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U.S. Citizenship
and Immigration
Services

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FILE:

Office: TEXAS SERVICE CENTER Date:

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IN RE:

Petitioner:

Beneficiary:

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, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

According to Part 2 of the petition, the petitioner seeks to classify the beneficiary 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. On September 16, 2003, the director advised the petitioner of the regulatory criteria, stating that the evidence submitted initially was insufficient. The director's notice was not specific as to why the initial evidence was deficient; rather, the director merely requested evidence explaining the significance of the petitioner's accomplishments. Upon considering the petitioner's response, the director determined the petitioner had not established the beneficiary's sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel asserts that the director erred in failing to consider whether the beneficiary might qualify for a lesser classification. The petitioner filed a single petition with a single fee. Counsel cites no provision that allows a petitioner to seek multiple immigrant classifications with a single petition/fee. Thus, we cannot conclude that the director erred in failing to consider more than one classification. Counsel's remaining arguments and the new evidence will be discussed below. As discussed therein, we find that the petitioner meets two of the ten regulatory criteria, but the evidence falls far short of meeting the required third.

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 the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a Vice President of Product Development for an Internet syndicator of health and medical related content. 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, is claimed, 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.

Counsel references the beneficiary's resume as evidence of 24 awards. The beneficiary's self-serving resume is not evidence of the accomplishments listed on it. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972) for the proposition that going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. The petitioner submitted 10 foreign language documents in support of this criterion. The regulation at 8 C.F.R. § 103.2(b)(3) requires "full" translations of foreign documents. Instead of submitting complete translations of these certificates, however, the petitioner submitted an "extraction translation" containing a brief summary of all 10 documents. The petitioner's response to the director's request for additional evidence did not include any evidence regarding the significance of the 10 awards initially documented. Rather, the petitioner submitted more certificates of recognition.

The director determined that the beneficiary's awards were issued by universities, state government agencies, cities or societies and associations. The director concluded that the record lacked evidence that these awards were nationally or internationally recognized. On appeal, counsel asserts that the Jose Maria Bengoa Medal (first class) is the "highest distinction and honor granted to any doctor in the nutrition field in Venezuela." Counsel continues that the award is issued once every two years for excellence in the field of nutrition. Counsel then lists the beneficiary's other awards and faults the director for failing to consider the awards.

We do not find that the director erred by failing to name each and every award documented. The director acknowledged the submission of evidence relating to awards and concluded that the record lacked evidence of their significance. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record contains no official documentation or media coverage of the Jose Maria Bengoa Medal indicating its prominence. The petitioner has also failed to submit evidence regarding the significance of any of the other awards. Moreover, the petitioner failed to comply with 8 C.F.R. § 103.2(b)(3) as it did not provide full translations of the award certificates.

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.

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

As with the beneficiary's awards, the petitioner submitted evidence of the beneficiary's memberships without full translations of the foreign membership documents and without evidence of the membership requirements for the associations of which the beneficiary is a member. Thus, the director concluded that the record lacked evidence of the beneficiary's membership in an association that requires outstanding achievements of its members.

On appeal, counsel states that the beneficiary is a member of 13 professional organizations that "require advance[d] degrees or extraordinary ability." Counsel further states that at least two "memberships or directorships are extraordinary and significant." Specifically, counsel notes that the beneficiary was president of the Latin American Nutrition Society and was the first honorary member of the Venezuelan Society for Parenteral and Enteral Nutrition. Counsel asserts that membership in the latter society is limited to doctors of medicine. Counsel references a letter from Dr. Arnold Vera as supporting the significance of these memberships. Dr. Vera does not address the membership requirements for the former society and makes no mention of the latter society.

The petitioner has not overcome the director's clearly stated concern that the record lacks any official documentation, such as the bylaws of the associations of which the beneficiary is a member, reflecting the membership requirements of these associations.² Without such evidence, we cannot determine whether any of the associations of which the beneficiary is a member requires outstanding achievements of its members. The beneficiary's role for these associations will be discussed below pursuant to 8 C.F.R. § 204.5(h)(3)(viii).

