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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 29 2009
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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:

[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.

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).

John F. Grissom
Acting 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 of 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 in the sciences. The director determined that the petitioner had not established the beneficiary's sustained national or international acclaim required for classification as an alien of extraordinary ability.

On appeal, counsel asserts that the beneficiary meets the criterion at 8 C.F.R. § 204.5(h)(3)(i), (iv), and (vi).

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.

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. 60897-99 (Nov. 29, 1991). 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.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "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). We address the evidence submitted and the petitioner's contentions in the following discussion of the regulatory criteria relevant to the beneficiary's case. The petitioner does not claim that the beneficiary is eligible under any criteria not addressed below.

In this case, the petitioner seeks classification of the beneficiary as an alien with extraordinary ability in the sciences, specifically as executive director and head of the therapeutic area. The petitioner initially submitted supporting documents including educational diplomas, letters of recommendation, articles the beneficiary authored, awards received, citations to the articles authored, and information about the petitioner. In response to a request for evidence (RFE) dated May 15, 2008, the petitioner submitted information about the organizations bestowing awards upon the beneficiary and associations to which he belongs, and information about the publications in which the beneficiary's articles were published.

On July 11, 2008, the director denied the petition, finding that the beneficiary did not meet any of the regulatory criteria for establishing sustained national or international acclaim at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel asserts the director "did not follow its own guidelines in calculating the response time allowed for a Request for Evidence." With regard to the director's issuance of a request for evidence, the regulation at 8 C.F.R. § 103.2(b)(8)(iii) permits the petitioner to respond "within a specified period of time as determined by USCIS." As the regulations do not mandate any specific period of time in which to afford a petitioner the opportunity to respond to an RFE, counsel's argument is not persuasive. Even if the director had committed a procedural error by failing to provide the petitioner additional time in which to respond to the May 15, 2008 RFE, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal as of September 9, 2008, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

(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 of the beneficiary's receipt of an award for Best Poster at the 1999 11th Congress of the South African Hypertension Society ("SAHS"). The petitioner presented information about the SAHS including its mission statement, objectives, membership criteria, constitution, and names of those on the advisory council. The reputation or standing of the organization is not an issue under this criterion, however. Instead, the petitioner must present evidence that the prizes it awards are *recognized* either in the field or by the public at large. The petitioner submitted no news or journal articles, for example, announcing the winners of the prizes or other evidence of how anyone would learn the identities of recipients of the SAHS prizes. Without a showing of recognition, this prize does not establish eligibility of the beneficiary under this criterion.

The petitioner asserted that the beneficiary received "numerous grants from highly esteemed national and international organizations." In response to the RFE, the petitioner listed the grants as being in 1995 from the New Zealand Health Research Counsel, 1998 from the South African Hypertension Society, and 1999 from the South African Medical Research Council. We find no evidence in the record that the beneficiary received these grants. 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. 1998) *(citing Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972)). Even if evidence of these grants had been submitted, we cannot ignore the fact that research funding through competitive grants is inherent to many fields within the basic and applied sciences. Although grants may indicate the recognized value of the recipient's research, they are not prizes or awards for documented achievements. Rather, they may recognize that the recipient's prior findings support the viability of the proposed research. Research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands,

receives 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, a research grant is principally designed to fund future research, and not to honor or recognize past achievement.

Even if either the grants or the exchange program amounted to awards under this criterion, they date from nine years or earlier prior to the filing of this petition so cannot evidence *sustained* acclaim.

For the above reasons, the petitioner has failed to establish that the beneficiary meets 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 stated that the beneficiary was eligible under this criterion through his work reviewing grant applications and peer reviewing articles. The letter from [redacted], Clinical Director of Linde Gas Therapeutics for the Medical Research Council ("MRC"), states that the beneficiary assisted the MRC in organizing medical school research presentations. The letter from [redacted] Professor of Medicine at the University of Auckland, stated that the beneficiary organized conferences and engaged in peer review of the New Zealand Society for the Study of Diabetes and the Australasian Diabetes Society, was a clinical teacher at the University of Auckland, was an examiner for the Royal Australasian College of Physicians, and reviewed grant applications for the New Zealand Health Research Council. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv) depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "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). The petitioner submitted no evidence showing that the beneficiary's role in any of these endeavors is consistent with sustained national or international acclaim at the very top of the field. Instead, very little evidence was submitted about the beneficiary's role with these organizations including how often he reviewed articles or grant applications, how he was chosen for the positions, or who else was involved with these organizations. In addition, the petitioner submitted no evidence that the beneficiary served on the editorial board, completed a substantial number of reviews, or otherwise conducted peer review of other scientists' work in a manner consistent with sustained national or international acclaim. The scant evidence submitted is insufficient to show that the beneficiary's activities with these organizations are consistent with sustained national or international acclaim.

