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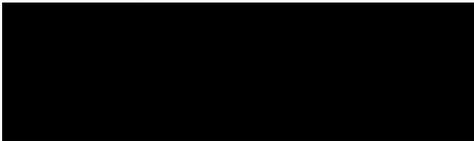


FILE: EAC 03 215 50717 Office: VERMONT SERVICE CENTER Date:

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, 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.

On appeal, counsel notes that the director erroneously changed the period in which to appeal from 30 to 15 days. Any information about the appeal period provided by the director cannot supercede the regulations. While counsel submitted the appeal within the time frame provided by the director, this office would still consider the appeal timely if filed within the time proscribed by the regulations.

In conclusion, counsel asserts that “few people in the world can rise to the level of Research Scientist at Yale University, yet [the director] brushes this off without even a mention.” We do not find that employment at Yale University creates a presumption of eligibility any more than major league status does for athletes. *See* Supplementary information at 56 Fed. Reg. 60899 (November 29, 1991). While Yale’s prestige is clearly a factor, the regulations make very clear that the employer’s distinguished reputation becomes relevant only when the alien plays a leading or critical role for that employer. 8 C.F.R. § 204.5(h)(3)(viii). At the time of filing, the petitioner was a postdoctoral associate at Yale, which, as discussed below, is not a leading or critical role for the institution as a whole. The remaining regulatory criteria, and counsel’s assertions relating thereto, will be discussed below.

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 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 a postdoctoral associate. While postdoctoral researchers are not precluded from establishing eligibility for this exclusive classification, we will not narrow the petitioner's field to those beginning their postdoctoral careers.

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.

The petitioner submitted a third class 1997 National Award for Technological Inventions issued by the Science Minister of the People's Republic of China, a 1995 second class Award for Scientific and Technological Advancement issued by a Shandong Provincial authority, and a 1991 second class Award for Scientific and Technological Advancement in Physical Education issued by the Committee of Physical Education and Exercise of the People's Republic of China. The petitioner also submitted evidence of his scholarship at the City University of New York (CUNY).

The director concluded that academic awards cannot serve to meet this criterion and that the petitioner had not demonstrated "the criteria used to grant these awards, and the individuals that were eligible to compete for them have not been clearly delineated in the record."

On appeal, counsel asserts that the director did not review the awards themselves. Counsel infers that the director is implying that while the awards were claimed, evidence of the awards was not submitted. Counsel asserts that the director's concern about the lack of evidence regarding the significance of the awards was "pure boilerplate garbage." Counsel continues that "there is no excuse for the examiner to make these idiotic and untrue statements." Earlier in his appellate brief, counsel asserts that "the National Award for Technological Invention is the highest award China gives for technological inventions, equivalent to the Fields Medal in the United States."

We acknowledge that the awards themselves are part of the record. The unsupported assertions of counsel regarding the prestige of these awards, however, do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The director was correct that the petitioner had not submitted any evidence regarding the significance of a third class National Award for Technological Invention (or any of the other awards) and the petitioner submits no such evidence on appeal. For example, the petitioner did not submit the nominating and selection rules for the award, the number of award recipients in each category/class,

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

media coverage of the award, or similar evidence of its prestige. In light of the above, the petitioner has not demonstrated that he meets this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner submitted evidence of his associate membership in the American Society for Biochemistry and Molecular Biology (ASBMB). The director concluded that the petitioner had not established that membership in this society could serve to meet this criterion. Counsel asserts that the director's direct discussion of ASBMB membership constitute "a boilerplate simplification" but concedes that "this is a weak category for this petition." Finally, counsel asserts that the petitioner is also a member of the American Diabetes Association (ADA).

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires that any memberships be in associations that require outstanding achievements of their members. The record contains no evidence that ASBMB or ADA requires outstanding achievements of their members. Thus, the petitioner cannot meet this criterion. This analysis may be simple but it is based on the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) and the evidence of record. We find no cause for a more involved discussion of this issue.

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.

The director concluded:

Your counsel indicates that the [petitioner's] published research has been cited. However, scientific citations are not considered to be evidence that material has been published specifically about the [petitioner] in professional or major trade publications or other major media.