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 beneficiary's duties as a university instructor could not serve to meet this criterion. While we concur with that conclusion, we agree with counsel that the director failed to consider other evidence relating to this criterion. The editorial positions referenced by counsel are supported only by the beneficiary's resume. As stated above, the beneficiary's self-serving resume is not evidence of the accomplishments listed in it. Nevertheless, the record does establish that the beneficiary served on the advisory board of the World Review of Nutrition and Dietetics, Volume 72, served as editor for *Actualizacion En Nutricion Y Dietetica* and "La Alimentacion Del Nino Menor de 6 Anos en America Latina" and chaired a panel discussion at the First National Congress of Science and Technology. We note that the evidence of these positions is among numerous foreign-language documents relating to the beneficiary's conference presentations. Based on the record as a whole, we conclude that the petitioner has established that the beneficiary meets this criterion.

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

² It is the petitioner's burden to provide evidence addressing every element of each criterion claimed. Nevertheless, we obtained the membership requirements for fellows of the American College of Nutrition (ACN), available at www.amcollnutr.org. This website reveals that fellows must possess a doctoral degree, demonstrate "expertise," be certified by a specialty board, have published five or more articles, and obtain an endorsement from a current fellow of the association. The latter requirement can be waived. We find that these requirements are not outstanding achievements, especially in light of the more exclusive master level within ACN.

Michelle Edmonds, who claims 20 years in the field of nutrition, asserts that thousands of individuals have relied on the beneficiary's work. Ms. Edmonds does not claim to have known of the beneficiary's work prior to being contacted for a reference and does not indicate that she personally has relied on the beneficiary's work. She does not identify a specific contribution or explain how it has impacted the field.

Dr. Benjamin Caballero, Director of the Center for Human Nutrition at Johns Hopkins University, indicates that he has known the beneficiary for 15 years. Dr. Caballero asserts that the beneficiary was instrumental in establishing dietary guidelines for children under five while serving as President of the Latin American Society of Nutrition. Dr. Caballero further states that these guidelines have had a "great influence in nutrition programs across many countries in Latin America."

Dr. Arnold Vera, an endocrinologist who was in medical school at Carabobo University when the beneficiary served on the faculty of that institution, asserts that the beneficiary has had a "tremendous impact in the field of nutrition and preventive medicine in Venezuela." Despite Dr. Vera's assertions to the contrary in his subsequent letter discussed below, his resume does not indicate that he specializes in nutrition. Dr. Vera's initial letter appears to be more of a personal recommendation than a professional one in the beneficiary's field.

Dr. Frederick Trowbridge, President of the nutrition and public health consulting firm Trowbridge and Associates, Inc., asserts that he has known of the beneficiary's work for more than a decade and has recently worked directly with the beneficiary. Dr. Trowbridge asserts that the beneficiary's contribution to providing health information for Spanish speakers on the Internet "has provided a new vision of ways to address the nutrition and health challenges faced by minority groups for whom Spanish is their first language."

Dr. Karen Donato, who claims to have recently worked on a U.S. Surgeon General's steering committee on obesity, indicates that she met the beneficiary in the early 1980s when he came to the United States to investigate the possibility of founding a Clinical Nutrition Research Unit in Venezuela. Dr. Donato asserts that the beneficiary's work "has been critical to the fight against nutrition-related diseases." She fails, however, to provide any specifics.

Dr. Carlos Moisa, an obstetrician and gynecologist, indicates that he has reviewed the beneficiary's credentials and concludes that the beneficiary would benefit the national interest. Dr. Moisa does not explain how his own credentials relate to the field of nutrition or assert that the beneficiary's work has influenced his own work.

In an unsigned letter with little evidentiary value, Henrique Salas Romer discusses his recruitment of the beneficiary to the Chairman of the State Health Institute in Carabobo while Mr. Romer was the governor of that state. In a signed letter, the former advisor to the governor of Carabobo, Bruno Bortesi, asserts that the beneficiary was "frequently used as a reference by other Venezuelan states and other countries." This claim is not supported by experts in other states and countries who have purportedly relied on the beneficiary's work.

