

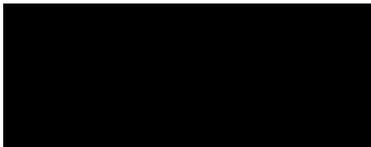
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U.S. Citizenship
and Immigration
Services



B2

FILE: WAC 03 114 50653 Office: CALIFORNIA SERVICE CENTER Date: MAY 03 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:



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.

Mari Johnson

R 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 with extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The applicable regulation defines the statutory term "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification as an alien with extraordinary ability in the sciences, specifically as a researcher in drug discovery using a bioanalytical chemistry and neuroscience approach. The petitioner submitted evidence including her diplomas, publications, citations of her work, membership in scientific associations, and several recommendation letters. The director found that although the petitioner was talented, highly skilled and successful, the evidence was insufficient to establish that she was an alien with extraordinary ability in the sciences. On appeal, counsel submits additional evidence including new publications, abstracts and citations. Much of this evidence arose after the petition was filed and consequently cannot be considered. The petitioner must establish her eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The remaining evidence does not overcome the substantive reasons for denial. Although we find flaws in some of the director's analysis, we affirm his ultimate decision.

The evidence submitted, the director's decision and counsel's claims are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

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

The petitioner submitted evidence that she received a Servier Young Investigator Award, four travel awards to participate in conferences, two fellowships at the National Institutes of Health, and a scholarship at the Catholic University of Leuven in Belgium. The director determined that none of these honors satisfied this criterion as the record lacked evidence of their significance. Not all of the director's analysis is valid. For example, the director stated that the petitioner did not "include evidence that identifies previous winners of each award for the past three to five years. Thus, the evidence does not clearly establish that the awards rise to a national or international level of achievement." We fail to see how the names of previous winners would establish the national or international significance of the awards or why those names are required to establish the petitioner's own eligibility under this criterion. The director's decision also included an irrelevant and misleading discussion of the one-time achievement (major, internationally recognized award) described in the regulation at 8 C.F.R. § 204.5(h)(3), even though the petitioner never claimed to have won such an award.

Nevertheless, the director correctly determined that the petitioner's scholarship and fellowships did not meet this criterion. Academic study and postdoctoral training are prerequisite to a career in the sciences. Only other students and recent doctoral graduates – not established scientists – compete for scholarships and postdoctoral fellowships. While such awards may show the recipient's promise and potential, they rarely establish national or international recognition for excellence as an established research scientist. We are not convinced by counsel's claim that just because they were given "in recognition of her previous outstanding research work," these honors necessarily constitute awards under this criterion. The petitioner's scholarship only demonstrates her successful work as a student. The petitioner's doctoral advisor, Professor Frans Vandesande, states that the petitioner's scholarship was a "high level national honor" in Belgium, but the only corroborative documentation is a brief letter from the Catholic University of Leuven stating that the petitioner was paid a scholarship while a doctoral student. The letter says nothing about the significance of the scholarship. Similarly, the petitioner's fellowships show only successful postdoctoral training and employment. The petitioner's supervisor at the National Institutes of Health (NIH), Dr. [REDACTED], states that the petitioner first worked in his laboratory as a postdoctoral fellow and was then "appointed as Fogarty Visiting Fellow at the National Institute on Aging." The record contains no evidence of the Fogarty Fellowship and the documents from NIH only demonstrate the petitioner's employment in Dr. [REDACTED] laboratory as a "visiting fellow," "research fellow," "guest researcher," or "research assistant." There is no evidence in the record regarding the significance of the petitioner's current postdoctoral position at Johnson and Johnson.

The director also found insufficient evidence of the selection criteria and significance of the petitioner's travel awards to establish that they constitute awards or prizes under this criterion. We agree. The petitioner submitted one electronic mail message, two letters, and one document that state that she received travel awards or financial support to attend various scientific conferences. Beyond the assertions of the petitioner and some of her references, the only independent evidence of the significance of these awards is the brief statement from the organizing committee of the Eighth Annual Conference on In Vivo Methods that the committee "received numerous requests for bursaries, all from very qualified applicants."

