is the full consideration on appeal of any evidence which the petitioner would have submitted in response to such a request.

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

This petition, filed on May 29, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a biomedical researcher. At the time of filing, the petitioner was working as a Research Fellow in the Experimental Medicine Section, Oral Infection and Immunity Branch, National Institute of Dental and Craniofacial Research (NIDCR), 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 her awards.

The petitioner submitted a June 1, 2000 letter from Dr. [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 the NIH under the sponsorship of Dr. [redacted], Oral Infection and Immunity Branch, National Institute of Dental and Craniofacial Research.

The petitioner also submitted a February 6, 2002 letter from Dr. [redacted] Chief, Experimental Medicine Section, Oral Infection and Immunity Branch, NIDCR, NIH, stating:

> I am pleased to inform you that we will convert you from a Visiting Fellow to a Research Fellow once you have obtained and H1 visa. The Research Fellow position is a full-time position at the National Institutes of Health. It is awarded to people who have the appropriate scientific credentials (e.g. Ph.D.) and have demonstrated substantial skills and talent in the research laboratory.

The preceding letters reflect the petitioner's selection for advanced scientific training opportunities at NIH under the direction of Dr. [redacted] rather than nationally or internationally recognized prizes or awards for excellence in the field.

The petitioner also submitted a January 3, 1999 letter from the State University of New York at Buffalo (SUNYB) informing her of her selection for a temporary "postdoctoral research position." The letter indicates that a number of applicants applied for the position and it describes the future research that the petitioner would be expected to undertake. Selection for a temporary position such as this is not a national award for excellence in one's field, but, rather an indication that the petitioner obtained financial support for her ongoing scientific training and research. There is no indication that the petitioner faced competition from throughout her field, rather than her approximate age group within her field.

Fellowships and postdoctoral research positions of the petitioner's kind are presented not to established scientists with active professional careers, but rather to those individuals seeking further their research training and experience. The petitioner cannot artificially restrict her 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 her eligibility for postdoctoral training opportunities elevates her to a level above almost all others in her field.

The petitioner also submitted a Second Prize certificate issued by "The Science & Technology Progression Committee of Guangdong Province" in 1998. On appeal, the petitioner submits a partial translation of information printed from this committee's website which discusses the "Guangdong provincial science and technology awards." It appears that certain sections pertaining to the award criteria as listed on the website were omitted from the translation. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services (CIS) shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The petitioner's partial translation of the award criteria from the Guangdong Provincial Science and Technology Committee's website does not meet the requirements of 8 C.F.R. § 103.2(b)(3). Nevertheless, information from the translated portions of the website clearly indicates that this award constitutes provincial recognition rather than national or international recognition.

The petitioner submitted a certificate issued on August 11, 1996 (during her Ph.D. studies at the Shanghai Institute of Biochemistry and Cell Biology) by "The Military Science & Technology Progression Committee" stating: "In recognition of her outstanding contribution to the project 'Oral Alive Vaccine Against Plasmodium Falciparum,' this Second Prize is being issue to [the petitioner]." The record contains no information regarding the scope of this award or how many other scientists were similarly recognized. The certificate itself is numbered "96-111-4" suggesting multiple recipients.

The petitioner submitted a "Certificate of Excellent Academic Paper" issued to her and two other scientists on August 5, 1996 (during her Ph.D. studies the Shanghai Institute of Biochemistry and Cell Biology) by the *Chinese Journal of Parasitic Disease Control*. The record contains no information regarding the scope of this award or how many other papers were similarly recognized.

The significance and importance of the two certificates from 1996 are not self-evident. The petitioner offers no supporting evidence showing that these certificates constitute top honors in her field at the national or international level. 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 or international stature. Simply alleging that an award is nationally recognized cannot suffice to satisfy 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.*

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. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. 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 her membership in the American Diabetes Association (ADA) and the American Association for the Advancement of Science (AAAS). The petitioner's AAAS membership card reflects her "CATEGORY" as that of a "SUPPORTING" member. The petitioner also submitted general information about these associations printed from their websites. According this information, membership in the AAAS is "open to all" who apply. The information provided from the ADA's website did not include its official admission requirements. There is no indication that membership in these organizations required outstanding achievement in the petitioner's field or that she was evaluated by national or international experts in consideration of her 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.*

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.

