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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 26 2005
LIN 02 203 50499

IN RE: Petitioner:
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.

Marie Johnson

Robert P. Wiemann, Director
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 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 denial is inconsistent with a previous approval of a nonimmigrant visa petition in behalf of the petitioner in a similar classification. We do not find that an approval of a nonimmigrant visa mandates the approval of a similar immigrant visa. Each case must be decided on a case-by-case basis on the evidence of record. The nonimmigrant visa could have issued based on different evidence or in error. Citizenship and Immigration Services (CIS) is not bound to treat acknowledged past errors as binding. *See Chief Probation Officers of Cal. v. Shalala*, 118 F.3d 1327 (9th Cir. 1997); *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 517-518 (1994); *Sussex Engineering, Ltd. v. Montgomery*, 825 F.2d 1084 (6th Cir. 1987). The remaining arguments will be discussed below.

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 research chemist. 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.[1]

*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 a 1986 certificate of achievement from the Wuhan Institute of Technology. In 1986, the petitioner was studying for his Master's degree at that institute. In 1991, the petitioner received a "certificate of award" from the "National Department of Mechanical Electrical Industry." The petitioner was a Ph.D. student at the time. The petitioner also asserted that he was submitting an award from the American Association for the Advancement of Science (AAAS). The certification, however, is a membership certificate, not a competitive award for excellence in the field.

On January 7, 2003, the director issued a request for additional evidence, noting that the record lacked evidence of the selection criteria for or significance of the above certificates. The petitioner no longer claimed to meet this criterion in his response and the director did not discuss the criterion further in his final decision. The petitioner does not claim to meet this criterion on appeal.

Academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships and student awards cannot be considered prizes or awards in the petitioner's field of endeavor. The petitioner's memberships will be considered below. Thus, we find 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.*

The petitioner submitted evidence of membership in the following associations: AAAS and the American Chemical Society (ACS). The petitioner submitted the bylaws for ACS indicating that membership in the society requires only that the prospective member be nominated by two members and meet certain education and experience requirements.

In his request for additional documentation, the director concluded that the membership requirements documented did not reflect that ACS requires outstanding achievements of their general membership. Once again, the petitioner's response did not indicate that he continued to claim to meet this criterion. As such, the director did not discuss it in his final decision. The petitioner does not claim to meet this criterion on appeal. We concur with the director that possession of a degree, a certain number of years of experience, and nomination by current members are not outstanding achievements.

*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.*

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[1] The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

Initially and in response to the director's request for additional evidence, the petitioner asserted that the articles that cite his own work serve to meet this criterion. While the petitioner is correct that citations can be indicative of the cited article's influence, we concur with the director that articles which cite the petitioner's work are primarily about the author's own work, not the petitioner. Thus, they cannot be considered published material about the petitioner. Nevertheless, as it is typical for members of the petitioner's field to publish original scholarly articles, the citation evidence will be considered below as evidence that the petitioner's publication history is consistent with national or international acclaim pursuant to 8 C.F.R. § 204.5(h)(3)(vi).

*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.*

Initially, the petitioner submitted evidence that the petitioner had refereed one article for the *Journal of Heterocyclic Chemistry*. In his request for additional evidence, the director noted the lack of evidence that the petitioner was invited to review the article and concluded that a single review was not indicative of a chemist at the top of his field. In response, the petitioner submitted evidence that he had reviewed two articles sent for review to his supervisor, [redacted] signed the final reviews. The petitioner also submitted a review article he coauthored published in Volume 7 of "Advances in Supramolecular Chemistry."

[redacted] Editor of *Supramolecular Chemistry* and a professor at the University of Texas at Austin, asserts that those invited to write review articles for the text were "experts who had made great contributions to supramolecular chemistry." [redacted] continues:

> Topics are usually identified by the editor, and invited experts select the most ground-breaking research from the recently published literatures and their own research work. Research summaries provide analyses that range from the purpose of study to the reviewer's observations about the research and its implications for further investigation. In addition, the review chapters highlight new directions in chemical research.

The director determined that the petitioner had not established that the journals for which he refereed articles specifically invited him to perform the reviews. The director concluded that the petitioner's referee history was not sufficient to meet this criterion. On appeal, the petitioner faults the director for failing to consider the petitioner's review article and resubmits the letter from [redacted]

Regarding the petitioner's review of articles submitted for publication, we concur with the director that 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.

The record does not establish th[redacted]editor of Volume 7 of "Advances in Supramolecular Chemistry," specifically invited the petitioner to author the review, as opposed to some of the more notable coauthors, such a[redacted] Moreover, the petitioner has not established that selecting the most significant articles in the area, something that can be determined objectively through citation evidence, constitutes judging

the work of others. The chapter is better considered under the scholarly article criterion pursuant to 8 C.F.R. § 204.5(h)(3)(vi), discussed below. We concur with the director's overall conclusion that the petitioner's review history is not indicative of or uniquely consistent with national acclaim.

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

[redacted] a professor at the Universita di Bologna, discusses a collaboration with the petitioner's group at Brigham Young University. [redacted] asserts that the petitioner "was able to efficiently synthesi[ze] new molecules that could work as sensors for metal ions, having applications in the field of medical diagnostics, drug discovery, and environmental control." [redacted] explains that the petitioner synthesized a series of macrocycles containing fluorophores such as 8-hydroxyquinoline, dansylamide, TSQ and Zinquin groups, which have proven to be effective chemosensors for transition metal ions." Dr. Prodi concludes that the petitioner's work "has tremendous importance for analysing [sic] and monitoring some metal ions in environmental and biological systems."