Similarly insufficient is the documentation of the petitioner's receipt of the 2002 Servier Young Investigator Award and The International Society of Neurochemistry (ISN) Travel Award for a Young Scientist in 2001. Four of the petitioner's recommendation letters briefly state that these are "internationally recognized prizes." Dr. [REDACTED] adds that the Servier award is "given to a young scientist for significant contribution to the progress of world-wide serotonin research" and that the ISN award is "another internationally recognized prize for excellent research by a young scientist in the field." In addition, the petitioner submitted a one-page, undated document entitled "Acknowledgements" from an unidentified source that states: "The following students, presenting a poster at this meeting, were recipients of a Servier Young Investigator Award." The petitioner is then listed as one of six recipients. The document does not state the selection criteria or significance of the award. As verification of her ISN award, the petitioner submitted an e-mail message that states "the ISN Travel Awards Committee has allocated US Dollars 1,300.00 to support your attendance at the Joint Meeting of the ISN/ASN." On appeal, the petitioner submits a list of the ISN travel grant committee members. The list shows only that the committee members come from various countries, but says nothing about the selection criteria or the significance of the travel grants from which we could determine that such grants constitute awards or prizes under the regulation. 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 found that the petitioner met this criterion without discussing the evidence. We find the record insufficient to affirm the director's determination. In order to satisfy this criterion, membership in an association must be earned by virtue of a member's outstanding achievements. Membership based on employment or activity in the field, a minimum of education or work experience, or recommendations by current members is insufficient because these qualifications do not constitute outstanding achievements. The record includes a letter from [REDACTED] verifying that the petitioner was elected and served as member of the Chemical Society of China. Although the letter states that the association requires outstanding achievements as a prerequisite to membership, the petitioner's curriculum vitae states that her membership in this society ended in 1993 when she left China, a decade before she filed her petition. The petitioner also submitted a "regular" membership card for the American Chemical Society that expired in 2001; a 2002 membership card for the Society for Neuroscience; a letter verifying her junior membership in the International Society for Neurochemistry; a membership certificate for the New York Academy of Sciences; and a letter verifying her membership in the Belgian Society for Neuroscience from 1998-1999. The record contains no evidence that any of these five associations require outstanding achievements of their members as determined by recognized national or international experts.

Although the petitioner claims to belong to the Serotonin Club, she did not submit evidence of her membership. On appeal, she submits a printout from the organization's website, but no evidence of her membership. Even if verified, that membership would be insufficient to establish the petitioner's eligibility under this criterion. According to the printout, membership in the club is open to all "biomedical scientists who are interested in any aspect of research on serotonin." Hence membership in the Serotonin Club apparently only requires a shared scientific interest – not outstanding achievements.

Of her seven claimed memberships, the petitioner submitted evidence of only six. She submitted no evidence regarding the membership criteria of five of these associations. The remaining organization, the Chemical Society of China, appears to require outstanding achievements of its members as determined by recognized

experts, but the petitioner does not submit corroborative evidence of the Society's membership criteria. In addition, the petitioner's membership in that organization ceased a decade before the filing of her petition. Moreover, the Society is a national organization in China and the petitioner's membership (even if current) would not reflect sustained international acclaim or national acclaim in the United States where she has been working for over a decade. Accordingly, the petitioner does not meet this criterion.

(iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The director correctly determined that the petitioner did not meet this criterion. The petitioner submitted evidence of the citation of her articles in scientific journals. Articles which cite the petitioner's work are primarily about the author's own research, not the petitioner. As such, they do not constitute published material about the petitioner. On appeal, counsel asserts that the fact that the petitioner's "research findings have been cited to and reviewed so extensively by her peers from all over the world demonstrate[s] the scientific, pharmaceutical and medical values of her findings." Counsel focuses on the wrong issue. We do not question the value of the petitioner's work in her field. The relevant issue here is whether or not there exists published material about her. On appeal, counsel submits three articles that cite the petitioner's publications. The petitioner's work is referenced in one sentence, such as: "Protein concentrations were assayed using the modified Bradford method described by Qu et al. (1997)." Her article is mentioned in a single sentence and one citation in each of these articles that range from nine to 13 pages long with 31 to 88 citations each. Clearly, these articles are not primarily about the petitioner or her work.

