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U.S. Citizenship
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FILE:

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Office: NEBRASKA SERVICE CENTER

Date: AUG 16 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has earned sustained national or international acclaim at the very top level.

This petition, filed on July 21, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a scientific researcher. At the time of filing, the petitioner was employed as a Research Assistant Professor in the Department of Dermatology at Northwestern University. In response to the director's request for evidence, the petitioner submitted evidence showing that he is now employed by the University of Colorado Health Sciences Center.

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.

On appeal, counsel states:

[The petitioner] has received at least one nationally recognized price [sic] or award for excellence in his field. As [redacted] noted, "in July 2002 [the petitioner] was awarded a three-year career development award from The National Dermatology Foundation to study the innate immunity of the skin. This is an extremely prestigious award that is judged very competitively."

In addressing the petitioner's Research Career Development Award stipend from the National Dermatology Foundation, the director noted that the stipend was "designated to fund future research by novice researchers." The director further stated:

Specifically, the materials indicate "applications will be accepted from junior investigator's in the early stages of their academic careers." The purpose of the award is to "assist in the transition from fellowship to established investigator." The funds are disbursed to the institution fiscal officer and are designated for the direct costs of the proposed research only. . . . Every successful scientist engaged in research, of which there are hundreds of thousands, receive [sic] funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, research grants, especially those designed for junior investigators, are principally designed . . . to fund proposed research, and not to honor or recognize past achievements.

We note that the petitioner's National Dermatology Foundation stipend was awarded not by outside nomination, demonstrating the field's regard for his ability, but upon his own application to the foundation. There is no evidence showing that the petitioner has received a nationally significant award for which he would have faced competition from throughout his entire field, rather than competition limited only to "junior investigators in the early stages of their academic careers." Such an award may distinguish the petitioner from other novice researchers applying for the same stipend, but it offers no meaningful comparison between the petitioner and experienced researchers who had long since completed their fellowship training programs. Therefore, the petitioner's Career Development Award fails to demonstrate that he "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2).

We concur with the director's finding that the petitioner's evidence does not establish 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.

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 letters of support confirming his membership in the Society of Investigative Dermatology and the Association for Research in Vision and Ophthalmology. The record, however, does not include the membership bylaws or the official admission requirements for these associations. There is no evidence showing that that admission to membership in these organizations required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership. Thus, the petitioner has not established that he meets this criterion.

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 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. An alien would not earn acclaim at the national or international level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

On appeal, counsel for the petitioner states that "there is at least one article written by others in the field about [the petitioner's] work. See the article titled "Expression of functional Toll-like receptor 2 on human epidermal keratinocytes published in the *Journal of Dermatological Science* 30 (2002) 185-194."

This research article cites the petitioner's work on page 191, mostly in an attempt to explain the discrepancies between the author's results and those reported by the petitioner. This article is primarily about the author's own research work, not the work of the petitioner. As such, it cannot be considered qualifying published material about the petitioner. We cannot ignore that the above article also cited scores of other authors. If the petitioner is not the main subject of the material, then such an article fails to demonstrate his individual acclaim. In the petitioner's field, it is the nature of research work to build upon work that has gone before. In

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

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. We find that the evidence submitted by the petitioner is not adequate to demonstrate that he meets this criterion.

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

The petitioner submitted several letters of support.

[REDACTED], Professor of Dermatology, Northwestern University, states: "[The petitioner's] work has been published in the highest quality scientific journals, which is further evidence that his work is respected by his peers. These studies are innovative and his work will undoubtedly lead to new treatments in both dermatology and ophthalmology."

Published work, however, falls under the next criterion, a criterion that we find the evidence in this case adequately satisfies. To satisfy this criterion, the petitioner must show not only that the petitioner's work was published, but that it has "major significance" in the field. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for published work and contributions of major significance, Citizenship and Immigration Services (CIS) clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. Further, Dr. [REDACTED] assertion the petitioner's research studies hold future promise for dermatology and ophthalmology treatments is not adequate to establish that his findings are already nationally or internationally acclaimed as a contribution of major significance. A petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971).

[REDACTED], Professor and Chair of the Dermatology Department at Northwestern University, states:

[The petitioner] has been recognized for his significant contributions in the field of investigative dermatology and ophthalmology. His studies have been extremely important in understanding the bacterial inflammation in skin and eye. He has made outstanding contributions in providing the molecular basis of understanding the inflammatory cascade that occurs from a gram-negative and positive bacterial infections. His studies have shown extreme innovation, and based on his reported observations will lead to new treatments both in dermatology and ophthalmology for gram negative and positive bacterial infections.

Since [the petitioner] has been in the United States he has published his studies in the major journals of dermatology and ophthalmology. [The petitioner] has authored a number of scholarly articles published in the most rigorous scientific journals in dermatology and ophthalmology. His research has been original and of the highest caliber in both dermatology and ophthalmology which is exemplified by his publications.

