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U.S. Citizenship
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Services

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MAY 20 2005

FILE: WAC 03 104 54233 Office: CALIFORNIA 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:
[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.

Handwritten signature: Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(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 into the United States will substantially benefit prospectively the United States.

The applicable regulation defines the statutory term "extraordinary ability" as "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification as an alien with extraordinary ability in the sciences, specifically in organic chemistry. The petitioner originally submitted supporting documents including his resume, articles, awards, and three letters of recommendation. On appeal, the petitioner submits six additional recommendation letters, citation information for some of his articles, documentation that he has served as a reviewer for scientific journals, information regarding two research grants he has received, conference documents and abstracts, additional information regarding an award and his membership in professional associations. Counsel's claims and the additional evidence do not overcome all the substantive reasons for denial and we affirm the director's decision. The evidence submitted, counsel's contentions and the director's decision are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

(i) 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 evidence that he was included in the 2000 edition of [REDACTED] Who and that in 1999 he received the [REDACTED] from the Russian Academy of Sciences jointly with two other individuals. The director correctly determined that the petitioner's inclusion in Who's Who did not meet this criterion and counsel does not contest that conclusion on appeal.

The director found insufficient evidence regarding the [REDACTED] to show that it was not simply an "academic or work related award." On appeal, petitioner submits additional evidence regarding this award. The "Guidelines of Academy of Sciences of Russia on Awarding Gold Medals And [sic] Prizes Instituted After Outstanding Scientists" states that these honors are granted by the Academy to reward scientists who have made "scientific discoveries and innovations bearing the utmost importance for scientific theory and research as well as practical implementation." The honors are based on competition open to both Russian and foreign scientists. Competitions for prizes are held once every three years. The [REDACTED] award was instituted in 1996 and honors the "best work in the field of Organic Chemistry and Petroleum Chemistry." The award proceedings and honorees are published in the *Russian Chemical Bulletin, International Edition* and the *Herald of the Russian Academy of Sciences*. Petitioner also submitted an excerpt from the September, 1999 edition of the *Herald* announcing the [REDACTED] honorees. The article features a picture of the petitioner along with his two co-honorees and states that they were granted the award for "detection and identification of unsaturated hydrocarbons in Russian oils." We find this evidence sufficient to establish that the [REDACTED] award is a nationally recognized honor for excellence in the petitioner's field.

Because we find that the petitioner meets this criterion by virtue of the [REDACTED] we need not address counsel's far less persuasive claims that the petitioner's research grants and best publication award also satisfy this category.

(ii) 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 originally submitted no evidence relevant to this category. On appeal, counsel claims that the petitioner is a member of the Russian Academy of Sciences, the American Chemical Society and the European Association of Organic Geochemists, but submits evidence of only one membership. The record contains a copy of a membership card for the American Chemical Society (ACS) that expires on December 16, 2004 and states that the petitioner has one year of service. This indicates that the petitioner did not become a member until December, 2003 well after his petition was filed. Consequently, we cannot consider this evidence. The petitioner must establish his eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Even if the petitioner was a member at the time of filing, we would still find the evidence insufficient to meet this criterion. The accompanying letter from the ACS says nothing about eligibility requirements or membership criteria and the petitioner submits no other evidence that outstanding achievements are a prerequisite to ACS membership.

The petitioner also submits two letters regarding his application for membership in the European Association of Organic Geochemists (EAOG), but the record contains no evidence of his actual membership or that such membership was earned by virtue of his outstanding achievements. On appeal, counsel restyles the petitioner's

inclusion in the 2000 edition of the Marquis Who's Who in the World as a "membership." The Marquis Who's Who is clearly a publication, not a membership association. Excerpts from the publication originally included with the petition state that selection for inclusion in the volume is based on "reference value." Individuals are selected by virtue of their "position" and "notable" – but not outstanding – achievements in their fields. In addition, there is no indication that the editors are recognized experts in any specific fields of endeavor. Accordingly, the petitioner does not meet this criterion.