Counsel also claims that there are several scholarly reviews of the petitioner's work including one book chapter. This claim is unsupported by the record. Counsel emphasizes that Professor Alvarez-Coque stated in her recommendation letter that she wrote a review paper that cited three of the petitioner's articles, but her review article is not included in the record. The petitioner's work was also cited in the book *Micellar Liquid Chromatography*, co-authored by Professor Alvarez-Coque. In Chapter 11, a 1991 article of which the petitioner was a co-author is cited once with at least 37 other citations. In Chapter 12, another 1991 article of which the petitioner is the lead author is cited once along with 29 other citations. Although this book references the petitioner's work, it does not focus on the petitioner or her research. The book's publication date is also not included as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

On appeal, the petitioner submits five review articles. These articles review recent research in specific areas of the petitioner's field, but are not about the petitioner's work specifically. In four of the articles, the petitioner's work is cited only once. In one article her work is cited twice. The reviews cite between 44 and 414 articles each. This brief mention and citation of the petitioner's work indicates that these reviews are not primarily about her research, but about particular areas in which she has published, along with many other authors. Consequently, these articles do not satisfy this criterion. The citations of the petitioner's articles are more relevant to and will be discussed below under the fifth and sixth criteria.

(iv) 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 petitioner initially submitted electronic mail messages and one letter showing that she had been requested to review articles for *The Journal of Neurochemistry* and *Brain Research Protocols*. The director found this

evidence insufficient to establish the petitioner's eligibility under this category because there was no evidence that the petitioner actually conducted the requested reviews. On appeal, the petitioner submits her "reviewer questionnaire" for one article and her detailed comments for another article submitted to the journal *Brain Research Protocols*. This evidence verifies that the petitioner has served as a reviewer for one journal, but is insufficient to meet this criterion. Established research scientists are generally expected to conduct peer reviews. The petitioner has begun to gain some recognition in this regard, but her review record is simply not comparable to scientists at the top of her field. The record in this case shows that the petitioner's own references not only serve as regular reviewers for, but also as members of the editorial boards of several scientific journals. Even though the petitioner is a relatively young researcher, she must still establish that she has already risen to the very top of her field. 8 C.F.R. § 204.5(h)(2).

We note that the director stated that the petitioner must establish "the significance of the work judged" and the selection criteria for judges. While volunteering to judge amateur work clearly would not satisfy this criterion, peer review of articles submitted to reputable scientific journals may be sufficient evidence. The director also stated that "[e]valuating the work of others is almost intrinsic to science, does not [sic] sufficiently demonstrate evidence of 'judging the work of others.'" We do not read the director's statements to imply that review and editorial work could never meet this criterion. Rather, the director appears to be noting that peer-review is a common credential among scientists. We agree that without evidence that distinguishes the petitioner's reviewing responsibilities, such as a large number of independent requests or membership on editorial boards, an alien cannot meet this criterion.

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

Evidence submitted in relation to this category includes eight recommendation letters, the petitioner's articles and abstracts, citation information, requests for reprints of one article and invitations to speak at various meetings. The director only discussed the petitioner's recommendation letters. Most of the letters were written by the petitioner's past supervisors, collaborators, and colleagues. For this reason, the director stated "[i]t appears that these individuals cannot offer an unbiased opinion regarding the petitioner's contributions to the field." We phrase our concerns somewhat differently. The letters provide relevant information about the petitioner's experience and accomplishments and we do not assume that the authors are biased. However, such recommendation letters cannot by themselves establish the petitioner's eligibility under this criterion because they do not demonstrate that the petitioner's work is of major significance in her field beyond the few scientists with whom she has worked directly. In addition, recommendation letters solicited by the petitioner carry less weight than preexisting, independent evidence of major contributions that one would expect of a scientist who has sustained national or international acclaim.