On appeal, counsel quotes the above language and responds:

This statement by the examiner is interesting, not for what it says, but what it implies. In point of fact, by mistake, we left citations out of the original submission. No reference was ever made to these citations by "your counsel." This whole sentence is fictitious. This examiner is so lazy he has not even bothered to read the cover letter. This comment is highly revealing about the actual level of scrutiny this case actually got. I doubt the examiner spent more than 5 minutes on it.²

If counsel believes that citation evidence that should have been submitted was omitted by mistake, it is not clear why counsel fails to submit such evidence on appeal. Regardless, counsel is wrong on both counts. First, evidence of citations, mostly by coauthors, was submitted. Second, and more disturbing given counsel's accusations of carelessness by the director, the *very first page* of counsel's initial cover letter includes the

² This discussion appears in counsel's appellate brief, we presume inadvertently, under an unrelated criterion, namely the criterion set forth at 8 C.F.R. § 204.5(h)(iv), relating to judging the work of others.

following description of the included exhibits: “**Appendix D** – Copies of papers which cite [the petitioner’s] work.” (Bold emphasis in original.) As such, counsel’s concerns that the adjudicator failed to read counsel’s cover letter are without merit.

More significantly as far as the petitioner’s eligibility is concerned, counsel fails to address the director’s conclusion that citations do not constitute published material about the petitioner. We concur with this conclusion. The articles that cite the petitioner’s work are primarily about the author’s own work. Thus, the petitioner has not established that he meets this 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.

The director concluded that the petitioner had not submitted evidence relating to this criterion and counsel does not challenge this assertion on appeal.³

Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The director concluded that the petitioner had not demonstrated the impact of his articles and that the letters were not adequately supported by unsolicited materials reflecting acclaim. On appeal, counsel asserts that the director’s discussion constitutes “boilerplate garbage.” Counsel further asserts that the petitioner’s publications alone serve to meet this criterion. Subsequently, counsel states:

The fact that the scientific articles are themselves evidence of original scientific contributions is irrelevant. The statute defines two categories that can essentially be met with the same evidence. This is the law. Rewriting the statute is not permitted.

The “law” requires extensive documentation reflecting sustained national or international acclaim. The regulations provide ten categories of evidence that can be used to demonstrate such acclaim. Asserting that evidence directly relating to one criterion is presumptive evidence to meet another, less related criterion, would appear to undermine the statutory requirement for extensive documentation and the regulatory requirement that a petitioner meet at least three criteria. While a researcher whose publication record is indicative of national or international acclaim will often have made a contribution of major significance, we do not presume that every researcher able to publish his work, which is nearly every researcher, has made a contribution of major significance.

As will be discussed in more detail below, the petitioner’s publication record is not indicative of an impact on the field. Rather, the number of citations of the petitioner’s work is minimal. While we concur with the director’s position that reference letters prepared in support of a petition are more persuasive when supported by unsolicited materials indicative of acclaim, we will consider the letters in more detail below.

³ Counsel’s acknowledgement appears in his appellate brief, we presume inadvertently, under an unrelated criterion, namely the criterion set forth at 8 C.F.R. § 204.5(h)(3)(iii) relating to published materials about the alien.

The petitioner submitted several reference letters attesting to his abilities, areas of expertise, and importance to ongoing projects. While aliens who qualify for this classification are presumably talented, attestations of “extraordinary ability” cannot form the sole basis for eligibility for the classification sought. Rather, the statutory standard for this classification is whether the petitioner has national or international acclaim. The relevant consideration for this regulatory criterion is whether, at the time of filing, the petitioner had already made contributions of major significance to his field and was recognized as having done so beyond her immediate circle of colleagues. In evaluating the letters below, we emphasize that letters identifying specific contributions and explaining their impact are more persuasive than letters providing general praise. Similarly, letters from independent experts previously aware of the petitioner’s reputation in the field are more persuasive evidence of acclaim than letters from colleagues, although letters from colleagues are important in explaining the details of the petitioner’s work.

According to counsel, the petitioner was a researcher at the Shandong Institute of Biology from 1986 to 1997, obtained his Ph.D. from the CUNY in 2001 and has worked as a postdoctoral research associate at Yale University in the laboratory of Dr. Gerald Shulman since obtaining his Ph.D. The petitioner’s degrees are a part of the record and his advisors and mentors discuss his research.