(iv) 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 petitioner originally submitted no evidence relevant to this category. On appeal, he submits a preface page from *Advances in Organic Geochemistry 1997* that lists the petitioner as a reviewer. The document states that the publication is a special issue of the journal, *Organic Geochemistry* and consists of selected papers presented at the European Association of Organic Geochemists' Eighteenth International Meeting. The papers were "subjected to a rigorous review procedure." [REDACTED] of *Organic Geochemistry*, confirms that she has "relied heavily on [REDACTED] expertise in providing reviews of manuscripts" in his field. The petitioner also submits a letter from the Executive Editor-in-Chief of the Russian journal *Neftekhimiya* (Petroleum Chemistry) confirming that the petitioner "worked (1987-2000) in Editorial Boards of Academic Journal 'Petroleum Chemistry' (Neftekhimia) [sic] as a reviewer of submitted papers in the field of oils and gas-condensates chemical composition." This evidence establishes that the petitioner has judged the work of others in his field in a manner consistent with sustained acclaim and thereby meets this criterion.

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

The director correctly determined that the petitioner did not meet this criterion because there was insufficient evidence that the petitioner's work had made a major impact in his field beyond his immediate colleagues. On appeal, counsel contends that the petitioner meets this criterion through his prior work on the occurrence of olefins in crude oil and the secondary migration of petroleum as well as his current work at ChemDiv, Incorporated on the synthesis of certain organic compounds. As supporting evidence of this claim, counsel refers to the petitioner's recommendation letters, citations of his articles, and his invitations to attend conferences in his field. Although this evidence shows that the petitioner has made notable and valuable contributions to his field, it is insufficient to demonstrate that those contributions were of major significance.

The petitioner submitted nine recommendation letters, eight of which were written by his present or former colleagues. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the scientists with whom he has worked directly. As proof that the petitioner's acclaim has extended beyond his circle of immediate colleagues, the petitioner submits one letter written by an expert in his field who has never worked with him directly, Professor [REDACTED]. While this letter also provides relevant information about the petitioner's contributions, it is similarly insufficient to establish his eligibility under this criterion. Letters solicited by an alien in support of his immigration case carry less weight than preexisting, independent evidence of major contributions that one would expect of a scientist who has sustained national or international acclaim. Accordingly, we discuss the letters as they relate to other supporting evidence.

The petitioner was part of a research team that discovered that the presence of olefins in crude oils was the result of natural radiation. [REDACTED] (who shared a room with the petitioner during the petitioner's fellowship at the University of Newcastle upon Tyne, United Kingdom) describes this discovery as "seminal work." [REDACTED] State University (the petitioner's colleague) similarly heralds the petitioner's work as a "truly superior contribution" that earned him a "world-renowned reputation." [REDACTED] a former collaborator and co-author of the petitioner) echoes this opinion by stating that the petitioner is "famous in the international organic geochemical community for his outstanding work on petroleum olefins." [REDACTED] (the aforementioned "independent expert") also describes the petitioner as "an innovative leader in his ... research of olefins in crude oils." However, the citation record of the petitioner's work in this area does not corroborate these glowing assessments. According to a list accompanying the petition, this research and related work was documented in five articles published in the journal *Organic Geochemistry*. The petitioner is the lead author of four of these articles and a co-author of the fifth article. The petitioner's first article on olefins published in 1994 has been cited 13 times, including six self-citations. A 1995 article has been cited six times, including five self-citations. The petitioner's 1996 article was cited four times with three self-citations. No citation information is provided for the 1998 article.¹ Another article published in 1998 of which the petitioner is a co-author has been cited five times (although the two most recent citations were in 2003 and may have occurred after the petition was filed). Hence, the petitioner's work on olefins has been only minimally cited by independent researchers and no other evidence establishes that this work made a contribution of major significance to the petitioner's field.

