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FILE: [REDACTED]  
EAC 03 012 50041

Office: VERMONT SERVICE CENTER

Date: DEC 19 2005

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

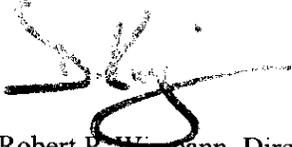
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to  
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[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.

  
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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel asserts that the director erred in denying the petition prior to issuing a request for additional evidence. Assuming the director erred, the most expedient remedy is to consider any evidence that might have been submitted in response to such a request on appeal. We will consider the new evidence submitted below. The regulation at 8 C.F.R. § 103.2(b)(12), however, requires that any evidence submitted in response to a request for additional evidence establish eligibility as of the date of filing. *See also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). We note at the outset that much of the new evidence submitted on appeal relates to accomplishments, such as publications and citations, that occurred after the date of filing. Thus, they cannot establish the petitioner's eligibility as of that date.

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.

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 seeks to classify the petitioner as an alien with extraordinary ability as a "visiting fellow." The petitioner's mentor, [REDACTED] indicates that the petitioner's title at the time of filing was "Visiting Postdoctoral Fellow." Postdoctoral appointments are typically entry-level research positions for recent Ph.D.

recipients. While nothing in the statute or regulations precludes postdoctoral researchers from establishing eligibility, we will not narrow the petitioner's field to recent Ph.D. recipients. The petitioner must compare with the most experienced and renowned members of the field.

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). 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.<sup>1</sup>

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

Initially, the petitioner submitted his 2002 Fellows Award for Research Excellence (FARE) from the National Institutes of Health; two research awards from the Shanghai Branch of the China Medical Association and a third class award from the Chinese army. In his initial brief, counsel asserted that the FARE award is presented to "a select group of postdoctoral fellows who have performed outstanding scientific research" and includes a \$1,000 travel award to present the work at a conference. Counsel further asserts that the awards from the Shanghai Branch of the China Medical Association are presented to 10 out of 100 papers submitted to the conferences.

The director concluded that the petitioner had not established the significance of these awards. On appeal, the petitioner submits evidence regarding the FARE award, confirming counsel's assertion that it is limited to postdoctoral fellows. The petitioner does not submit any evidence regarding the significance of his other awards. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Postdoctoral appointments are entry-level positions for newly graduated doctoral students. Awards limited to postdoctoral researchers cannot establish that the petitioner is one of the very few at the top of his field.

In light of the above, we concur with the director that 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.*

Initially, the petitioner submitted evidence of his membership in the Society for Neuroscience. Counsel initially stated that member candidates must be sponsored by two regular or emeritus members and submit a curriculum vitae and bibliography. The director concluded that the petitioner had not established that the society requires outstanding achievements of its members.

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

On appeal, counsel asserts that member candidates must submit an application form "showing their outstanding contributions in the field." The petitioner submits Internet materials about membership in the society. These materials confirm that a member must be sponsored by two members and submit a curriculum vitae and bibliography. The materials do not confirm, however, that the application must show "outstanding contributions in the field." As stated above, the unsupported assertions of counsel do not constitute evidence. *Id.*

We note that, according to the materials submitted on appeal, the society is the world's largest of professionals devoted to studying the brain. Dues are required with the submission of a membership application and notification is provided within one to two weeks of filing the application. Such information is not consistent with an association where recognized national or international experts are judging membership applications as to whether the candidates have outstanding achievements in the field. Sponsorship by current members of a large association and experience in the field are not outstanding achievements. We note that the materials reference an "emeritus" membership category. As the record does not reflect that the petitioner is an emeritus member, it appears that the society has a higher membership level than the level obtained by the petitioner.

In light of the above, the petitioner has not established that he meets this criterion.

*Published materials 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.*

Initially, counsel asserted that the "several" articles citing the petitioner's work in "highly renowned peer-reviewed journals" serve to meet this criterion. The petitioner submitted his own review article, which cites his own work, and a November 2000 *Science News* article that mentions the work of the petitioner's collaborator, [REDACTED] reported in 1998 and "last year." The petitioner does not list any 1998 or 1999 publications or presentations resulting from a collaboration with [REDACTED] on his curriculum vitae.