Gustavo Coronel, a geologist who was a consultant to the Carabobo government in the 1990s, credits the beneficiary with promoting preventive medicine in the state and, thus, establishing "a high standard of Quality of Life enjoyed by Carabobo." Mr. Coronel does not indicate that any of his credentials relate to the beneficiary's field of nutrition.

Finally, the President of the petitioning company asserts that the beneficiary's MiDieta program was the first expansive effort to target the U.S. Hispanic community and that the beneficiary's Internet and newspaper health articles are distributed to over 250,000 readers and subscribers.

The director concluded that the letters were not from experts in the beneficiary's field and did not adequately explain the significance of the beneficiary's contributions to the field of nutrition. On appeal, counsel asserts that the references are experts and that the director should have given the letters more weight as they are uncontradicted and credible. Counsel cites *Immediate Bus. Sys., Inc. v. Richard*, 645 F. Supp. 355 (N.D. Ga. 1986.) Counsel further asserts that the regulations do not require that reference letters be from those with prior knowledge of the beneficiary's work. The petitioner submits new reference letters.

The case cited by counsel involved affidavits attesting to the engineering experience required for a position in support of a petition seeking a lower classification than the one sought in these proceedings. As the lesser classification sought in that case does not require the extensive documentation mandated by the regulations relating to the classification sought in these proceedings, we do not find this decision applicable. Furthermore, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. It remains that letters from independent members of the field who were aware of the beneficiary's work prior to being contacted for a reference are more persuasive evidence of the beneficiary's acclaim than letters from experts who had never previously heard of the beneficiary or his work. It can be expected that someone with national or international acclaim will be known to independent members of his field.

While we acknowledge that some of the beneficiary's references are experts in the field of nutrition, others are not. Specifically, Dr. Vera and Dr. Moisa practice in a different area of medicine and Mr. Coronel is not even in a field relating to public health. Moreover, while the regulations do not specifically state that references must have prior knowledge of the beneficiary's work, they do provide that a petition in this classification must be supported by extensive documentation indicative of national or international acclaim. Letters from independent experts in the field who have nevertheless heard of the beneficiary's work are the most persuasive letters evidencing national or international acclaim.

In a new letter submitted on appeal, Dr. Vera asserts that his resume demonstrates 34 years of experience in the field of nutrition. A review of his resume does not reveal positions or published articles that are directly related to nutrition. Rather, Dr. Vera has practiced endocrinology and has taught courses in that subject and metabolism. The titles of his articles and abstracts make no mention of nutrition. Dr. Vera further asserts that the beneficiary's Internet MiDieta personalized weight management program has been incorporated into outpatient clinics at several major hospitals. The record is absent letters from physicians at various major hospitals affirming this assertion. Dr. Vera does not explain how he has personal knowledge of the practices at several major hospitals. Dr. Vera further testifies to the size and influence of Univision's television broadcasts. While the record contains evidence of the beneficiary's Internet articles for Univision, the record does not confirm that the beneficiary has participated in television broadcasts. Finally, Dr. Vera discusses the importance of the beneficiary's newspaper articles, circulated in the Southeast, and radio show, broadcast in Georgia. While these programs provide useful information, Dr. Vera does not explain how they constitute a contribution of major significance to the field of nutrition as a whole. Not every nutritionist who authors health articles in

the general media, including those who take advantage of new dissemination technology such as the Internet, is making a contribution of major significance to the field of nutrition as a whole.

