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U.S. Citizenship
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FILE: WAC 04 026 52562 Office: CALIFORNIA SERVICE CENTER Date: **JUL 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:

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 Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 of 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 medical scientific researcher. The record shows that the petitioner is currently employed as a postdoctoral research fellow at the University of California Los Angeles (UCLA) School of Dentistry. The petitioner submitted supporting documents including her curriculum vitae, copies of her scholarly articles and abstracts, documentation of the citation of two of her articles, six recommendation letters, copies of her membership cards for two professional associations, and documentation of research grant projects in which she is involved. The director determined that the record did not establish the requisite sustained acclaim placing the petitioner at the very top of her field. On appeal, the petitioner submits a letter and additional copies of four journal articles. The petitioner's claims and the evidence submitted on appeal do not overcome the deficiencies of the petition and the appeal will be dismissed. The evidence submitted, the petitioner's claims and the director's decision 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 correctly concluded that the petitioner did not meet this criterion. The petitioner claimed to meet this criterion because she was the "recipient of a \$475,000 grant from the National Institutes of Health [NIH]." The record contains a copy of the face page of a Department of Health and Human Services Public Health Service grant application for a project entitled "GP120 Independent Infection of CD4(-) Cells by HIV-1." The form lists the petitioner's supervisor at the UCLA, Dr. Shen Pang, as the principal investigator. The petitioner also submitted a printout from the Computer Retrieval on Scientific Projects (CRISP) website containing an abstract of this project and indicating that the project was funded by the National Institute of Allergy and Infectious Diseases from May 2002 through April 2005. Dr. Pang, Associate Professor of Oral Biology and Medicine at the UCLA School of Dentistry and the petitioner's supervisor, confirms that the petitioner "currently is working on a research project funded by NIH. She is screening a cDNA library to identify the protein that is critical for gp120-independ [sic] infection. She has successfully constructed two cDNA gene expression libraries."

On appeal, the petitioner takes issue with the director's statement that "[s]imply being involved as a researcher in a research project does not establish the alien has receipted [sic] nationally or internationally recognized prizes or awards for excellence in the field of endeavor." The petitioner explains that her important role in the NIH-funded research project is evidenced by an article discussing the research that was published in the *Journal of Acquired Immune Deficiency Syndromes*. Although the petitioner is the lead author of this article, it was published in the December 1, 2004 edition of the journal, over a year after her petition was filed and consequently cannot be considered. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Moreover, prestigious research grant funding is only a "prize" in the sense that it is awarded, in part, on the past accomplishments and proven track record of the applicants. Although the petitioner was involved in the research funded by the NIH grant, the record is devoid of any evidence that the grant was awarded, in part, due to her achievements rather than those of Professor Pang. 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 determined that the petitioner did not meet this criterion and the petitioner does not contest this conclusion on appeal. The petitioner submitted copies of cards issued by the American Association for the Advancement of Science (AAAS) identifying her as a "Post Doc" member. The record contains no evidence that outstanding achievements are prerequisite to AAAS membership. The petitioner also submitted copies of two documents printed in Japanese, which purportedly evidence her membership in the Immunology Society of Japan and the Molecular Biochemistry Society of Japan. Because the petitioner failed to submit certified translations of these documents, we cannot determine whether the evidence supports the petitioner's claim. See 8 C.F.R. § 103.2(b)(3). Accordingly, she does not meet this criterion.

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

The director determined that the petitioner met this criterion because the petitioner's contributions to her field were recognized by others "as evidenced by the testimonial letters." The director failed to address other relevant evidence and gave unwarranted weight to the petitioner's recommendation letters. Upon review of all the relevant evidence, we find the record does not establish the petitioner's eligibility under this criterion.

The petitioner submitted recommendation letters from her present and past supervisors and one UCLA professor who has not worked with her directly. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his or her field beyond the limited number of individuals with whom he or she has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has earned sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

Mitsuaki Kakinuma, Honored Professor at Hokkaido University in Japan, states that the petitioner was a doctoral student in Professor Kakinuma's laboratory at the Institute of Immunological Science. Professor Kakinuma praises the petitioner as "a scientist of the highest caliber" and ranks her among "the top 5% of scientists in her specialty." Professor Kakinuma explains the petitioner made "valuable discoveries in the field of small GTP-binding proteins" through her work in Japan, specifically, she "isolated novel GTP-binding proteins called rab33A and rab33B. She also clarified that these rab proteins are located on the Golgi apparatus in the cell. Her works on the cloning and subcellular localization of these proteins were published [in] the most prestigious biological science journals." Toshiaki Koda, Professor of Biological Science at Hokkaido University, also supervised the petitioner's research when she was a graduate student. He explains that the petitioner "isolated cDNAs and genes for these proteins from human and mouse for the first time in the world and investigated the function of these genes. . . . Most importantly, she demonstrated that the expression of Rab33A gene is restricted to the nervous system and the immune system. . . . These studies have been reported [in] the well-authorized peer-reviewed international journals." Professor Koda states that the petitioner remained at Hokkaido to work as a postdoctoral researcher at Professor Koda's laboratory where she "continued her research on Rab proteins, and isolated the cDNAs for effector proteins. She also demonstrated that these effector proteins bind specifically to the GTP-bound forms of Rab33A and Rab33B proteins."

