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U.S. Citizenship
and Immigration
Services

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FILE: EAC 02 244 53094 Office: VERMONT SERVICE CENTER Date: APR 14 2005

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:

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.

Maui Jensen

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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 in the sciences. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien with extraordinary ability.

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.

The applicable regulation defines the statutory term "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). 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.*

In this case, the petitioner seeks classification as an alien with extraordinary ability in the sciences as a biomedical research scientist. The petitioner submitted evidence of her education and publications along with seven recommendation letters from supervisors and colleagues. After assessing this evidence, the director found that although the petitioner was a valued researcher who had made some meaningful contributions to her field, the evidence was insufficient to establish that she was an alien with extraordinary ability in the sciences. On appeal, the petitioner submits four additional recommendation letters, verification of her pending membership in the American Society for Cell Biology, citation information for her published articles, and additional documents relating to her research. This evidence does not overcome the reasons for denial and we affirm the director's decision. The evidence submitted and the petitioner's claims are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

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

The director found no evidence relating to this criterion. On appeal, the petitioner claims that her receipt of scholarships and a fellowship meet this criterion. Specifically, the petitioner refers to her receipt of scholarships and "other awards as an excellent student" while studying at Fudan University in China and at the University of Montreal in Canada. The record contains no evidence of these honors and we cannot accept unsupported assertions as truth. *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190, 193-94 (Reg. Comm. 1972). The petitioner also cites her selection for a post-doctoral fellowship from the Natural Sciences and Engineering Research Council of Canada even though she did not accept this fellowship and instead accepted a post-doctoral position at the University of Massachusetts. Again, the record contains no corroborative evidence of the Canadian fellowship. Regardless, such evidence would not suffice to meet this criterion. Academic study and post-doctoral training are prerequisite to a career in the sciences. Only other students and recent doctoral graduates – not established scientists – compete for scholarships and post-doctoral fellowships. While such awards may show the recipient's promise and potential, they do not establish national or international recognition for excellence as an established research scientist. Accordingly, the petitioner does not meet this criterion.

(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.

The director correctly stated that the petitioner submitted no evidence to verify or establish the significance of the petitioner's membership in the New York Academy of Science.¹ On appeal, the petitioner submits a letter from The American Society for Cell Biology confirming that the petitioner's membership application will be reviewed on December 4, 2004. This potential membership cannot be considered. A petitioner must establish eligibility at the date of filing. 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Even if the petitioner was already a member of this society, that membership would be insufficient to establish her eligibility. In order to satisfy this criterion, membership in an association must be earned by virtue of a member's outstanding achievements. Membership based on employment or activity in the field, a minimum of education or work experience, or recommendations by current members is insufficient because these qualifications do not constitute outstanding achievements. The letter submitted by the petitioner in this case states that qualifications for membership in The American Society for Cell Biology only require sponsorship by another member in good standing and a doctoral, medical or equivalent degree (or equivalent experience). Those qualifications do not constitute outstanding achievements. Consequently, the petitioner does not meet this criterion.

(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.

¹ The petitioner explains: "I was told that being a member of any academic society would benefit the application. I chose New York Academy of Science because it could be registered online and processed within a few days, easy and quick, plus it is free. Sorry that I didn't know that it wasn't that qualified."

The director correctly determined that the petitioner did not meet this criterion. The petitioner has published three articles in scientific journals. She is the lead author on one article and is a co-author on the other two. All of the articles were published while the petitioner was a doctoral student at the University of Montreal. Published articles written *by* the petitioner cannot satisfy this criterion because the regulation requires published material *about* the alien. The record also contains citation information for these articles and one article from the May 1997 issue of *Nature Biotechnology* that reviews the petitioner's research. Although the latter article may constitute published material about the petitioner, it was an editorial review in the same issue in which the petitioner's article appeared. In addition, the review was published nearly five years prior to the filing of the petition and does not reflect sustained national or international acclaim. This review, the petitioner's publications and citations are more relevant to and will be discussed below under the fifth and sixth criteria.

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

The director correctly determined that the petitioner did not meet this criterion. The petitioner submitted seven reference letters with her petition. On appeal, the petitioner submits second letters from three references and one additional recommendation letter. All of these letters were solicited by the petitioner and – with the exception of one letter – were all written by the petitioner's current and past supervisors and colleagues. Consequently, they carry less weight than independent, pre-existing evidence of the petitioner's contributions. In addition, the letters speak largely of the petitioner's potential and promise as an excellent scientific researcher. They do not attest to her existing contributions as an established research scientist. Professor [REDACTED] the petitioner's supervisor during her post-doctoral work at the University of Massachusetts, states that the petitioner has "excellent potential for a productive scientific career." Professor [REDACTED] who knew the petitioner as a graduate student at the University of Montreal, states that the petitioner "has the potential to be a leader in the important area of medical research where she has decided to work." Professor [REDACTED] a member of the petitioner's dissertation committee at the University of Montreal, states that the petitioner "shows considerable promise for becoming a leader in her field of research."

