



U.S. Citizenship
and Immigration
Services

TO:



DATE: DEC 15 2009

Petition: Immigrant Petition For Alien Worker

File Number: 

DECISION

Your Form I-140, Immigrant Petition For Alien Worker, has been denied for the following reason(s):

See Attachment

If you desire to appeal this decision, you may do so. Your notice of appeal must be filed with this office at the address at the top of this page within 30 days of the date of this notice (33 days if this notice was mailed to you). Your appeal must be filed on Form I-290B. A fee of \$585.00 is required, payable to U. S. Citizenship and Immigration Services with a check or money order from a bank or other institution located in the United States. If no appeal is filed within the time allowed, this decision will be the final decision in this matter.

In support of your appeal, you may submit a brief or other written statement for consideration by the reviewing authority. You may, if necessary, request additional time to submit a brief. Any brief, written statement, or other evidence not filed with Form I-290B, or any request for additional time for the submission of a brief or other material must be sent directly to:

U. S. Citizenship and Immigration Services
Administrative Appeals Office
Washington, D.C. 20529-2090.

Any request for additional time for the submission of a brief or other statement must be made directly to the Administrative Appeals Office, and must be accompanied by a written explanation for the need for additional time. An extension of time to file the appeal may not be granted. **The appeal may not be filed directly with the Administrative Appeals Office. The appeal must be filed at the address at the top of this page.**

Sincerely,

David L. Roark, Director
Texas Service Center



Enclosure: Form I-290B

ATTACHMENT

Reference is made to Immigrant Petition for Alien Worker (Form I-140) filed by [REDACTED] on November 17, 2009. Form I-140 seeks to classify the petitioner/beneficiary as an alien of extraordinary ability in accordance with Section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), as amended. After consideration, it is the decision of U.S. Citizenship and Immigration Services (USCIS) to deny Form I-140.

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

Title 8, Code of Federal Regulations (CFR), Part 204.5(h) *Aliens with extraordinary ability*, states:

An alien, or any person on behalf of the alien, may file an I-140 visa petition for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in the sciences, arts, education, business, or athletics.

Title 8, CFR, Part 204.5(h)(2) *Definition*, states:

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.

Title 8, CFR, Part 204.5(h)(5) states:

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

Title 8, C.F.R. Part 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring 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.

In the instant matter, the petitioner seeks classification of the petitioner/beneficiary under this category as an Associate Professor. The evidence initially submitted with the Form I-140 (Immigrant Petition For Alien Worker) does not show that the petitioner/beneficiary has received a major internationally recognized prize or award. Therefore, the evidence must establish the petitioner/beneficiary has fulfilled at least three lesser criteria.

The USCIS requested further evidence the beneficiary met at least three of the lesser criteria which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability or the beneficiary has received a major internationally recognized prize or award.

The record includes information attempting to establish evidence of the petitioner/beneficiary's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor; documentation of the petitioner/beneficiary'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; published material about the petitioner/beneficiary in professional or major trade publications or other major media, relating to the petitioner/beneficiary's work in the field for which classification is sought; evidence of the petitioner/beneficiary'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; evidence of the petitioner/beneficiary's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field; evidence of the petitioner/beneficiary's authorship of scholarly articles in the field, in professional or major trade publications or other major media; and evidence that the petitioner/beneficiary has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

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

The record includes evidence the petitioner/beneficiary has received the [REDACTED] grant, the [REDACTED] grant, the [REDACTED] Fellowship, and the [REDACTED]

The criteria for being considered for the [REDACTED] grant is that an applicant have completed one or two period of postdoctoral training and be appointed to staff position that allow them to initiate and direct their own independent lines of research. Specifically, to be eligible for the grant an applicant must be within 5 years of obtaining an independent position (Assistant Professor, Lecturer or equivalent) but must have obtained their PhD, or equivalent no longer than 10 years before the deadline for submission of the letter of intent. The [REDACTED] recognition is a research grant and not has been establishes as a nationally or internationally recognized prize or award. The criteria for applying to the [REDACTED] limited to those that have received their PhD not longer than ten years before applying for the [REDACTED] grant and therefore is not open to the petitioner/beneficiary's whole field. Also, the overall success rate for receiving grant monies from the [REDACTED] Organization is "of the order of 4.5%" and does not establish how the petitioner/beneficiary is one of that small percentage who have risen to the very top of the field of endeavor.