The record includes a letter from the petitioner's supervisor at the NIH, Dr. [REDACTED] her doctoral supervisor at the Catholic University of Leuven in Belgium, Professor Frans Vandesande; her Belgian collaborator, Professor [REDACTED] Dr. [REDACTED] of Bioanalytical Systems, Incorporated who describes the petitioner as a "patron of [his] company;" and Professors [REDACTED] and [REDACTED] the petitioner's colleagues in the Chemistry Department of Lanzhou University in China. We note that the letter of Professor [REDACTED] that was initially submitted with the petition is copied almost verbatim and submitted on appeal as a letter from Professor [REDACTED]. This repetition suggests that the language is not the authors' own and detracts from the letters' credibility.

Professor [REDACTED] of the University of València in Spain and Dr. [REDACTED] at the NIH have never worked directly with the petitioner. As opinions from independent experts in the petitioner's field, their letters merit further discussion. As previously mentioned, Professor A [REDACTED] states that she cited the petitioner's work in her 1999 review article concerning the direct injection of physiological fluids in micellar liquid chromatography. She attests that the petitioner "was the first to report the analysis of endogenous compounds in physiological fluid by micellar HPLC" and that Professor [REDACTED] colleagues at the University of València "expanded this micellar liquid chromatographic method to more endogenous compounds." Professor A [REDACTED] then lists citations of the petitioner's work and notes that she has "significantly contributed" to this area of research. The letter also claims that the petitioner has made "outstanding contributions to bioanalytical chemistry," but cites only the petitioner's review paper of micellar liquid chromatography and one other article of which the petitioner was not the lead author. In addition, Professor A [REDACTED] states that the petitioner's research as a doctoral student produced "significant results" that were published in peer-reviewed journals. Of the petitioner's work at NIH, Professor A [REDACTED] simply states that she was "indispensable in the project." Although this letter demonstrates that the petitioner has made valuable and significant contributions to her field, it does not establish that those contributions were of major significance.

Dr. [REDACTED] letter also fails to establish that the petitioner has met this criterion. After a nearly formulaic recitation of the petitioner's experience as it relates to the regulatory criteria, Dr. [REDACTED] offers little substantive information about the petitioner's research. Dr. [REDACTED] describes the petitioner's work at NIH and then states that the results of her research "enable us to identify molecular targets involved in" neuropsychiatric diseases, but that the results have yet to be published. He states that the petitioner's "expertise in the research of serotonin signaling transduction makes her very valuable in work likely to solve some neuropsychiatric and neurodegenerative diseases" and that her "excellent work in neuropharmacological studies of depression has a good chance to become extremely useful in the U.S. national cooperative programs to control the disease." Hence, Dr. [REDACTED] speaks of the potential – not established – impact of the petitioner's work. In sum, none of the petitioner's recommendation letters establish that she has made original scientific contributions of major significance in her field that would reflect sustained national or international acclaim.

The citations of the petitioner's articles are also insufficient to establish her eligibility under this criterion. Substantial and ongoing citation of a scholarly article by independent experts may provide some evidence of the author's original scientific contribution of major significance in the field. At the time of filing, the petitioner had published 27 articles.¹ She is the lead author on 18 of these papers. The petitioner submitted citation information for 15 of her articles. At the time of filing, three of these papers had only self-citations. The remaining 12 articles have been consistently cited, but mostly to a minimal degree. The petitioner's publication record may be impressive for a young scientist, but it pales in comparison to that of scientists at the top of their fields and is not in itself sufficient to show that any of the published research has made contributions of major significance in her field.