On appeal, counsel states that the petitioner's work "has recently been cited in the prestigious journal *Molecular Biology of the Cell*" (September 2004). This evidence 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). Counsel also notes that the petitioner's work was cited nine times "over a ten year period from 1994 – 2004" in Chinese journals. We note, however, that the petitioner and her work were not the primary subject of the articles that cited her 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 fully addressed under a separate criterion.

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 students in one's research laboratory.

On appeal, counsel argues that the petitioner's teaching and supervision of graduate and undergraduate students constitutes qualifying evidence under this criterion. Counsel cites a single sentence from a January 23, 2003 letter from Dr[redacted] Associate Professor, Department of Pathology and Anatomical Sciences, SUNYB, as evidence that the petitioner "has worked in the role as a teacher of other scientists." Dr.[redacted] letter states: "[The petitioner] contributed to the training and nurturing of several students in my laboratory."

We do not find that teaching or supervising "students" is tantamount to judging the work of others in one's field for purposes of this criterion. Furthermore, in this instance, we note that Dr.[redacted] rather than the petitioner, was the final authority on issues relating to the students in his laboratory. We further note that not one of the letters of support, including the letter from Dr[redacted] refers to the petitioner as serving as a "judge" of the work of established professionals. While a teacher, or a research scientist who teaches as a collateral duty, does evaluate the work of his or her pupils or trainees, this evaluation is commonplace and inherent to the process of teaching in a scientific laboratory. Contributing to the training of novice researchers does not, however, elevate the petitioner above almost all others in her field at the national or international level. We find no evidence to demonstrate that the petitioner has formally judged the work of established researchers (such as tenured professors) who have long since completed their graduate or undergraduate studies. The petitioner's involvement in training "students" is not indicative of national or international acclaim and does not fulfill 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.

Dr[redacted]e petitioner's research supervisor at NIH, states: "The function of IA-2 . . . is not known. By use of a two-hybrid system, [the petitioner] has made important advances in our understanding of this protein and how it interacts with other proteins. These findings may have broad application to other diseases in addition to diabetes."

Dr[redacted] Professor of Biochemistry, Institute of Biochemistry and Cell Biology, Chinese Academy of Sciences, states:

> [The petitioner's] research work in my laboratory aimed to establish a model to study the cell cycle and use the model to screen human gene involved in cell cycle regulation. She successfully established a

> conditional lethal tri-mutant yeast model by knocking out three cell cycle regulator element genes . . . . This conditional model could be easily controlled by selection of sugar source in culture medium. . . . [The petitioner] was the first one to successfully establish this cell model in China. More importantly, using this model, she discovered three novel human genes that regulated the cell cycle. These three novel genes have been reinstated at NIH and published in the Genebank. Her outstanding research on this project has led to three scientific papers published in the top national or international journals . . . .

We acknowledge Dr. [redacted] observations that the petitioner was among the first in China to establish one particular cell model and that she discovered three novel human genes. However, of far greater relevance in this proceeding is the importance to the overall field of the petitioner's discoveries. In this case, the petitioner has not provided adequate evidence showing that these findings were widely recognized throughout her field as a major contribution. The petitioner must show not only that her discoveries are important to her research mentors, but that her work is widely acclaimed throughout the greater research community as well. As noted by the director, "[a]n individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim." An aggregate total of only nine cites to the petitioner's articles over a ten-year period is not an indication of sustained national acclaim as a researcher.

Dr. [redacted] observation that the petitioner's work led to three scientific publications may indicate that her research 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 her field. Without extensive documentation showing that the petitioner's published findings have been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that she meets this criterion. The petitioner's publications will be further addressed under the next criterion.

