U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: AUG 10 2009

LIN 07 222 53726

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

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John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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, the petitioner raises several concerns on the Form I-290B, Notice of Appeal. The petitioner further indicated that he would submit a brief or additional evidence to the AAO within 30 days. The petitioner dated the appeal January 23, 2009. As of this date, more than six months later, this office has received nothing further. Therefore the appeal will be adjudicated based on the assertions set forth on the Form I-290B. For the reasons discussed below, we uphold the director's decision. In addition to the issues addressed by the director, we further note that the record lacks sufficiently detailed plans of the petitioner's future employment as set forth at 8 C.F.R. § 204.5(h)(5).

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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

On appeal, the petitioner asserts that the director erred by requiring evidence that he is "the best in the world." The director, however, stated that the petitioner had not demonstrated national *or* international acclaim, consistent with the statutory standard quoted above.

U. S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29, 1991). 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 beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an obstetrician and gynecologist. 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). Congress' example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a substantial cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien's field as one of the top awards in that field.

The petitioner asserts that his inclusion as an International Health Professional of the Year in 2006 by the International Biographical Centre (IBC) of Cambridge, England, his nomination as one of the Top 100 Health Professionals in 2006 and his election as a fellow of the International College of Surgeons in 1998 constitute international merit awards. For the reasons discussed below, the inclusion of the petitioner's name in a for profit biographical dictionary, recognition for which the petitioner must purchase his own testimonial, sash or medal and his membership in an association do not even constitute lesser nationally or internationally recognized awards or prizes pursuant to 8 C.F.R. § 204.5(h)(3)(i). Thus, they cannot serve as evidence of the petitioner's one-time achievement, defined as a major internationally 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 under 8 C.F.R. § 204.5(h)(3).[1]

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

As stated above, the petitioner submitted a May 24, 2007 letter confirming his "nomination" as "an" International Health Professional of the Year in 2006 by the IBC. The letter indicates that the IBC is a publisher of biographical dictionaries. The petitioner submitted a second letter also dated May 24, 2007 confirming his nomination for the Top 100 Health Professionals in 2006. This letter suggests that the petitioner is "eligible" for the commemorative items available, such as a medal that it appears the petitioner must purchase. In addition, the petitioner submits his certificate affirming his election as a fellow of the International College of Surgeons in 1998.

In response to the director's request for additional evidence, the petitioner submitted an electronic mail (e-mail) message from the customer relations department at the IBC regarding the International Health Professional of the Year advising that the editorial department reviews the biographical details from recommendations and questionnaires and "various other sources" and then creates a shortlist of 300 names. The e-mail does not indicate whether these editors are medical experts or even if they verify the information provided to them by nominators or the applicants themselves. The e-mail confirms that the petitioner was "awarded the title International Health Professional of the Year 2006" which entitles the petitioner to "purchase" a pictorial testimonial, sash or medal to commemorate the award. The petitioner also submitted materials from IBC's own website asserting that they have published over one million biographies in various biographical dictionaries and solicit nominations.

The petitioner also submitted materials from http:/en.wikipedia.org. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.[2] *See Lamilem Badasa v. Michael Mukasey,* 540 F.3d 909 (8th Cir. 2008). That said, we

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

[2] Online content from *Wikipedia* is subject to the following general disclaimer:

> WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on August 6, 2009, a copy of which is incorporated into the record of proceeding.

cannot ignore that the information from this website submitted by the petitioner for our consideration is not favorable. Specifically, the materials state that the IBC "specializes in creating 'awards' and offering them to many. Awards cost the recipient between US$500 and $1495 each, depending on its claimed prestige." The footnotes for this information include a blog entry "nominating this as 'Most Idiotic International Scam of the Year 2005.'" The reader is also referred to entries on "Vanity press" and "Who's Who scam."

Regarding the International College of Surgeons, the petitioner submitted lists of the college's honorary fellows, honorary members and honorary master surgeons that do not include the petitioner. The petitioner also submitted general information about the college discussing its mission and advising that members are encouraged to engage in humanitarian projects. Materials from the U.S. section advise that the college has over 8,000 members.