In his new letter, Dr. Caballeros asserts that the beneficiary chaired a group of experts convened by the United Nations University and the Cavendes Foundation in 1987 that developed dietary guidelines that formed the basis for Latin American nutritional “pyramids.” The record lacks confirmation of this role from the United Nations University or the Cavendes Foundation. The record does not contain the proceedings from any conferences in 1987. Moreover, we note that the petitioner filed the petition in 2002, 15 years later. Thus, we are not persuaded that development of these guidelines would be evidence of sustained acclaim.³

Dr. Artemis Simopoulos, President of the Center for Genetics, Nutrition and Health, discusses the beneficiary’s founding of the Center for Nutrition Research at Carabobo University. As discussed below, we find this accomplishment to be a leading role for an organization with a distinguished reputation. While this center was the first outside the United States, the record contains no evidence that it has served as an example for future centers. As such, we are not persuaded that it constitutes a contribution of major significance to the field.

Dr. Benjamin Torun, a coauthor of the beneficiary’s, asserts that their book is part of the Pan American Health Organization’s Expanded Program on Textbooks. The record contains no information about the significance of this inclusion.

As discussed above, the content of the reference letters is not persuasive. Moreover, the letters of record are all from the beneficiary’s immediate circle of colleagues and collaborators. While such letters are important in detailing the beneficiary’s work, they cannot, by themselves, establish that the beneficiary is known beyond his immediate circle of collaborators.

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

The beneficiary has presented his work at numerous conferences and has authored news articles on health for Univision.com and *Mundo Hispanico*. The director concluded that the petitioner had not established the significance of the conferences or news articles. On appeal, the petitioner submits a new letter from Dr. Benjamin Caballero attesting to the significance of the beneficiary’s written work. Specifically, Dr. Caballero asserts that the beneficiary’s book, “Feeding Children Under 6 Years of Age in Latin America,” is part of the Pan American Health Organization’s Expanded Program of Textbooks, is considered a treatise in the field, and is used by scholars and other professionals in the field. Dr. Caballero further asserts that the beneficiary has authored chapters in books that are used by professionals and as textbooks “in Spanish speaking countries all over the world.”

The beneficiary’s nutritional articles in the general media are not scholarly articles published in peer-reviewed nutritional journals. As such, they cannot serve to meet this criterion. Rather, those articles were considered above as evidence relating to the petitioner’s contributions to the field.

³ The evidence relating to each criterion need not necessarily demonstrate *sustained* acclaim. As the evidence relating to the two criteria the petitioner dwindles after 1998, however, evidence relating to this criterion from 1987 is not persuasive evidence of sustained acclaim at the time of filing in 2002.

Regarding the petitioner's books and book chapters, the petitioner did not submit evidence supporting Dr. Caballero's assertions. For example, the petitioner did not submit evidence that the beneficiary is widely cited, data from publishing companies regarding the sales of the beneficiary's books, or course syllabi from multiple universities listing the beneficiary's chapters as required reading. The evidence submitted to meet each criterion must be evaluated as to whether it is indicative or consistent with national or international acclaim. The record does not establish that the petitioner's history of published articles is indicative of or consistent with national or international acclaim.

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

According to the plain language of 8 C.F.R. § 204.5(h)(3)(vii), this criterion relates to visual artists. Thus, this criterion is not applicable to the beneficiary's field and his conference presentations cannot serve to meet it. Further, we do not find that conference presentations, even a large number over a lengthy career, is comparable evidence to the type of exclusive artistic showcases that might serve to meet this criterion for visual artists.

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

The director failed to consider this criterion, however, we find that the evidence amply demonstrates that the beneficiary meets this criterion. According to Dr. Caballero, the beneficiary, in consultation with the U.S. National Institutes of Health, founded and directed a Clinical Nutrition Research Unit (CNRU) at the University of Carabobo in Venezuela. Dr. Caballero indicates that this CNRU is one of eight worldwide. Ricardo Maldonado, Dean of Carabobo University, affirms that the beneficiary was the Chief of the Education Division and Director of the National Institute of Nutrition of Venezuela, the CNRU at the University of Carabobo. The university subsequently named the CNRU after the beneficiary. The beneficiary also served as the General Director of Health and Nutrition for the Government of Venezuela. These positions are clearly leading roles for institutions with a distinguished reputation.

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 in his field 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, 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.