The record contains copies of three articles relating to the petitioner's research at Hokkaido University. The petitioner is the lead author of all three articles. The first article was published in 1997 in *Biochimica et Biophysica Acta*. The second article was published in 1998 in the *Journal of Medical Science Hokkaido*. Professor Kakinuma describes this article as a summary of the petitioner's work as a graduate student. The third article was published that same year in the *Journal of Cell Science*. The petitioner submitted citation information for two of these articles in the form of printouts from the "ISI Web of Science" website. The printouts show that the petitioner's 1997 article from *Biochimica et Biophysica Acta* has been cited five times and her 1998 article from the *Journal of Cell Science* has been cited eight times. Yet the printouts do not list the individual citing articles or state that all of the citations were made by independent research teams and do not include self-citations by the petitioner or her co-authors. The minimal citation of two of the petitioner's articles does not indicate that her work was widely recognized by other scientists and the record contains no other

evidence that the petitioner's research in Japan made major contributions to her field in a manner reflective of the requisite sustained acclaim.

The record also does not indicate that the petitioner's subsequent work at UCLA had made major contributions to her field at the time of filing. Robert Chiu, Professor at the UCLA School of Dentistry, states that the petitioner worked as a postdoctoral fellow in his laboratory from 2000 to 2001. Professor Chiu explains that during the petitioner's "stay in my laboratory for one year [,] [s]he has made significant contribution in gene cloning and sequence mutagenesis, including constructing plasmids for preparing DNA vectors, defining functional domains of cyclophilin A nuclear translocation in response to retinoic acid treatment. . . . Her efforts have been demonstrated in several manuscripts that have been published or submitted. Her outstanding research skills have helped to develop new treatment avenues for patients with prostate cancer."

The petitioner's current supervisor at the UCLA School of Dentistry, Professor Pang, describes the petitioner as "a critical member in my research team." Professor Pang discusses two specific contributions made by the petitioner. First, the petitioner developed "a lentiviral gene therapy vector to eradicate prostate cancer cells." Professor Pang explains that:

[b]ased on the results achieved from cell culture tests, Dr. Zheng has used the constructed lentiviral vector to treat human prostate cancer in mice. She has inoculated human prostate cancer cells in immunodeficient mice using subcutaneous injection. Human prostate tumors developed in mice two to three weeks post injection. Dr. Zheng has injected the lentiviral DTA vector into these tumors. She also used the same gene therapy vector to treat other human tissues inoculated in mice and found that the injected vector has no pathogenic effect to other human tissues. These results strongly suggest that our cloned prostate tissue-specific gene therapy vector can specifically destroy human prostate cancer cells while has [sic] no effect to other human tissues. . . . The major results of Dr. Zheng's studies have been published in the journal of Cancer Gene Therapy. . . . Dr. Zheng is also very actively involved in an important basic research project . . . [to] characterize a new gene, CLDN-7. We found that this gene can regulate the expression of the prostate-specific antigen, a key protein for prostate cancer screening. . . . As the first author, Dr. Zheng has one paper published in the Journal of Membrane Biology.

Second, Professor Pang describes the petitioner's work on HIV-1 research: "Dr. Zheng and her colleagues have found that HIV-1 can also infects [sic] CD4 (-) cells including cells from kidney, prostate[,] oral tissues and endothelial cells in the blood vessels. Such discovery will be important to design strategies against the latent HIV-1 virus. . . . This important discovery has been published in the Journal of AIDS." Professor Pang explains that the petitioner has "also extensively studie[d] the effects of ethanol in oral cell infection. She found that with the presence of 4% alcohol, a concentration similar to most beers consumed in the United States[,] HIV increases infection to oral cells by approximately 6-fold. . . . A manuscript with Dr. Zheng as the first author has been submitted." Finally, Professor Pang notes that the petitioner is working on the NIH-funded project discussed above under the first criterion.