The director did not consider the above evidence as relevant to this criterion and concluded that the petitioner's education could not serve to meet this criterion. On appeal, the petitioner asserts that the director failed to consider the international stature of the organizations that "awarded my Extra-ordinary Ability certificates."

The IBC's own promotional materials cannot establish its "international stature." The record contains no favorable media coverage of the IBC in general or its selection of awardees. The letters, e-mail and Internet materials from the IBC reveal that it is primarily a for-profit publisher of biographical dictionaries that promotes the sale of books to those included in those dictionaries and the sale of testimonials, sashes and medals to "award" recipients. We are not persuaded that nationally or internationally recognized awards require the recipients to pay for the testimonials, sashes or medals evidencing the awards.

Regarding the International College of Surgeons, the international prestige of an association does not create a presumption that membership is a nationally or internationally award or prize for excellence. Nothing in the Internet materials submitted suggests that election as a fellow is an award for excellence. We note that the regulations contain a separate criterion for memberships at 8 C.F.R. § 204.5(h)(3)(ii). We find that this fellowship is best considered under that criterion.

In light of the above, the petitioner has not established 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.*

As stated above, the petitioner is an elected fellow of the International College of Surgeons. The petitioner also submitted evidence of his fellowship in the Council of the West African College of Surgeons based on an examination, his membership of the Society of Gynaecology & Obstetrics of Nigeria (SOGON) and his junior fellowship in the American College of Obstetricians and

Gynecologists (ACOG). In response to the director's request for additional evidence, which specifically requested the constitution or bylaws of the associations setting forth their membership requirements, the petitioner submitted the abovementioned information about the International College of Surgeons and evidence that he is a member of the "AAGL."

The director concluded that the petitioner had not demonstrated that any of the associations require outstanding achievements of their members. On appeal, the petitioner does not address this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of membership *and* evidence that the association requires outstanding achievements of its members. We will not presume the membership requirements for an association based on its national or international reach, which may be more indicative of its mission rather than the exclusivity of its membership. It is the petitioner's burden to provide the constitution, bylaws or other official information from the association setting forth its membership requirements. The petitioner did not submit such information despite the specific and unambiguous request by the director for this evidence. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In light of the above, the petitioner has not submitted the required initial evidence to meet this criterion.

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

The petitioner has never claimed to meet this criterion. We acknowledge that the petitioner has authored two published articles in 1997 and 1998. He has also presented his work at a conference in 1997. The record, however, lacks evidence of citations, letters from other obstetricians influenced by his work or comparable evidence confirming the impact of this work. Significantly, the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires evidence that the petitioner's work is not only original but of *major significance*. While the publications and presentations may attest to the originality of the petitioner's work, the record lacks evidence that this work has had a major impact on the practice of obstetrics.

In light of the above, 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.

As stated above, the petitioner has authored two articles in 1997 and 1998 and presented his work in 1997. The petitioner personally explained the significance of his articles. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). As noted by the director, the petitioner submitted no evidence that his published or presented work has been cited or other evidence of its impact.

On appeal, the petitioner asserts that the director did not acknowledge the petitioner's publications and citations. The record, however, contains no peer-reviewed articles citing the petitioner's work or other evidence of its impact. The evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim if that statutory standard is to have any meaning. The petitioner has not established that his publication and presentation record is consistent with such acclaim. Moreover, the publications and presentations predate the filing of the petition by at least 11 years and, thus, are not evidence of *sustained* acclaim as of the date of filing. Even if we concluded that the petitioner meets this criterion based on the plain language of the regulation at 8 C.F.R. § 204.5(h)(vi), and we do not, the evidence falls far short of meeting any other criterion.

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

While the petitioner did not previously claim to meet this criterion, the petitioner submitted evidence of the following appointments: Lecturer I at the College of Medicine, University of Nigeria in 1992, "honorary consultant" at the University of Nigeria Teaching Hospital in 1992, and one of 12 members of the Faculty Curriculum Committee at the College of Medicine, University of Nigeria in 1996. The director requested evidence of the significance of the petitioner's role and the reputation of the University of Nigeria. The petitioner's response included no new relevant evidence for this criterion, such as an organizational chart or a letter from an official at the University of Nigeria explaining how the above positions fit within the hierarchy of the university.