Similarly insufficient is the evidence regarding the petitioner's work on the secondary migration of petroleum. [REDACTED] explains that she and the petitioner collaborated on initial research in this area at the Fossil Fuel and Environmental Geochemistry Institute of the University of Newcastle upon Tyne in the United Kingdom. She describes their first joint publication in 1994 (of which she was the lead author and the petitioner was a co-author) as "an important milestone" that "laid the scientific foundation" for later work that was published in *Nature* in 1996. [REDACTED] confirms that the petitioner was "one of the first chemists who proposed ... to use data on carbazole compositional fractionation to study lateral (secondary) migration of petroleum." [REDACTED] also attests that the petitioner's research "provided an invaluable foundation for understanding secondary oil migration." The 1994 article has been consistently cited (21 times, including five self-citations by the petitioner and his co-authors). On appeal, the petitioner submits an excerpt from the 1996 article in *Nature* that cites the 1994 article. Counsel stresses the distinguished reputation of *Nature* and claims that the mere citation of the petitioner's article in this prestigious journal is proof that he has made a major contribution to his field. To the contrary, the single citation of an article that the petitioner co-authored nine years before his petition was filed reflects minor recognition, not sustained national or international acclaim. The evidence thus indicates that the petitioner was involved in foundational work for later research that made a major contribution to the field, but in which he was not involved.

None of the evidence demonstrates that the petitioner's current work at ChemDiv, Inc. has made original and major contributions to his field. Three letters from the petitioner's colleagues at ChemDiv, Inc. indicate that he is a valued researcher who is involved in important projects for the company. [REDACTED] Ivachtchenko, Chief Scientific Officer and Founder of ChemDiv, Inc. states that the petitioner "played a critical

¹ To clarify, the article referred to here is: "Olefins of radiogenic origin in crude oils," E.B. [REDACTED] & N.A. Vanyukova, *Org. Geochem.*, Vol. 29, No. 1-3, pp. 409-420, 1998. The petitioner is a co-author of two other articles published in the same volume for which he provides citation information.

role on projects ... that [have] led to development of cutting edge commercial products with applications in medicinal chemistry,” but gives no examples of those medical applications [REDACTED] states that the petitioner “has played an instrumental role in conducting research on novel ways to synthesize organic compounds” and that the compounds resulting from the petitioner’s “groundbreaking work are currently being evaluated for their potential to treat arteriosclerosis, cancer, diabetes, and other diseases.” Yet at the time of filing, the petitioner’s recent work apparently had not resulted in any publications or other evidence of the work’s significance. On appeal, the petitioner submits an article co-authored with his ChemDiv colleagues that was published in 2004. He also submits evidence of a Russian patent awarded in 2004. These accomplishments occurred after the petition was filed and consequently cannot be considered. The petitioner must establish his eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49.

Finally, contrary to counsel’s claim on appeal, the petitioner’s invitation to present his research findings at various conferences does not meet this criterion. Such participation only indicates that the petitioner has been active in his field. Although the petitioner’s work is valued by his colleagues and has gained some recognition in his field, the record is insufficient to establish that any of his research has resulted in original contributions of major significance.

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

The petitioner claims to have authored more than 60 articles and papers. However, mere publication of scientific work is insufficient to satisfy this criterion. Frequent publication of research findings is inherent to success as an established scientist and does not necessarily indicate the sustained acclaim requisite to classification as an alien with extraordinary ability. Evidence of publications must be accompanied by documentation of consistent citation by independent experts or other proof that the alien’s publications have made a significant impact in his field. In this case, the petitioner’s publication record is insufficient to meet this criterion.

The petitioner’s resume lists 63 publications. Six of these articles or abstracts were published before the petitioner received his doctoral degree. Of the remaining publications, 23 are abstracts, oral presentations or conference papers. We do not dispute that the remaining articles have been published in reputable scientific journals. Yet the petitioner is the lead author of only 15 of these articles and he provides citation information for only four articles. These four articles have been only minimally cited by independent researchers. The petitioner’s 1994 article entitled “Unsaturated-Hydrocarbons in Crude Oils” has been cited 13 times, but that number includes six self-citations. The petitioner’s 1995 article entitled “Alkene/Alkane Correlations within Olefin-Containing Paleozoic Crude Oils from Oklahoma and Texas” has been cited only six times including five self-citations. His 1996 article entitled “Radiolytic Nature of [REDACTED] Precambrian and Palaeozoic Oils” has been cited only four times including three self-citations. The petitioner’s 1997 article, “Liquid Chromatography of Petroleum Carbazoles” has been cited only three times including one self-citation. In addition, the petitioner’s most recent publications were in 1998, over four years before his petition was filed. The petitioner submits a more recent article on appeal, but we cannot consider it because it was published after his petition was filed. The petitioner must establish his eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49. The petitioner’s publication record thus indicates only minimal citation by independent researchers and is not consistent with sustained national or international acclaim.