The record contains two additional letters from professors at UCLA: Professor Irvin S.Y. Chen, Director of the UCLA Acquired Immune Deficiency Syndrome (AIDS) Institute, and Professor Jerome A. Zack, Associate Director for Basic Science at the UCLA AIDS Institute. Both Professor Chen and Professor Zack summarize and praise the petitioner's accomplishments and the important potential medical applications of her research. We note that the director stated that all of the support letters were written by individuals who had worked with the petitioner. In her response to this statement on appeal, the petitioner explains that Professor Zack has not

worked with her and “[i]n some way, [he] is a competitor of [her] study.” The petitioner submits on appeal a journal article of Professor Zack’s that she describes as proposing a hypothesis that “directly disagrees” with that proposed by one of her articles.

The petitioner submitted copies of three articles related to her research at UCLA. The first article was published in 2002 in the *Journal of Acquired Immune Deficiency Syndromes* and lists the petitioner as the third author. The second article was published in 2003 in the *Journal of Membrane Biology*. Although the petitioner is the first listed author of this article, a footnote states that “J.-Y.Z. and D.Y. [the second listed author] contributed equally to this manuscript.” The third article was published in 2003 in *Cancer Gene Therapy* and lists the petitioner as the lead author. The record is devoid of any evidence that these articles have been cited or otherwise recognized by independent researchers as major contributions to the field. Thus the importance of the petitioner’s recent work, although heralded by her support letters, is not corroborated by independent evidence in the record. Accordingly, the petitioner does not meet this criterion.

(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 mistakenly stated that the “record contains no evidence of the petitioner having satisfied this criterion.” In fact, the record contains numerous documents relevant to this category. The director’s oversight has not prejudiced the petitioner, however, because the record does not demonstrate that she has met this criterion. Frequent publication of research findings is inherent to success as an established scientist and does not necessarily indicate the sustained acclaim requisite to classification as an alien with extraordinary ability. Evidence of publications must be accompanied by documentation of consistent citation by independent experts or other proof that the alien’s publications have had a significant impact in his or her field.

As discussed above under the fifth criterion, the petitioner submitted copies of six articles published in scholarly journals relating to her research in Japan and the United States. She is the lead author of four of these articles, a co-principal author of one article and the third-listed author of another article. The petitioner submitted citation information for only two of these articles indicating that they have been cited a combined total of 13 times. As previously noted, the record does not establish that these citations were all made by independent research teams and do not include self-citations by the petitioner or her co-authors. Moreover, the most recent of the articles for which the petitioner provided citation information was published in 1998, five years prior to the filing of her petition. Because the petitioner did not submit the individual citing articles for this publication, we cannot assume that her work continued to be cited for several years after its publication in 1998. Hence, the minimal citation of the petitioner’s articles does not indicate the requisite sustained acclaim. The record is also devoid of any evidence of the citation of the petitioner’s subsequent work in the United States.

The petitioner submitted copies of numerous abstracts of her research presented at various scientific conferences. All of the abstracts were apparently printed in conference materials and the petitioner provides no evidence that any of her abstracts have been published in scholarly journals or have otherwise received significant recognition from independent researchers in her field. In sum, the record indicates that the petitioner has published six articles in scholarly journals and is the lead author of four of these articles. Two of these articles have been cited a combined total of 13 times. The most recent cited article was published in 1998 although this petition was filed in November 2003. The evidence does not indicate that the petitioner’s publications have been widely cited or otherwise recognized by independent experts in a manner consistent with the requisite sustained acclaim. Consequently, the petitioner does not meet this criterion.

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

The petitioner claims eligibility under this criterion by virtue of her publications and presentations of her research at scientific conferences and symposia. The director determined that this evidence was not relevant to this criterion because it "plainly refers to 'artistic exhibitions or showcases.'" Even if we considered the relevant materials under this category pursuant to the comparable evidence provision of 8 C.F.R. § 204.5(h)(4), we would find them insufficient to establish the petitioner's eligibility. As noted above under the sixth criterion, the petitioner's publication record does not reflect the requisite sustained acclaim.

In addition, frequent presentation of research findings at conferences is inherent to a scientist's occupation and does not necessarily demonstrate sustained national or international acclaim. The record in this case does not indicate that the petitioner's work was distinguished from that of other conference participants. For example, the record does not show that the petitioner won any awards for her papers or that she was a featured speaker at any of the conferences or symposia she attended. Hence, the presentation of the petitioner's work was not made in a manner consistent with the requisite sustained acclaim and she does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), 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 evidence in this case indicates that the petitioner is an accomplished scientist who has made valuable contributions to rab proteins, prostate cancer and HIV-1 research. However, the record does not establish that she has achieved sustained national or international acclaim as a scientist placing her at the very top of her field. She is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and her 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.