

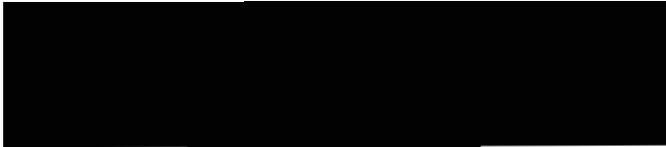


U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

B2



FILE: [Redacted]
SRC 07 267 50908

Office: TEXAS SERVICE CENTER Date: NOV 10 2009

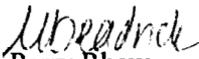
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.


Perry Rhew
Chief, Administrative Appeals Office

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

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. Specifically, the director concluded that the petitioner meets only one of the ten regulatory criteria, 8 C.F.R. § 204.5(h)(3)(vi) relating to authorship of scholarly articles, of which an alien must meet at least three.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we are satisfied that the petitioner enjoys sustained national acclaim in his field.

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, 60898-99 (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 has sustained national or international acclaim at the very top level.

This petition, filed on July 6, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. 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, internationally recognized award). Congress' example of a one-time achievement is a Nobel Prize. H.R. Rpt. 101-723, 59 (Sept. 19, 1990). Barring the alien's receipt of such an award, the regulation outlines the following 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.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (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;
- (iii) Published material 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;
- (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 specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The petitioner submitted supporting evidence including his election as a fellow in an association that requires outstanding achievements for election as a fellow,¹ letters attesting to the field's use of the petitioner's nuclear magnetic resonance procedures, his extensive publication record and evidence that his articles are consistently well-cited. While the most persuasive evidence of the petitioner's service as a judge of the work of others, his service on an editorial board, postdates the filing of the petition, we simply note that the petitioner was invited to serve on this editorial board prior to the filing of the petition. This invitation is consistent with our finding that the petitioner is eligible for the exclusive classification sought.

Not all of the petitioner's evidence carries the weight imputed to it by counsel or relates to the criteria identified by counsel. Moreover, we concur with the director that publications and presentations are insufficient evidence of contributions of major significance absent evidence of their significance. *See Kazarian v. USCIS*, 2009 WL 2836453, *6 (9th Cir. 2009). Nevertheless, consistent with *Matter of Price*, 20 I&N Dec. 953 (Act. Assoc. Comm'r. 1994), we find the evidence of record sufficient to establish that the petitioner has demonstrated his eligibility for the classification sought. Specifically, upon careful review of the record, it is concluded that the petitioner has demonstrated by a preponderance of the evidence that he is within the small percentage of individuals who have risen to the very top of the field of nuclear magnetic resonance research. The evidence submitted establishes that the petitioner has sustained national or international acclaim and that his achievements have been recognized in the field of nuclear magnetic resonance research. As a result, the petitioner qualifies as an alien of extraordinary ability.

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 sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.

¹ While we concur with the director that the petitioner's fellowship in an association that strictly limits the number of fellows is not an "award" or "prize" as claimed by counsel, his election to fellowship (rather than his basic membership) is clearly a qualifying membership pursuant to 8 C.F.R. § 204.5(h)(3)(ii).