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FILE: WAC 03 097 52764 Office: CALIFORNIA SERVICE CENTER Date: JUN 13 2005

IN RE: Petitioner: 
Beneficiary: 

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:



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

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 earned sustained national or international acclaim at the very top level.

This petition, filed on February 6, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a biomedical researcher. At the time of filing, the petitioner was working as a postdoctoral research fellow in the Department of Pathology at the University of California, Irvine.

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.

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence of his regular membership in the American Society for Investigative Pathology (ASIP), International Society of Interferon & Cytokine (ISIC), and American Society for Biochemistry and Molecular Biology (ASBMB).

The petitioner submitted material from the ASIP's website stating: "Successful candidates for **regular membership** are independent investigators with solid scientific qualifications, commitment and continuing productivity."

The petitioner also submitted a copy of the bylaws for the ISIC. Item 2 under the heading "Article I: Membership" states: "Persons admitted as Members in any category shall: a) possess an earned baccalaureate or higher degree in science or medicine or the academic equivalent of the above, and b) be currently engaged in professional activities commonly associated with interferon and cytokine research."

The petitioner also provided a letter from [REDACTED] Executive Officer of the ASBMB, who states: "Regular membership is available to any individual who holds a doctorate, has published since the receipt of a doctoral degree at least one paper in a refereed journal devoted to biochemistry and molecular biology. The applicant must also be sponsored by one Regular member of the Society." As publication is an inherent duty of researchers, the mere publication of scholarly articles is not adequate to demonstrate outstanding achievement in one's field.¹

¹ 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 were the acknowledgement 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 Citizenship and Immigration Service's (CIS) conclusion that publication of scholarly articles is not presumptive evidence of outstanding achievement.

The above membership requirements are not adequate to demonstrate that the petitioner's membership in the preceding societies required outstanding achievement in his field or that he was evaluated by national or international experts in consideration of his membership. The record contains no evidence to establish that the preceding societies require outstanding achievement of their members in the same manner as highly exclusive associations such as the U.S. National Academy of Sciences.

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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution.

On appeal, the petitioner argues that citation of his work by others in the field represents qualifying evidence under this criterion. We note, however, that the petitioner and his work were not the primary subject of the articles that cited his findings. Scientific articles which cite the petitioner's work are primarily about the author's own work, not the petitioner's work. As such, they cannot be considered qualifying published material about the petitioner's work. We cannot ignore that the articles citing the petitioner's work similarly referenced scores of other authors. In the petitioner's field, it is the nature of research work to build upon work that has gone before. In some instances, prior work is expanded upon or supported. In other instances, prior work is superseded by the findings in current research work. In either case, the current researcher normally cites the work of the prior researchers. Clearly this is not the same thing as published material written about an individual's work in the field. This type of material does not discuss the merits of an individual's work, the individual's standing in the field, or any significant impact that his or her work has had on work in the field. Citations of the petitioner's work will be addressed under a separate criterion.

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

We withdraw the director's finding that the petitioner's evidence is adequate to satisfy this criterion.

The petitioner submitted several letters in support of the petition.

██████████ now a Guest Professor, Department of Radiation Genetics, Kyoto University, and formerly a professor at Kumamoto University (where he supervised the petitioner), states:

[The petitioner] handled a project involving the study of the mechanism of chromosome partitioning in *E. coli* under my supervision. . . . [The petitioner] obtained very fine results, where he clearly demonstrated that C-terminal domain of MukB protein binds to the chromosomal DNA and on the other hand the N-terminal domain provides motor function that drives the newly divided chromosome into two compartments of divided cell.

[REDACTED] states: "The knowledge gained from a relatively simple organism like *E. coli* will help to advance our studies on similar biological process [sic] in the human system, which is much more complex."

[REDACTED] Research Center, states: "[The petitioner's] research provided significant insight on the process of cell division in a simple organism, bacteria, which helped us understand the similar process in a human which is much more complicated."

[REDACTED] Laboratory, states:

[The petitioner] has for the first time discovered that cytokine receptor family members also signal via a regulated intramembrane proteolysis (RIP) pathway, in addition to the already known JAK-STAT pathway. . . . This striking new discovery will certainly give new impetus to research aimed at improving the therapeutic potential of interferons.

[REDACTED] Antiviral Drug Discovery, Abbott Laboratories, states: "[The petitioner's] report of a novel mechanism of affinities of Stat2 interactions to the subunits of the interferon (IFN) α receptor will aid to explore a new possibility, that IFN α R2 being a transmembrane protein signals *via* regulated intermembrane proteolysis (RIP)."