Specifically, [the petitioner's] research established that cell receptors termed TLR2 and TLR4 stimulate a response to certain bacteria from the keratinocyte cells which make up the outer layer of the epidermis. Thus, for example, if a TLR2 sensed the presence of lipopolysaccharide, a harmful gram negative bacterial cell wall component, it will send what is called a "endotoxin" signal from the outside to the inside of the keratinocyte cell through the TLR signal transmission pathway. This signal will induce the cell to produce cytokines or lymphokines, which will in turn recruit macrophages or monocytes or neutrophils to the infection site as soon as possible to start killing the bacteria.

Far beyond merely satisfying academic curiosity, [the petitioner's] pioneering lays the groundwork for applied researchers to develop drugs to facilitate immune responses in persons whose immune system has deteriorated such as HIV. On the other hand, in the case of individuals whose immune responses are for some reason, exaggerated, resulting in harmful inflammations of the skin even in response to non-threatening bacteria, [the petitioner's] work provides a roadmap as to how this problem may be effectively attacked by blocking the transmission of the signals which trigger the inflammatory response.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or published research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge or is one of several individuals who collects data for a study designed by others has inherently made a contribution of major significance to the field as a whole.

Professor and Chair of the Dermatology Department at the University of Colorado Health Sciences Center (the petitioner's current employer), states:

[The petitioner] became the first researcher to establish that certain toll-like receptors on the skin surface directly stimulated keratinocytes skin cells in response to certain bacteria. This research constituted a contribution of major significance to the field of dermatological immunology as did his groundbreaking work on neuropeptides in which he provided the first molecular proof of their role in reducing skin inflammation. These contributions to the field of dermatological immunology, together with [the petitioner's] work investigating the effects of UVB rays on eye inflammation and demonstrating the pathways by which they stimulate the production of cytokines in the eye (leading to eye inflammation and sometimes even blindness) far exceed the contributions which would be expected by an ordinary professional in his field.

[redacted] Chair of the Dermatology Department at Emory University, asserts that the petitioner was a fellow there. While [redacted] attests to the potential benefits and importance of the petitioner's current work and asserts generally that the beneficiary has made past contributions, he does not identify any of those contributions or explain their significance and influence in the field. [redacted] Director of Ophthalmic Research at Emory University, asserts that the petitioner provided "the molecular basis of understanding the inflammatory cascade that occurs from gram-negative bacterial infections." [redacted]

however, does not provide any examples of how these results have influenced the field in such a manner as to be indicative of national or international acclaim.

The petitioner also submitted letters of support from [REDACTED] Professor of Medicine and Head of the Dermatology Division at the University of Washington's Department of Medicine, and [REDACTED] Professor of Surgery and Physiology at the University of California, San Francisco. In addressing the petitioner's contributions, their brief letters contain the following identical statements:

[The petitioner] was the first researcher to provide molecular proof that substances released by nerves, termed neuropeptides, have the affect of reducing skin inflammation. There is reason to believe that this may lead to important new therapies in the future and may find application in combating the effects of other inflammatory diseases such as heart disease, multiple sclerosis and diabetes.

This work, together with his research in which he established the direct links between toll-like receptors and skin keratinocyte cells in combating bacterial invasion of the body and tracking the pathways by which UVB light resulted in eye inflammation, were all contributions of major significance to the field of dermatological immunological basic research, which greatly exceeded those of ordinary professionals in his field.

It is not clear who is the original author of these common passages, but it is highly improbable that both individuals independently formulated the exact same wording. It is acknowledged that these individuals have lent their support to this petition, but it remains that at least one of them did not independently choose the wording of his letter. We find such duplicative letters of support to be of limited probative value.

The petitioner's references all attest to his innovation and the originality of his work. Obviously, the petitioner cannot satisfy this criterion simply by demonstrating that his work was "original" in that it did not merely duplicate prior research or by showing that he was among the first to make a particular discovery. Research work that is unoriginal would be unlikely to secure the petitioner a master's degree, let alone classification as an alien of extraordinary ability. 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. To be considered a contribution of major significance in the field of science, it can be expected that the results of the petitioner's work would have already been reproduced and confirmed by other experts and applied in their work. In this case, the petitioner has not adequately shown how the field has changed as a result of his work, beyond the incremental improvements in knowledge and understanding that are expected from original valid research work.

Aside from the duplicative letters from [REDACTED] all of the petitioner's letters of support are from his immediate circle of colleagues. With regard to the personal recommendation of individuals from institutions where the petitioner has worked, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the petitioner has earned sustained acclaim for his contributions outside of his affiliated institutions. If the petitioner's reputation is mostly limited to those institutions, then he has not achieved national or international acclaim regardless of the expertise of his witnesses. Without extensive documentation showing that the petitioner's work has been unusually

influential or highly acclaimed throughout the greater field, we cannot conclude that his work rises to the level of a contribution of major significance. We find that the evidence submitted by the petitioner is not adequate to demonstrate that he meets this criterion.

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

The petitioner submitted evidence of his authorship of scholarly articles in publications such as *The Journal of Immunology* and *Journal of Investigative Dermatology*. The petitioner also submitted evidence of cites to his articles showing that others in his field have found his work to be significant. We concur with counsel that the petitioner's evidence is adequate to satisfy this criterion.

The regulation at 8 C.F.R. § 204.5(h)(3), however, requires that at least three criteria must be fulfilled 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 himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.

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.