The director concluded that the petitioner had not submitted a citation record consistent with national or international acclaim. On appeal, the petitioner submits the citation history of his articles published after the date of filing. Such evidence is not relevant to the petitioner's eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Even if the reference in *Science News* is to work coauthored by the petitioner, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published materials be "about the alien." We cannot conclude that an article that does not mention the petitioner by name is "about" him. In general, articles which cite the petitioner's work are primarily about the author's own work, not the cited work. Review articles cover a large topic, and typically are not "about" any particular work cited. As such, articles that cite the petitioner's work cannot be considered published material about the petitioner. Thus, the petitioner has not established that he meets this criterion.

*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 record reflects that the petitioner has refereed articles for *Neuroscience Letters*. The record reflects that the journal initially requested that the petitioner's advisor, [REDACTED] review the article who then assigned the duty to the petitioner. Being requested to review an article by one's own advisor is not evidence of national or international acclaim.

Moreover, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys sustained national or international acclaim. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner meets this criterion.

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

The petitioner'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. See *Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). 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 petitioner's work.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS 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; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; See also *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)). Given the statutory requirement for "extensive documentation" and the ten regulatory criteria requiring specific evidence of accomplishments, we must conclude that 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.

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. On appeal, counsel asserts that the director was inconsistent in requiring evidence from independent experts but also asserting that the independent letters submitted were not from experts previously familiar with the petitioner's work. We do not find such concerns inconsistent. The statutory standard is national or international "acclaim." Thus, it can be presumed that an eligible alien will have a reputation that extends beyond his immediate circle of colleagues. Letters from independent references who were previously aware of the petitioner through his reputation are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. We acknowledge, however, that the petitioner did

submit letters from independent researchers who were aware of the petitioner's work through publications and conference presentations. We will consider those letters below.

In his initial brief, dated October 8, 2002, counsel asserts that the petitioner has 17 years of experience as an influential researcher in neuroscience. The petitioner obtained his medical degree from the Weifang College of Medicine in July 1985. He worked as a physician from that date until August 1991. The petitioner obtained his Ph.D. in Neurology and Neuroscience in July 1996 from the Changcheng Graduate School of Medicine. The petitioner worked as a fellow at that school until April 1998 and as an associate professor and neurologist at the Second Medical University of Shanghai until September 1999. In October 1999, the petitioner joined the National Institutes of Health (NIH) as a visiting postdoctoral fellow.

██████████ a professor at the Chinese PLA General Hospital Military Post Graduate Medical School, discusses the petitioner's work in China. While ██████████ does not explain how he knows of the petitioner's work, the petitioner's published articles, part of the record of proceeding, reflect that ██████████ coauthored several articles with the petitioner. ██████████ asserts that the petitioner's work on the mechanisms of stroke was "groundbreaking." More specifically, ██████████ asserts that the petitioner found "that cerebral ischemia can induce up-regulation of the hypothalamic-pituitary-adrenal axis, resulting in an increased level of cortisol in the blood flow, and that this increased cortisol can reduce the break-down of the blood-brain barrier caused by ischemic insult." The petitioner "also found that cerebral ischemia can induce an increased level of vasoactive intestinal peptide in the parasympathetic nerves innervating cerebral arteries, which can dilate cerebral blood vessels. While ██████████ characterizes these results as significant contributions to the scientific knowledge of cerebral ischemia, he does not provide examples of treatments or research that has been influenced by the petitioner's results.

██████████ Chief of the Molecular Neurobiology Section at the National Institute of Mental Health (NIMH), NIH, asserts that the petitioner's work at NIH focuses on the neuroprotective effects of lithium against ischemic stroke induced brain injury. While at NIH, the petitioner "demonstrated that lithium possesses neuroprotective effects against cerebral ischemia." The petitioner presented this work at a 2001 conference and, as of the date of filing, had "submitted" an article for publication. ██████████ concludes that these results demonstrate that "lithium can be considered as a promising drug to be used clinically in the treatment of ischemic stroke patients" and formed the basis for the petitioner's FARE award. ██████████ further states:

At the same time [the petitioner] has collaborated with other investigators and found (1) prostaglandin A<sub>1</sub> protects striatal neurons against excitotoxin injury in a rat brain model [citation omitted]; [and] (2) JNK and p38, as well as their down-stream AP-1 binding activation and p53 phosphorylation, play a prominent role in mediating glutamate excitotoxicity [citation omitted]. Moreover, he found that the neuroprotective effects of lithium are mediated, at least in part, by suppressing NMDA receptor activation of the MAPK pathway.

██████████ does not provide examples of how any of this work has been replicated or otherwise applied in the field outside of the petitioner's own circle of colleagues.