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

On appeal, counsel requests that we consider the petitioner's participation in various scientific conferences as comparable evidence under this category pursuant to 8 C.F.R. § 204.5(h)(4). The petitioner submits a list of 25 conferences that he participated in from 1978 to 2000 as well as programs, copies of his abstracts and conference-related correspondence. Frequent presentation of one's research at scientific conferences is essential to continued success as an established scientist and does not necessarily indicate the sustained acclaim requisite to classification as a scientist with extraordinary ability. In this case, the record demonstrates that the petitioner has been active in his field, but none of the evidence indicates that his involvement in the conferences has been anything beyond that of a regular participant or that his participation was requested based on his sustained acclaim. None of the programs list the petitioner as an individually featured speaker and many of the documents show that the petitioner's papers have been accepted only as poster presentations. Accordingly, the comparable evidence submitted does not reflect the requisite acclaim and does not establish the petitioner's eligibility.

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

The director found no evidence relevant to this criterion. On appeal, counsel claims that the petitioner meets this criterion through his work at the Russian Academy of Sciences, his fellowship at the Fossil Fuels and Environmental Geochemistry Newcastle Research Group at the University of Newcastle in the United Kingdom and his current research position at the ChemDiv corporation. However, to satisfy this criterion, a petitioner must establish the nature of the alien's role within the entire organization and the reputation of the organization. Where an alien claims to have performed in a leading or critical role for a section of a distinguished organization, the petitioner must establish the reputation of that section independent of the organization at large. The record in this case does not meet this standard.

The petitioner's resume states that from 1987 to 2001 he was a Senior Research Fellow at the Petroleum Chemistry Laboratory at the Institute of Petrochemical Synthesis of the Russian Academy of Sciences. During his time at the Laboratory, the petitioner was the principal investigator for two research grants from the International Science Foundation and the Russian Government. Successful competition for research funding is essential to the scientific profession and does not necessarily reflect the sustained acclaim requisite to classification as an alien with extraordinary ability. Although the record shows that the petitioner's grants were highly competitive, it does not state that he was the only scientist or one of a select few at the Institute or the Academy to receive such funding. Although the petitioner's receipt of the Zelinsky award reflects the value of the petitioner's research while he worked at the Laboratory, it does not establish his specific role within the Laboratory or the Institute. In addition, while we do not dispute the distinguished reputation of the Russian Academy of Sciences, we find no evidence of the reputation of the Laboratory or the Institute independent of the Academy. Thus the record is insufficient to show that the petitioner's position at the Petroleum Chemistry Laboratory meets this criterion.

Similarly insufficient is the evidence concerning the petitioner's role at the Fossil Fuels and Environmental Geochemistry Newcastle Research Group ("the Newcastle Group"). The petitioner's resume states that he was a Distinguished Visiting Fellow at the Newcastle Group from 1992 to 1993. The brief letter of [REDACTED] Larter of the University of Newcastle simply verifies that the Newcastle Group was "fortunate to have employed [the petitioner] in the 1990's." [REDACTED] was a research associate at the Newcastle Group from 1991 to 1995 and states that the petitioner "was invited as a Distinguished Visiting Fellow, to conduct collaborative research."

The significance of that research was discussed above under the fifth criterion. The record contains no other evidence of the petitioner's fellowship. Moreover, the petitioner submitted no evidence of the reputations of either the Newcastle Group or the University of Newcastle. Accordingly, the evidence is insufficient to establish the petitioner's eligibility by virtue of his Newcastle fellowship.

The record is also insufficient to demonstrate the petitioner's eligibility under this criterion through his current position at [REDACTED]. Although four of the petitioner's colleagues at the company praise his contributions, the record contains no independent evidence that [REDACTED] has a distinguished reputation.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The petitioner bears this substantial burden of proof. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner in this case has not sustained that burden. The record indicates that the petitioner is an accomplished researcher who is well regarded by his colleagues, has won a nationally recognized award and has judged the work of his peers. However, the evidence does not establish that he was a scientist of extraordinary ability at the time of filing. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.