In response to the RFE, the petitioner asserted that the beneficiary was chosen to be a peer reviewer for the 19th World Diabetes Congress. The list of reviewers presented, however, does not include the beneficiary's name. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Even if the beneficiary had been listed as a reviewer, the petitioner submitted no evidence as to how those reviewers were chosen and, in any event, the beneficiary would have served as one of 115 reviewers for the Congress. Such a high number of reviewers does not indicate that only the very top of the profession were invited or that being a reviewer is indicative of national or international acclaim.

Accordingly, the petitioner has failed to establish that the beneficiary meets this criterion.

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

In support of the original submission, the petitioner submitted letters of recommendation and referred to the beneficiary's publications. While the beneficiary'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. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance to the field as a whole. The beneficiary's field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the beneficiary's work.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. Thus, the content of the experts' statements and how they became aware of the beneficiary's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a researcher who has sustained national or international acclaim.

Although the letters submitted are complimentary of the beneficiary, many focus on the beneficiary's abilities as a researcher or physician as opposed to detailing any contribution that his research made. For example, the letter from [redacted] President of Pharmacovigilance & Risk Management, states that the beneficiary has "extensive clinical practice experience coupled with excellent analytical skills and clear understanding of the methodology and application of approaches to the detection and assessment of safety signals for pharmaceutical products." The letter from [redacted] Director of Medical Imaging at Coffs Harbour Health Campus, stated that patient care was positively impacted by the beneficiary's work, but provides no details about how or to what extent the beneficiary's work was adopted or any details about his work or its adoption. The letters from [redacted] Executive Director of the petitioner's Global Regulatory Affairs and Safety division, Dr. [redacted] and [redacted] contain similar statements. These complimentary statements do not amount to evidence that the beneficiary made an original contribution of major significance to the field. They are simply statements that the beneficiary is successful in his chosen profession.

The letter from Clinical Director for South Auckland Clinical School, states that parts of the beneficiary's program compiling patient data from doctors, clinics, and laboratories which allowed for monitoring of "the clinical and managerial performance of the Diabetes Service [at Middlemore Hospital]" were "used in defining the specifications for the subsequent South Auckland patient and health provider requirements for the district-wide information technology programme." [redacted] states that the beneficiary's ideas "were

responsible in large part for the successful implementation of Information Technology which made Middlemore Hospital the acknowledged leader in Clinical Information systems in New Zealand at that time." [redacted] letter also noted the "innovative" program for computerizing clinical diabetes tests. The letter from [redacted] stated that the beneficiary's model for diabetes care "led to SAH introducing this model for other chronic diseases and was truly innovative in changing the paradigm of specialist health care in the community." [redacted], Head of the Drug Safety Department at SciClone Pharmaceuticals, stated that the beneficiary "earned an international reputation" through his "research and innovation in the highly specialized area of risk management, with a focus upon drug safety signal detection" which "significantly improved the efficiency and accuracy of detecting certain potential adverse drug reactions from combination drug therapies." The letter from [redacted], Head of the Cardiology Department with Port Elizabeth Hospital Complex, states that the beneficiary discovered the use of "calcium antagonists and beta blockers to control hypertension in patients with cardiac risk factors" which resulted in a change in "the management practices in the hypertension and cardiac risk clinics." [redacted] stated that the beneficiary's work changed the course of treatment for diabetics with suspected heart problems or who had suspected heart attacks "in many cardiac intensive care units." [redacted] medical researcher at Northwestern University, stated that her department implemented the recommendations of the beneficiary in using "calcium anatgonsists [sic] and combination with beta blockers."

The above letters are all from the beneficiary's collaborators and immediate circle of colleagues. While such letters are important in providing details about the beneficiary's role in various projects, they cannot by themselves establish the beneficiary's acclaim beyond his immediate circle of colleagues. The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition. The caliber of journals publishing the beneficiary's work and the number of citations to the beneficiary's work show that the beneficiary has contributed to the field, but does not demonstrate that the contributions are of major significance as will be discussed in further detail under the discussion of 8 C.F.R. § 204.5(h)(3)(vi).