On appeal, counsel claims that the impact of two of the petitioner's articles is sufficient to satisfy this criterion. The evidence does not support that contention. First, counsel states that the petitioner's 1991 article, "Direct urine injection with micellar liquid chromatography amperometric detection for dopamine monitoring," has been "cited by more than 10 research groups in the field." Yet the citation list submitted by the petitioner

¹ On appeal, the petitioner submitted citation information for one article published in 1993 in *Analytical Letters* that is not listed on her curriculum vitae.

includes two self-citations. Second, counsel states that the petitioner's 1997 article, "Determination of serotonin, catecholamines and their metabolites by direct injection of supernatants from chicken brain tissue homogenate using liquid chromatography with electrochemical detection," reported a method which has been "widely used by many other scientists." Counsel then lists nine studies by other researchers purportedly using this method. The petitioner is a co-author of one of these studies (Arckens et al., 2000). In addition, five of the studies appear to have been published after the petition was filed and consequently cannot be considered. The petitioner must establish her eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49.

Finally, the petitioner's abstracts, requests for reprints of one of her articles, and her invitations to participate in conferences are all insufficient to meet this criterion. The petitioner submitted copies of numerous abstracts of her work from various scientific conferences between 1994 and 2002. These abstracts reflect the petitioner's consistent participation in such conferences, but do not establish that any of the reported research constitutes a major contribution to her field. The petitioner submitted requests from ten people for a reprint of an article that was published in *Brain Research Protocols*. These requests are for only one of the petitioner's articles that was published two years before the petition was filed and do not reflect sustained national or international acclaim. The petitioner also submitted evidence that she had been invited to participate in two international conferences, two national meetings, and was a featured speaker at Bioanalytical Systems, Incorporated. As with the petitioner's abstracts, these documents show that she has been active in her field, but do not establish that she has made major contributions.

(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 determined that the petitioner met this criterion and we do not contest that conclusion. At the time of filing, the petitioner had published 27 articles. She is the lead author on 18 of these articles. This publication record combined with the fact that the petitioner's work has been consistently cited minimally meets this criterion.

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

The director correctly found that the petitioner did not meet this criterion. The evidence shows that the petitioner has made valuable contributions to the laboratories in which she has worked, but has never held a leading or critical position. Dr. Rapoport states that the petitioner was "very productive" while working at his laboratory at NIH. He states that the petitioner's research "helps us to identify molecular targets in depression and other brain diseases, and to develop drugs to effectively treat these disorders." Although he values the petitioner's contributions to his laboratory, Dr. Rapoport does not affirm that she was a leading or critical researcher whose work could not have been performed by someone else with the same skills. His letter verifies the petitioner's successful postdoctoral employment at NIH, but it does not establish that she performed in a leading or critical role in either his laboratory, the National Institute on Aging or NIH. Similarly, Professor Vandesande's letter confirms that the petitioner was a successful graduate student in his laboratory, but does not show that she played a leading or critical role. Professor Vandesande states that he initially invited the petitioner to work in his laboratory because she had developed a certain technique that was useful to research he planned to undertake. He verifies that the subsequent research was published in several articles. Yet these facts are not unusual for successful doctoral students in the sciences. As a researcher and later as a doctoral student,

the petitioner's work was initiated and led by Professor Vandesande, not the petitioner herself. Finally, Professors Hu Zhide and Hulin Li state that the petitioner was a valued colleague at Lanzhou University, but do not claim that she had a leading or critical role in either the chemistry department or the university as a whole.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The petitioner bears this substantial burden of proof. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner in this case has not sustained that burden. The evidence shows that the petitioner is a highly skilled researcher whose work has been published and consistently cited. The record also indicates that she has served as a peer reviewer for one scientific journal and is beginning to gain significant recognition in her discipline. However, the petitioner must demonstrate that she has already risen to the very top of her field. 8 C.F.R. § 204.5(h)(2). The record in this case does not establish that the petitioner was a researcher with extraordinary ability in the sciences at the time of filing. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.