[redacted] discusses the work the petitioner did at Brigham Young University. Specifically, the petitioner reduced the number of steps typically needed to prepare dansylamidoethyl fluorophore for heavy metal ions from four to one, increasing the yield. The petitioner also prepared X-ray quality single crystals, allowing the study of exact structures that cause metal ions to fluoresce. Dr. Bradshaw explains that these developments improve our ability to remove toxic metal ion salts from streams and recover silver.

[redacted] a professor at Brigham Young University and one of the petitioner's coauthors, asserts that the petitioner simplified [redacted] former student's method of preparing 8-aminoquinoline armed ligands, saving time, effort and reagents. [redacted] explains that the new fluorescent ligands "will allow the development of much improved procedures for the analysis of transition and post-transition metal ions." Dr. Izatt concludes that these procedures have analytical and environmental applications.

[redacted] professor at Brigham Young University, asserts that the petitioner developed a new way to attach a UV active group allowing easy "viewing" of the molecule through UV spectroscopy.

[redacted] senior research investigator with the Bristol Myers Squibb Pharmaceutical Research Institute, asserts that the petitioner's work designing and incorporating additional molecular features into molecules has applications in heavy metal extraction, fluorescence-based chemosensors, and pharmaceutical separations. Dr. [redacted] asserts that the petitioner's approach is more "elegant" than the one developed at Bristol Myers Squibb, although he does not indicate that Bristol Myers Squibb has adopted the petitioner's approach.

[redacted] a professor at Wuhan University, discusses the petitioner's work at that university. Specifically, the petitioner synthesized bucket shaped compounds that can accept correctly shaped chemicals and are used to analyze pharmaceutical compounds and as enzyme models.

In response to the director's request for additional evidence, the petitioner submitted letters from independent researchers not only praising the petitioner's work, but also discussing their own adoption of his methods.

The director concluded that the petitioner meets this criterion through his development of novel compounds that fluoresce when exposed to metals in the environment. The record supports that conclusion.

*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 has authored 40 published articles and the aforementioned review chapter. The petitioner's 2000 article in the *Journal of Hetrocyclic Chemistry* was the lead article in that issue. 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 CIS's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

The director concluded that the petitioner meets this criterion. Although many of the citations of the petitioner's articles are self-cites, we will not disturb the director's conclusion that the petitioner meets this criterion, albeit minimally.

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

The petitioner obtained his Ph.D. from Wuhan University in 1994. The petitioner then spent one year as an assistant professor at that university. From August 1995 to August 1997, the petitioner worked as a postdoctoral research associate for the Hong Kong Polytechnic University. The petitioner then returned to Wuhan University for a year. The petitioner worked as a postdoctoral fellow at Brigham Young University from February 1998 to April 2001. From May 2001 until the date of filing the petitioner was a synthetic organic chemist at IBC Advanced Technologies, Inc.

[redacted] Vice President of Research and Development at IBC, asserts that the petitioner "is an important member of our 5 member organic chemistry Ph.D. research group." In a subsequent letter, signed jointly with [redacted] Director of Organic Synthesis at IBC [redacted] asserts that the petitioner was critical to IBC's successful completion of a project sponsored by the National Institute of Standards and Technology. While [redacted] indicates that the petitioner stopped working at IBC in October 2002, he asserts that IBC "would seriously consider hiring [him] when our business again has a project needing his unique expertise in synthetic organic chemistry."

[redacted] asserts that the petitioner's work "was critical to the success of our on-going research in new metal ion chemosensors" at Brigham Young University.

[redacted] professor at Wuhan University, asserts that the petitioner was a co-principal investigator on two projects and the principal investigator on a third project at the university funded by the National Natural Science Foundation of China.

The director acknowledged [redacted] assertion that the petitioner's work was critical to a project but determined that [redacted] had "indicated that the company would not hire the petitioner again until it had another project 'needing his unique expertise in synthetic organic chemistry.'" The director then concluded that playing a leading role in a research group at a university does not imply a leading role for the university itself, the entity with the distinguished reputation. The director noted that the published material about the work at Brigham Young University relating to fluorescing waste metallic ions mentions [redacted] and his collaborators, [redacted] but not the petitioner.

On appeal, the petitioner does not contest the director's conclusions regarding the petitioner's role at Brigham Young University, but asserts that the director mischaracterized [redacted] statement regarding IBC's interest in rehiring the petitioner.

We have already considered the petitioner's claimed contributions while working for Brigham Young University and IBC above. What is relevant for this criterion is the nature of the role the petitioner was hired to fill and the national reputation of the employer. We concur with the director that the petitioner's postdoctoral position at Brigham Young University cannot serve to meet this criterion. While Brigham Young University may have a distinguished reputation, we cannot conclude that every post doctoral researcher who plays an important role in a distinguished university's laboratory plays a leading or critical role for the University as a whole. We also concur with the director's concern that the published material about the petitioner's research group does not mention him. We further note that the work discussed in this material appeared in the *Journal of Organic Chemistry* in July 2001. The petitioner does not list this article on his curriculum vitae.

The petitioner's concern that the director twiste[redacted] statement is valid. Nevertheless, we concur with the director's ultimate determination on this criterion. While a research firm requires creative and successful researchers to succeed, we cannot conclude that every research chemist plays a leading or critical role for the research firm that employs him. We note that the materials from IBC's website submitted for the record list several notable articles published by IBC staff. The petitioner is not a coauthor on any of these articles.

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 research chemist 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 research chemist, 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.