Dr. Shulman is the only reference to discuss the petitioner’s work in China. Dr. Shulman asserts that this work involved “biosensor research leading to the glutamate, glucose and lactate analyzers.” Dr. Shulman notes that this work received “the most envied National Award for Technological Inventions” but does not explain how he has personal knowledge of the significance of this award. None of the references explain the significance of this work and the record contains no evidence that the petitioner’s innovation was patented and licensed or other comparable evidence of its impact in China.

Dr. Horst Schulz, the petitioner’s coauthor at CUNY, asserts that the petitioner studied enzymes essential for the degradation of unsaturated fatty acids. Specifically, the petitioner “probed the structure-function relationship of $\Delta^{3,5}$, $\Delta^{2,4}$ -dienoyl-CoA isomerase by site-directed mutagenesis and explored the functions of the three Δ^3 , Δ^2 -enoyl-CoA isomerases present in rate mitochondria and proxisomes.” The petitioner’s results elucidated the enzymology and pathways of unsaturated fatty acid breakdown, are of “great importance in lipid biochemistry” and “form the theoretical basis for nutritionists to understand the role of fats in human nutrition and for physicians to interpret human diseases due to disorders of fat metabolism.” Dr. Schulz provides no examples in support of these claims. The record contains no course curricula indicating that the petitioner’s work is routinely assigned as reading in nutrition classes, no evidence of frequent citation in the nutrition literature, no letters from high-level officials of health-related government agencies affirming that the petitioner’s work has been influential in government issued nutrition guidelines, and no comparable evidence to support Dr. Schulz’ characterization of the petitioner’s influence.

Dr. Gary Cline, an assistant professor at Yale University, asserts that the petitioner’s work at CUNY was in an important area and “therefore” constitutes “the best in this field in recent years.” This paragraph seems to imply that the importance of an area of research alone can establish the quality of the work being done in that area. We will not presume that every researcher working in an important area has made a contribution of major significance to his field. Research with no value would, presumably, receive little funding or acceptance in peer-reviewed publications.

Dr. Shulman details the petitioner's work on diabetes at Yale, which involves specialized skill in using NMR and tandem mass spectrometry in the characterization of metabolic processes. Dr. Shulman explains that "insulin resistance is a primary defect in type two diabetes" and is associated with obesity, hypertension, dyslipidaemia and accelerated atherosclerosis. The petitioner "has successfully established several NMR and mass spec methods to detect crucial metabolic intermediates that regulate metabolic functions or play a role in insulin sensitivity." The results of this work "established that insulin resistance associated with free fatty acid elevation is associated with an increase in long-chain acyl-CoAs and the triglyceride synthesis intermediate diacylglyceride." In addition:

[The petitioner] established [an] analytical method for the lipid intermediate malonyl-CoA and lysophosphatidic acid with the high throughput tandem mass spectrometer. These lipid intermediates are otherwise very difficult to analyze. Establishment of these methods paves the way for future discoveries.

Dr. Shulman then explains the complexity of this work, the specialized skills needed, and the scarcity of researchers with those skills. While such skills are understandably attractive to a prospective employer, they do not imply eligibility for the classification sought, which requires national or international acclaim in the 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. at 221. While that case involved a different classification and is mostly irrelevant, the proposition that we lack jurisdiction to evaluate shortage claims bears mention given Dr. Shulman's comments.

Dr. Shulman concludes:

It should be clear at this point that [the petitioner] has done some very exceptional work in medical research, and that work has already influenced researchers around the world. I believe the importance of this work is self-evident and the significance of [the petitioner's] discoveries is clear. His work could eventually be one of the major milestones in the history of medicine.

While the petitioner may have done exceptional work, the record does not establish its influence on researchers around the world. The reference letters do not attest to other, independent laboratories that are applying the petitioner's results or nutritionists issuing guidelines based on his work. As discussed above and, in greater detail, below, the petitioner's citation history is minimal. As such, Dr. Shulman's general assertions remain unsupported.

Dr. Zheng-Gang Liu, an investigator at the National Cancer Institute, asserts that the petitioner has improved our understanding and his work "could" lead to the development of new therapies for type two diabetes. Dr. Baoying Weng, a research scientist at Walter Reed Army Medical Center discusses the importance of diabetes research in general, which is not in dispute, and asserts that the petitioner's work "has a huge impact on the design strategies for identifying [a] drug target for the treatment of diabetes related disorders." Dr. Weng does not claim to be relying on the petitioner's results to identify any new drug targets and does not identify any other pharmaceutical companies or research institutions that are doing so.