As noted by the petitioner on appeal, the director did not address this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) reflects that the relevant factors for this criterion are the nature of the position the petitioner was hired to fill and the reputation of the entity that hired him. In other words, the nature of the position, in and of itself, must be indicative of or consistent with national or international acclaim.

While the petitioner has affirmed the distinguished reputation of the University of Nigeria, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California,* 14 I&N Dec. at 190). Even if we accepted that the University of Nigeria enjoys a distinguished reputation, the petitioner has not established that he played a leading or critical role for the university. We are not persuaded that a position as a lecturer at a university is a leading or critical role beyond the obvious need for a university to employ competent and creative lecturers. The consultant appointment letter does not suggest that it is a leading or critical role for the university. The appointment requires that the appointee be registered as a specialist and maintain a membership in a medical defense organization. The duties are not specified and the record does not establish how many consultants provide such services to the teaching hospital. Finally, we note that the petitioner was one of 12 members on the Faculty Curriculum Committee which was chaired by someone other than the petitioner. The significance of the petitioner's role on this committee is undocumented. Finally, the

appointments all predate the filing of the petition by at least 11 years and, thus, cannot demonstrate *sustained* acclaim at the time of filing.

In light of the above, the petitioner has not established that these appointments can serve to meet this criterion.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

While the petitioner never previously claimed to meet this criterion, his appointment letter for the lecturer position lists the petitioner's entry remuneration as 32,959 Naira. The consultant appointment letter indicates the petitioner would receive an additional 24,000 Naira per year. On appeal, the petitioner asserts that the director failed to address this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires evidence of high remuneration *in relation to others* in the field. Thus, the evidence submitted under this criterion must allow us to compare the petitioner's remuneration to the high end level of remuneration in the field nationally. The record contains no such evidence. Moreover, the record contains no evidence of the petitioner's income after 1998. The evidence of his income in 1990's, even if it was significant, could not demonstrate sustained acclaim in 2007 when the petition was filed.

In light of the above, the petitioner has not established that he meets 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 an obstetrician and gynecologist 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 showed prior talent in this occupation, but 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.

In addition, the regulation at 8 C.F.R. § 204.5(h)(5) provides:

> *No offer of employment required.* Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement

from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

While the petitioner touts his decades of experience, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California,* 14 I&N Dec. at 190). Moreover, the regulation at 8 C.F.R. § 204.5(g)(1) provides that evidence of experience "shall" consist of letters from current or former employers. The petitioner has filed two Form I-485 Applications to Register Permanent Residence or Adjust Status that are part of the record of proceeding, receipt numbers WAC-06-071-51997 and LIN-08-118-50997. Accompanying these petitions are two Forms G-325A Biographic Information signed on March 5, 2008 and November 29, 2005. On these forms, the petitioner lists employment as a physician in Ireland from 1998 through 2001, as a physician in California from 2004 through 2006,[3] and as a teacher for a San Diego school district as of July 2007. The petitioner did not submit employment verification letters from his employers in Ireland or the United States in support of this petition. The petitioner did, however, submit evidence of his employment as a physician in Ireland and a one-year residency in California in support of a previous petition, receipt number WAC-06-071-52057.

While the petitioner has asserted that he plans to teach and train medical personnel, he did not submit a detailed plan on how he intends to do so or any of the other evidence mandated under 8 C.F.R. § 204.5(h)(5). The absence of such evidence is of special concern given that the petitioner does not claim to have worked in his field after August 2006, does not appear to have taught at the university level after 1998 and has not documented that he is licensed in any U.S. state.

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.

[3] We were unable to confirm that the petitioner is licensed to practice medicine in the State of California at http://licenselookup.mbc.ca.gov/licenselookup/search.php, accessed August 6, 2009 and incorporated into the record of proceeding.