Many of the letters speak of the importance of the petitioner's research on hammerhead ribozyme activity in bacteria that was published in the prestigious journal *Nature Biotechnology*. However, this research was performed while the petitioner was a doctoral student being guided by Professor [REDACTED] who is hailed by the petitioner's references as an internationally recognized expert in his field. Moreover, the article was published nearly five years prior to the filing of the petition and is not indicative of the petitioner's sustained national or international acclaim. The discussion of the petitioner's subsequent research is of even less weight. Apparently, none of her subsequent research has been published. The letters all refer to the potential importance of the petitioner's more recent work. Professor Fournier, in his second letter, states that "[i]n her present position Dr. [REDACTED] has acquired excellent experience with important new technologies that provide new strength and potential." Dr. [REDACTED] the petitioner's current supervisor at the Weis Center for Research, states that the petitioner's initial research in her laboratory has "spark[ed] much interest" at national meetings, but that the "results need to be confirmed" and the work remains unpublished. Dr. [REDACTED] explains that the petitioner's more recent work was "instrumental" in securing a new \$1,000,000 grant to her laboratory from the National Institutes of Health, but that the petitioner's work is still "being prepared for publication." Professor Z [REDACTED] of the Boston University School of Medicine, also attests to the importance of the petitioner's work in ribozymes as a doctoral student, but speaks only of the potential of the petitioner's current, "soon to be published" work and concludes that she "look[s] forward to witness[ing] [the petitioner's] outstanding career." In sum, the letters establish the petitioner's excellent work as a student, post-doctoral associat e, and a researcher

in Dr. Robishaw's laboratory. None of the letters show that the petitioner has made original scientific contributions of major significance in her field that would reflect sustained national or international acclaim.

The petitioner also submits citation information for her articles. This evidence is also insufficient to establish her eligibility under this criterion. The petitioner's article published in the March 21, 1995 edition of *Gene* has been cited 16 times. Her article published in the August 9, 1996 edition of *Journal of Biological Chemistry* has been cited 13 times. Her article published in the May, 1997 edition of *Nature Biotechnology* (the only article on which she is the lead author) has been cited 17 times. Substantial and ongoing citation of a scholarly article by independent experts may evidence the author's original scientific contribution of major significance in the field, yet the citation information provided in this case does not reach that level. The petitioner has not shown that the majority of the citations are by independent experts as opposed to self-citations and citations by her co-authors or advisors.

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

The director correctly concluded that the petitioner did not meet this criterion. As previously discussed, the petitioner has published three articles concerning research conducted while she was a doctoral student. We do not dispute that these articles were published in reputable professional journals. However, the articles are insufficient to establish the petitioner's eligibility under this category. Publication of one's research is requisite to successful doctoral studies in the sciences. Hence the petitioner's articles only evidence her success as a doctoral student. They do not reflect sustained national or international acclaim as an established research scientist in her field. Moreover, the petitioner's last article was published nearly five years prior to the filing of her petition and apparently none of the petitioner's subsequent research has been published. We note that the petitioner has only recently begun her career as a research scientist. However, she must still establish her eligibility for classification as a scientist with extraordinary ability at the time of filing. *Matter of Katigbak*, 14 I&N Dec. at 49. We also note that her fellow doctoral student at the University of Montreal has published numerous articles and abstracts since his graduation in 1998, the same year that the petitioner received her doctoral degree. See Curriculum Vitae of Gerardo Ferbeyre (listing eight articles, six abstracts, and one book publication since 1999).

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

The director correctly found that the petitioner did not meet this criterion. The evidence shows that the petitioner has made valuable contributions to the laboratories in which she has worked, but has never held a leading or critical position. Although Dr. Robishaw and Dr. Carey attest to the value of the petitioner's current contributions to the Weis Center for Research, their recommendations do not establish that the petitioner performs a leading or critical role for the Center. Dr. Robishaw states that the petitioner's "contribution is of the utmost importance to our research program in heart disease," but speaks mainly of the petitioner's technical skills and the potential of her as yet unpublished research and then notes that "the Weis Center cannot afford the time and resources to hire someone and train such a person to carry out the tasks assigned to Dr. Chen." This last note indicates that the petitioner is valued mainly for her technical skills and experience in carrying out research led by Dr. Robishaw, not the petitioner. Dr. Carey confirms that the petitioner "has specific skills and expertise that make her an essential and productive contributor to the research activities of the Weis Center for Research," but does not identify her as playing a leading or critical role for the organization. In addition, the

petitioner submits no independent evidence that the Weis Center or Dr. Robishaw's laboratory enjoy distinguished reputations.

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

The director found no evidence in the record relevant to this criterion. On appeal, the petitioner cites Dr. Carey's second letter as evidence of her high salary. Dr. Carey states that the petitioner "is the most highly compensated employee with this job title in our program." The petitioner submits no corroborative evidence of her salary such as paycheck stubs or income tax returns. In addition, the record contains no evidence of the income of other research scientists in her field with which to compare the petitioner's salary. Consequently, the evidence is insufficient to show that the petitioner has earned a salary high enough to reflect sustained acclaim.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act 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 petitioner bears this substantial burden of proof. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner in this case has not sustained that burden. The evidence indicates that the petitioner is a highly skilled researcher who is well respected by her colleagues and shows great potential for future success. However, the petitioner must demonstrate that she has already risen to the very top of her field. 8 C.F.R. § 204.5(h)(2). The record in this case does not establish that the petitioner was a researcher with extraordinary ability in the sciences at the time of filing. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.