██████████ a research assistant professor at the Uniformed Services University of the Health Sciences (USUHS), asserts that he is providing a review of the petitioner's credentials. ██████████ does not acknowledge any personal connection to the petitioner or his mentor. We note, however, that his curriculum vitae and that of ██████████ reveal several recent collaborations between the two researchers. ██████████ serves

with [REDACTED] on the Stanley Foundation Affective Disorder Network. [REDACTED] praises the petitioner's work in China, but does not assert that this work has influenced the way ischemia is treated. [REDACTED] also praises the petitioner's recent work with lithium, explaining that the petitioner "has taken this research a step further by showing that the neuroprotective effects of this drug are associated with an increased synthesis of heat shock protein 70 (Hsp 70) and increased DNA binding of the transcription factor responsible for this increased, heat shock factor 1." [REDACTED] concludes: "Although the primary precipitating event in the mechanism of lithium's therapeutic effects is, as yet unknown, I am convinced that heat shock protein induction is the earliest known event of that mechanism. [The petitioner's] work is seminal in this regard. [REDACTED] does not indicate that this final work had been published as of the date of filing. Work that has yet to be disseminated in the field cannot be considered to have already influenced the field to such a degree as to be considered a contribution of major significance. Finally, [REDACTED] discusses the petitioner's work with excitotoxicity, but fails to explain how this work has already influenced the field.

As acknowledged by the director, the petitioner did submit letters from researchers who appear to be independent of the petitioner, although not all of these researchers provide their curriculum vitae. [REDACTED] a senior scientist in the Division of Neurology at Huddinge University Hospital, Karolinska Institute in Sweden, does not explain how he came to know of the petitioner's work. He lists the petitioner's results obtained in China and at NIH. [REDACTED] Chief of the Unit of Clinical and Biochemical Pharmacology at NIH, asserts that his letter is based on a review of the petitioner's "background, achievements and his current research. [REDACTED] reiterates the results discussed above. The petitioner provides a similar letter from [REDACTED] Chief of the Biochemistry Section, National Institute of Neurological Disorders and Stroke, NIH. None of these letters provide examples of how this work has influenced the author's own work or the work of others in the field.

[REDACTED] professor at the University of Alabama, indicates that he knows of the petitioner's work through the petitioner's publications and interactions at conferences. [REDACTED] explains the importance of the petitioner's work with lithium, a drug already approved by the U.S. Food and Drug Agency (FDA) and for which much information about its affect on people is already known. [REDACTED] asserts that the petitioner has not only "identified a drug capable of providing considerable protection to the brain from the massive damage that can be caused by ischemic stroke, but he has also begun to identify the biochemical mechanisms accounting for this protective effect." [REDACTED] an associate professor at the University of Chicago, further asserts that another important result of the petitioner's work on lithium is that "the drug is effective even when administered after the onset of cerebral ischemia, as would be the case in the clinic."

The above letters establish that, as a result of the petitioner's work, some in the field are persuaded that lithium has great potential as a treatment for ischemic strokes. The record, however, lacks press coverage in scientific or the general press reporting these results as a major breakthrough in stroke treatment, as would be expected for a new treatment for strokes. The record further lacks evidence that these results, as of the date of filing, had been replicated by outside researchers. In addition, the petitioner has not demonstrated that clinics or emergency room doctors are considering using lithium in treating stroke victims. Finally, as of the date of filing, the petitioner had only published some of this work and none of his work had been widely and frequently cited. In light of the above, we find that the petitioner has not established that he met this criterion as of the date of filing.

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

The petitioner submitted evidence that he had authored 11 published articles and four abstracts. The petitioner also appears to have presented his work at four conferences. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces our position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

As discussed above, the petitioner initially submitted his own review article that cites his previous work and an article that mentions his advisor's work but does not clearly cite work authored by the petitioner. While self citation is a normal and expected practice, it cannot establish the petitioner's reputation beyond his colleagues. Thus, this citation record is not indicative of or consistent with national or international acclaim.

On appeal, the petitioner submits evidence that his articles published after the date of filing have been cited 16, 14 and three times. This evidence, however, does not establish the petitioner's eligibility as of the date of filing as the petitioner's work, now cited, was not even published as of that date. Thus, the petitioner has not established that he met this criterion as of the date of filing.

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

The petitioner claims to meet this criterion. The plain language of this criterion reveals that it relates to the visual arts. While the regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable" evidence where a criterion is not "readily applicable," we find that conference presentations are far more comparable to published articles and, thus, we have considered the petitioner's conference presentations under the criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi), discussed above.

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 a researcher 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 shows talent as a researcher, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the 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. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.