Dr. [redacted] the petitioner's research supervisor at SUNYB, states:

> [The petitioner] was among the first to use a new screening system to isolate candidate FGFR1 interacting proteins from the human brain cDNA library. She proved this method to be quicker, more efficient and more accurate than the traditional methods for detecting interactions among proteins. She had successfully cloned several important target proteins . . . . The most important was that she discovered two new nuclear partners of FGFR1 . . . . [The petitioner] obtained the first evidence connecting FGFR1 with RSK1 in mammalian cells. She had also found that the interaction between these two proteins required both the FGFR1 and RSK1 kinase domains. This important finding has been critical for further development and progress of our project. It has established a new, truly revolutionary, molecular mechanism of FGFR1 action, and has indicated its role in the pathogenesis of the glioma brain cancer. [The petitioner's] findings have a significant potential for the prevention strategy and for possible new treatments for the brain cancer. . . . The article describing [the petitioner's] discovery is in its final stage of preparation for the submission with [the petitioner] serving as a senior author.

The record, however, contains no evidence showing that the findings discussed by Dr. [redacted] were published as of the petition's filing date. A petitioner must establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). The assertion that the petitioner's research results hold future promise is not adequate to establish that her findings are already nationally or internationally acclaimed

as a major contribution. The visa classification sought by the petitioner is intended for aliens already at the top of their respective fields, rather than for those individuals progressing toward the top at some unspecified future time.

The petitioner submitted additional letters of support from other researchers who provide similar information to that of Drs. [redacted] and [redacted] With regard to the witnesses of record, many of them discuss what may, might, or could one day result from the petitioner's work, rather than how her past efforts rise to the level of a contribution of major significance. In the present case, we cannot conclude that petitioner's past contributions far exceed those of other capable biomedical researchers.

On appeal, counsel asserts that Dr. [redacted] Associate Professor of Pediatrics and Genetics at the Louisiana State University Health Sciences Center, "has never personally met with [the petitioner]," but the fact remains that Dr. [redacted] of the University of Tokyo, and Professor Prabhakar of the University of Illinois at Chicago all indicate in their letters that they have collaborated with [redacted] the petitioner's supervisor at NIH.[1] If the petitioner's reputation is mostly limited to her affiliated institutions and her current supervisor's immediate collaborators, then we cannot conclude that she has achieved national or international acclaim.

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 her authorship of articles appearing in publications such as *Current Microbiology*, *Chinese Bulletin of Life Sciences*, *Acta Biochimica et Biophysica Sinica*, and the *Chinese Journal of Parasitic Disease Control*.

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 herself has cited sources in her own publications. 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, the petitioner provides evidence showing that she published an article in *The Journal of Biological Chemistry* in 2004 and that her 2002 article in *Current Microbiology* was cited one time in 2004. This evidence, however, came into existence subsequent to the petition's filing date. *See Matter of Katigbak* at 45. New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date.

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[1] The letter of support from Dr. Lan states: "I have collaborated with [the petitioner's] mentor, Dr. [redacted] for the past 12 years."

The petitioner's appellate submission included a citation history showing that four of the articles she co-authored were cited an aggregate total of nine times in various Chinese journals.[2] While the citation indices provided by the petitioner demonstrate a small degree of interest in her published work, she has not shown that an aggregate total of nine citations over a research career spanning more than a decade elevates her to a level above almost all others in her field at the national or international level. We accept that the petitioner has authored some published papers, but the weight of this evidence is diminished by a lack of evidence showing that any of her published findings are widely influential.

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

On appeal, counsel argues that the petitioner's conference presentations satisfy this criterion. The AAO has consistently found, however, that this particular criterion applies to the visual arts rather than scientific research. In the fields of science and medicine, acclaim is generally not established by the mere act of presenting one's work at a scientific conference.

In regard to the petitioner's conference presentations, we note that the record contains no documentation demonstrating that the presentation of one's work is unusual in the petitioner's field or that the invitation to present at conferences where the petitioner spoke was a privilege extended to only a few top researchers. Participation in scientific conferences and symposia of the petitioner's kind is routine and expected in the medical research community. Many professional fields regularly hold conferences and symposiums to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the petitioner above almost all others in her field at the national or international level. The record contains no evidence showing that the petitioner's conference presentations commanded an unusual level of attention in comparison to those of other conference participants or that she has served as a keynote speaker at a national or international scientific conference.

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 she 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 herself 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 is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.

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[2] The greatest number of times any single article authored by the petitioner was cited was four.

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.