The criteria for being considered for the [REDACTED] grant is subject to the [REDACTED]. While the [REDACTED] will develop and publish selection criteria consistent with the nature and objectives of the [REDACTED] there is no evidence to establish the selection criteria as determined by the [REDACTED]. Also, since [REDACTED] grant consideration will be toward the development of research skills in [REDACTED] invests in [REDACTED] brightest and best, enabling them to explore their ideas, and contribute innovation and development in our society, and in the research community globally), the evidence does not establish the [REDACTED] grant is open to the petitioner/beneficiary's whole field.

The criteria for being considered for the [REDACTED] appears to be limited to the [REDACTED] fellows. Accordingly, the [REDACTED] is not open to the petitioner/beneficiary whole field and does not represent excellence in the field of endeavor. In addition, it has not been established that a fellowship based on being a fellow at the [REDACTED] is a nationally or internationally recognized prize or award but is a regional award.

The criteria for being considered for the [REDACTED] is being an amateur, a student or must have received his or her degree since the last annual meeting and must be a member of the [REDACTED]. It has not been established that the [REDACTED] is based on fellowship based on exhibiting excellence in the field of endeavor. Also, it has been established the [REDACTED] is an institutional award and is not a nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The evidence does not establish that this criterion has been met.

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/beneficiary is an elective member of the [REDACTED]. The criteria for joining the [REDACTED] as an elective member is that the candidate must be a resident or citizen of a political subdivision of the Western Hemisphere, and shall receive at least half the number of votes cast. It has not been established who casts the votes. The evidence does not establish the petitioner/beneficiary was elected to the [REDACTED] based on his outstanding achievements or was voted into the [REDACTED] from recognized national or international experts in their disciplines or fields.

The evidence does not establish that this criterion has been met.

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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner/beneficiary and, as stated in the regulations, be printed in professional or major trade publication 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 level from a local publication. 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.

The record includes an article from the [REDACTED] which references the petitioner/beneficiary indicating he is employed by the [REDACTED] and the author of a report in the current issue of [REDACTED]. This article is not primarily about the petitioner/beneficiary and does not establish how the petitioner/beneficiary is one of that small percentage who have risen to the very top of the field of endeavor.

The record also includes articles from [REDACTED] which referenced the petitioner/beneficiary is a [REDACTED] at the [REDACTED] whose findings suggest that [REDACTED]. While the articles do discuss the petitioner/beneficiary's hypothesis regarding [REDACTED] these articles do not establish how he is one of that small percentage who have risen to the very top of the field of endeavor.

The record also includes an article from the [REDACTED] which references the petitioner/beneficiary as being employed by [REDACTED]. This article is not primarily about the petitioner/beneficiary and does not establish how the petitioner/beneficiary is one of that small percentage who have risen to the very top of the field of endeavor.

The record includes several other articles which reference the petitioner/beneficiary in his professional role as a researcher, these articles are not primarily about the petitioner/beneficiary and does not establish how the

petitioner/beneficiary is one of that small percentage who have risen to the very top of the field of endeavor.

The evidence does not establish that this criterion has been met.

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.

The petitioner/beneficiary has been asked to review 24 scientific articles in 2009 and has been asked to review 4 grant applications.

The record contains evidence the petitioner/beneficiary has been asked to review seven manuscripts and one grant application between April 8, 2000 and the present. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Sofici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Evidence submitted in support of this criterion must reflect that the petitioner/beneficiary was selected to perform reviews because of his expertise in the field. The evidence does not indicate the petitioner/beneficiary was selected because of his expertise in the field. Further, because the statute requires extensive documentation, the evidence must establish the frequency and the regularity to perform peer review. Occasional participation in the peer review process does not substantiate that the petitioner/beneficiary has earned sustained national or international acclaim that his opinions and insight are regularly sought as a valued element of that process.

The evidence does not establish that this criterion has been met.

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

The record includes a recommendation letter from [REDACTED] which states in part: "... His work on [REDACTED] recognition in [REDACTED] for example, provided the first answer to a long-standing question: how does a [REDACTED] develop the ability to recognize members of its own species? This question and others related to it that [REDACTED] has pursued are central to both functional (reproductively beneficial) and developmental explanations of behavior, which explains [REDACTED] work is routinely cited in the primary textbooks in animal behavior and which I incorporate in both my teaching and research. No one else has made the kind of progress or contributed the kind of knowledge that [REDACTED] has in unraveling the functional and developmental basis of social behavior in a [REDACTED] that is, a species which [REDACTED]

[REDACTED]" While [REDACTED] does state he uses the petitioner/beneficiary's research in his own teaching and research, the letter from [REDACTED] does not provide any specific examples of how the petitioner/beneficiary's research establishes him as one of that small percentage who have risen to the very top of the field of endeavor.