[REDACTED] Children's Hospital Boston and Harvard Medical School, states:

[The petitioner's] most recent research revealed an aspect of cytokine signaling which was not known before. The transmembrane proteins Amyloid precursor protein (APP), HER4, SREBP and CD44 were recently reported to become activated through proteolysis within the membrane and to initiate a signaling pathway named "regulated intramembrane proteolysis (RIP) signaling." [The petitioner] has become the first researcher to describe that a cytokine receptor family member, IFN α R2, also undergoes the same phenomenon.

[REDACTED] China Medical University, states: "In his most recent work [the petitioner] has successfully studied the regulated intramembrane proteolytic processing of membrane proteins. This work holds promise for solving mysteries of many membrane proteins of unknown function."

[REDACTED] Pathology, University of California, Irvine, states that the petitioner has worked in his laboratory for the past four years. [REDACTED]

[The petitioner's] lead project involves understanding the role of a previously unknown interaction between proteins involved in the interferon-alpha signaling pathway. . . . The results of [the petitioner's] research on the interferon-alpha signaling have uncovered a novel mechanism involved in this pathway. In brief, it appears that the receptor for this pathway can signal in two ways: a classical or canonical pathway previously described by my lab and many others and the novel pathway recently

discovered as a result of [the petitioner's] research. . . . We are just beginning to understand the interaction between the canonical and novel signaling pathway, but it is likely that this will open up an entirely new area for potential drug discovery.

With regard to the witnesses of record, many of them discuss what may, might, or could one day result from the petitioner's work, rather than how his past efforts rise to the level of a contribution of major significance. In the present case, we cannot conclude that petitioner's past contributions far exceed those of established pathology researchers.

[REDACTED] his letter by stating: "With the publication in the next month or two of the results of his discoveries, [the petitioner] will be recognized internationally as an expert on regulated intramembrane proteolytic signaling of interferons." The record, however, contains no evidence showing that the results discussed by [REDACTED] were published as of the petition's filing date. A petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). The assertion that the petitioner's research results hold future promise is not adequate to establish that his findings are already nationally or internationally acclaimed as a major contribution.

In the same manner as [REDACTED] of Chemistry, University of California, Irvine, concludes his letter by stating: "Given the opportunity it is clear to me that [the petitioner] will amplify his accomplishments in the coming years." The visa classification sought by the petitioner, however, is intended for aliens already at the top of their respective fields, rather than for those individuals progressing toward the top at some unspecified future time.

We accept that petitioner's work has yielded some useful and valid results; however, it is apparent that any scientific manuscript, in order to be accepted in for publication, must offer new and useful information to the pool of knowledge. It does not follow that every individual whose scholarly research is accepted for publication has made a major contribution in his field. Without extensive documentation showing that the petitioner's published findings have been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that he meets this criterion. The petitioner's publications will be further addressed under the next criterion.

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

The petitioner initially provided evidence of his authorship of articles appearing in publications such as *Biochemistry*, *FEMS Microbiology Letters*, and *The Journal of Biological Chemistry*. In response to the director's request for evidence, the petitioner provided evidence of an article published in *Oncogene* in 2004. This published article, however, came into existence subsequent to the petition's filing date. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak* at 45.

We do not find that publication of scholarly articles is presumptive evidence of sustained national or international acclaim; we must also consider the greater scientific community's reaction to those articles. When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. If a given article in a prestigious journal

(such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner himself has cited sources in his own publications. Numerous independent citations would provide firm evidence that other researchers have been influenced by the petitioner's work and are familiar with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the greater field, then it is reasonable to conclude that the alien's work is not nationally or internationally acclaimed.

In response to the director's request for evidence, the petitioner provided citation indices showing that his article in *Biochemistry* was cited once, his article in *FEMS Microbiology Letters* was cited eleven times, and his article in *The Journal of Biological Chemistry* was cited eight times. While the citation indices provided by the petitioner demonstrate a small degree of interest in his published work, he has not shown that an aggregate total of twenty independent citations over a research career spanning more than a decade elevates him to a level above almost all others in his field at the national or international level. We accept that the petitioner has authored some published papers over the last several years, but the weight of this evidence is diminished by a lack of evidence showing that his published findings are widely influential.

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

In response to the director's request for evidence, the petitioner submitted an April 13, 2004 letter from the Office of the Executive Vice Chancellor, University of California, Irvine, indicating that his annual salary would increase to \$38,652 on July 1, 2004. This evidence came into existence subsequent to the petition's filing date. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak* at 45. Evidence relating to subsequent developments in the petitioner's career cannot retroactively establish that he was already eligible for the classification sought as of the filing date. Regardless, the petitioner offers no basis for comparison to show that this salary is significantly high in relation to others in his field.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. 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.

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ORDER: The appeal is dismissed.