The statement provided from the petitioner originally detailed the beneficiary's work and recruitment due to the beneficiary's "breakthroughs" by several pharmaceutical companies including Pfizer, Gilead Sciences, and the petitioner as well as hospitals or education facilities. No evidence appears in the record to support these statements. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Notably, no letters appear from anyone at these pharmaceutical companies about the reason that the beneficiary was recruited or how his methods or findings were used.

Accordingly, the petitioner failed to establish that the beneficiary meets this criterion.

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

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 had a significant impact in his field. The petitioner submitted the following articles authored or co-authored by the beneficiary: "Atenolol Plus Nifedipine for Mild to Moderate Systemic Hypertension After Fixed Doses of Either Agent Alone," published in the 1986 edition of *The American Journal of Cardiology*; "Monotherapy with the Calcium Channel Antagonist Nisoldipine for Systemic Hypertension and Comparison with Diuretic Drugs," published in the 1987 edition of *The American Journal of Cardiology*; "Blood pressure and social support observations from Mamre, South Africa, during social and political transition," published in the 1999 *Journal of Human Hypertension*; "Effect of slow-release nifedipine on glucose intolerance," published as a part of the 6th International Adalat Symposium; "Lispro insulin as premeal therapy in type 1 diabetes: comparison with Humulin R, published in the 1997 *New Zealand Medical Journal*; "Ambulance visits for severe hypoglycaemia in insulin-treated diabetes," published in the 1999 *New Zealand Medical Journal*; "Ambivalence of primary health care professionals towards the South African Guidelines for Hypertension and Diabetes, published in the December 2000 edition of the *South African Medical Journal*; "A structured record to implement the national guidelines for diabetes and hypertension care," published in the 2000 *South African Medical Journal*; "Primary Cardiac Amyloidosis: A Case Presentation" and "Primary Cardiac Amyloidosis: A Review of the Literature," published in the 1980 *South African Medical Journal*; "A polymorphism (D20S32e) close to the human melanocortin receptor 3 is associated with insulin resistance but not the metabolic syndrome," published in the 2007 *Diabetes Research and Clinical Practice*; and "Melanocortin-3 receptor gene variants in a Maori kindred with obesity and early onset type 2 diabetes," published in the 2002 edition of *Diabetes Research and Clinical Practice*.

The evidence provided indicates that only six of the beneficiary's articles were cited and only for a total of 54 citations. This relatively small number of citations is insufficient to demonstrate that the beneficiary's work has received sustained national or international acclaim regardless of the quality of the journal publishing the article. The journals' position as professional or major trade publication or other major media is not in question. However, as noted under the discussion of the beneficiary's eligibility under 8 C.F.R. § 204.5(h)(3)(v), the petitioner failed to show that the beneficiary's research has impacted the field so as to reflect sustained national or international acclaim within the field.

The petitioner also submitted evidence of the beneficiary's presentation at the 2007 Pharmacovigilance & Risk Management conference and an invitation to participate in a Global Risk Management Compliance web conference. In the original submission, the petitioner listed a number of presentations that the beneficiary purportedly gave, however, no evidence appears in the record to substantiate the beneficiary's participation. 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. For the two conferences supported by evidence in the record, the petitioner presented no evidence that the beneficiary actually participated in the Global Risk web conference as opposed to solely being invited nor did the petitioner present information about the Pharmacovigilance & Risk Management conference so as to indicate that participating in this conference conveyed the necessary national or international acclaim required by this highly restrictive classification.

As a result, the petitioner failed to demonstrate that the beneficiary meets this criterion.

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

As discussed above, the petitioner asserted that the beneficiary participated in a number of presentations at scientific conferences. The petitioner presented evidence of only two of these conferences. Only one showed actual participation as opposed to an invitation. The plain language of this criterion reveals that it relates to the visual arts, such as sculptors and painters, rather than to scientific exhibitions or conferences. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. Regardless, the petitioner submitted no evidence, such as the size of the conferences, the attendees, or the selection criteria for presentations to demonstrate how the beneficiary's participation in these conferences conveyed the necessary national or international acclaim required by this highly restrictive classification.

Accordingly, the petitioner failed to establish that the beneficiary meets this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), 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 record in this case does not establish that the beneficiary has achieved sustained national or international acclaim as a researcher placing him at the very top of his field at the time of filing. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.