The record also includes a recommendation letter from [REDACTED] which states in part: "His research has had significant influence on my own research and teaching. My own work on [REDACTED] is strongly based on [REDACTED] experimental work, and his conceptual ideas on [REDACTED] are fundamental to my work on [REDACTED]. I regularly use [REDACTED] work during my lectures at all undergraduate levels." The letter from [REDACTED] does not provide any specific examples of what part of the petitioner/beneficiary's research is used in her research and is used in teaching her undergraduate students.

The record includes a recommendation letter from [REDACTED] which states in part: "...In particular, many of his publications are characterized by the design and execution of extremely elegant experiments,

one of the hallmarks of an excellent scientist. He has also published several influential reviews...." [REDACTED] fails to establish what specific experiments the petitioner/beneficiary has carried out which are elegant.4

In evaluating the recommendation letters, the letters that contain mere assertions of widespread, vague claims of contributions or predictions of future applicability are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner/beneficiary through his reputation and who have witnessed his work are far more persuasive than letters from independent references who were not previously aware of the petitioner/beneficiary. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

Specifically, the record indicates that most if not all recommendation letters were prepared solely for the purpose of above referenced immigrant petition. While providing examples of the expertise the petitioner/beneficiary has been involved in, none of the recommendation letters sufficiently indicate how this expertise has significantly impacted the field of evolutionary biology and animal behavior as to establish his extraordinary ability.

The evidence does not establish that this criterion has been met.

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

The petitioner/beneficiary has authored or co-authored articles which have over 500 citations.

The record does establish that this criterion has been met.

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

There does not appear to be any evidence to satisfy this criterion.

The evidence does not establish that this criterion has been met.

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

There does not appear to be any evidence to satisfy this criterion.

The evidence does not establish that this criterion has been met.

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

The record includes evidence the petitioner/beneficiary was paid \$45,000.00 from a fellowship [REDACTED] at the [REDACTED]. The petitioner/beneficiary also submits a stipend level sheet from National Research Service Award for postdoctoral employees with no experience indicating a salary of \$31,092.00. The record establishes the petitioner/beneficiary graduated from [REDACTED] with his PhD, on May 26, 2002. It has not been established how the petitioner/beneficiary commanded a high salary as an associate professor or fellow on December 10, 2001 (the date of the offer letter from [REDACTED] offering the \$45,000.00 fellowship) when he was yet to receive his PhD and had not established a track record as a fellow or associate professor (the indication of zero years of experience on the National Research Service Award stipend sheet). While the evidence does establish the petitioner/beneficiary

was paid a higher salary than other beginning fellows for the National Research Service Award, the evidence indicates this was based on his academic record as a student and not his performance as a fellow or assistant professor. Accordingly, the petitioner/beneficiary has not established the \$45,000.00 fellowship stipend offered by [REDACTED] that he one of that small percentage who have risen to the very top of the field of endeavor.

The record also includes evidence the petitioner/beneficiary is being [REDACTED] the [REDACTED] [REDACTED] as a Senior Lecturer and [REDACTED] at the [REDACTED] an Associate Professor, there is no evidence as to what other Senior Lecturers or Associate Professors in the petitioner/beneficiary's field earn.

The evidence does not establish that this criterion has been met.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

There does not appear to be any evidence to satisfy this criterion.

The evidence does not establish that this criterion has been met.

Other Comparable Evidence to Establish Extraordinary Ability.

The record has been discussed above and fails to establish the petitioner/beneficiary qualifies as an alien of extraordinary ability. Any comparable evidence regarding the petitioner/beneficiary's qualifications as an alien of extraordinary ability was reviewed and the evidence fails to establish the petitioner/beneficiary qualifies for the requested visa preference.

The evidence does not establish that this criterion has been met.

While the petitioner/beneficiary is obviously very talented in his field, the evidence does not satisfy at least three of the ten lesser forms of evidence of extraordinary ability that are described by 8 C.F.R. 204.5(h)(3).

Therefore, the evidence falls short of showing the petitioner/beneficiary is of sustained national or international acclaim, or that he is one of that small percentage at the very top of his field of endeavor.

In *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966), the beneficiary has the burden of establishing eligibility for the benefit sought in visa petition proceedings.