Dr. Song-Yu Yang, the head of a laboratory at the Institute for Basic Research in Developmental Disabilities, asserts that the petitioner's work on fatty acid metabolism is a "breakthrough" that will "have a long-term impact in the understanding [of] cellular and subcellular functions related to fuel metabolism." Dr. Yang further

asserts that the petitioner's work at Yale "is well regarded as an important milestone in the field of insulin resistance." Once again, such general praise without concrete examples of how the petitioner's work has been influential has minimal evidentiary value.

Dr. Wangxue Chen, a research officer at the Institute for Biological Sciences in Canada asserts that the petitioner is "well-known and respected" and that he has "already made an enormous impact on research in his field." In support of these broad assertions, however, Dr. Chen states only that the petitioner's work is "likely to lead to new novel and effective treatment strategies for certain disease such as diabetes" and that his investigations "could lead to the development of new diabetes drugs." These statements are highly speculative and do not provide examples of the petitioner's results being applied towards these goals.

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. 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. As discussed above, the petitioner's independent references do not claim to be influenced by the petitioner's work and, for the most part, provide little explanation for how they know of the petitioner's work. While we presume these references to be independent, the record lacks the curriculum vitae of the petitioner and those of his references. While the record includes numerous 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 researcher 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.

Counsel initially asserted that the petitioner was submitting 14 journal articles, three in submission, of which the petitioner is first author on six, including the three most recent. In support of the petition, the petitioner submitted an unpublished abstract, six published articles and two published abstracts. The petitioner is the lead author on two of the articles and the two abstracts.

The petitioner also submitted evidence that one of his first authored articles was cited once by a coauthor, a second article was cited six times, three of which are by a coauthor, and a third article was cited seven times, five of which are by a coauthor. Thus, the evidence does not establish that any of the petitioner's articles had been cited more than three times by independent researchers as of the date of filing.⁴

⁴ We note that three of the citations to the petitioner's article in Volume 277 of the *Journal of Biological Chemistry* at page 50230, namely the citations in Volume 52 of *Diabetes* at page 688, Volume 278 of the *Journal of Biological Chemistry* at page 8199, and the *Journal of American Physiological Endocrinology Metabolism*, do not list the petitioner's name as an author of the cited article and do not include "et al." We have confirmed the petitioner's authorship of the cited article at the journal's website and conclude that the

The director referenced his discussion of the previous criterion. On appeal, counsel asserts that the publication of 13 articles qualifies the petitioner under this criterion. The petitioner submits an abstract published after the date of filing. A petitioner must establish 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 petitioner's abstract is not relevant to his eligibility as of that date and need not be considered.

The regulation at 8 C.F.R. § 204.5(h)(3) states that a petition for the classification sought "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." The regulatory criteria then follow as divisions under this same subparagraph. The evidence submitted to meet any criterion must be evaluated as to whether it is indicative of or consistent with national or international acclaim if that statutory standard is to have any meaning. This office consistently finds that duties inherent to an occupation cannot serve to meet a given criterion.

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 in the sciences is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles. The petitioner's citation record is minimal. Thus, we find that the petitioner has not demonstrated that he meets this criterion.

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

Counsel relies on the reference letters discussed above to meet this criterion. On appeal, counsel asserts that the petitioner's supervisor, Dr. Shulman, "is unequivocal about the unique position of [the petitioner] in his projects at UConn." We note that the record contains no evidence that the petitioner has ever worked at the University of Connecticut. Rather, Dr. Shulman is the petitioner's supervisor at Yale University.

Under counsel's analysis, the petitioner's original published results produced at a distinguished university would serve to meet the contributions criterion, the scholarly articles criterion, and this criterion. Such an analysis renders the necessity of meeting at least three regulatory criteria (and the statutory requirement for extensive documentation) meaningless.

We have already considered the petitioner's contributions while at Yale University 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 Yale University as a whole. At the time of filing, however, the petitioner filled the role of postdoctoral associate. We cannot conclude that the role of postdoctoral associate is a leading or critical role for Yale University as a whole beyond the obvious fact that Yale requires the services

omission is inadvertent. We mention the omission only as a possible reason why the director's decision seems to imply that citation evidence was not submitted.

of its numerous postdoctoral associates to participate in the research occurring at that institution. Thus, we concur with the director 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 medical 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 talent as a postdoctoral associate, 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.