

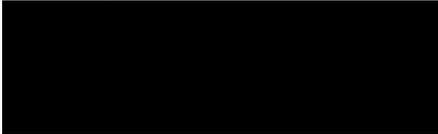
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U.S. Citizenship
and Immigration
Services

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FILE: LIN 04 040 50146 Office: NEBRASKA SERVICE CENTER Date: JAN 06 2006

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.

Mai Johnson

2 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, the petitioner submits new evidence relating to accomplishments after the date of filing. For the reasons discussed below, while we withdraw the director's adverse finding that the petitioner did not establish any contributions of major significance, we concur with the director that the petitioner has not demonstrated his eligibility as of the date of filing.

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

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

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 of academic scholarships and academic awards from Wuhan University.

As implied by the director, 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. Moreover, competition for scholarships is limited to other students. Experienced experts in the field are not seeking scholarships. Thus, the director concluded that the petitioner does not meet this criterion.

The petitioner does not contest the director's conclusion for this criterion on appeal and we concur with the director's reasoning and conclusion.

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 concluded that the petitioner's memberships were professional and could not serve to meet this criterion. The petitioner does not challenge this conclusion on appeal. We will examine the evidence in detail.

The petitioner submitted evidence of his membership in the Purdue University Chapter of Sigma Xi. The petitioner also submitted materials providing that full membership in Sigma Xi requires a "noteworthy achievement," evidenced by "publications, patents, written reports or a thesis or dissertation, which must be available to the Committee on Admissions if requested." In addition, nominations for membership in a chapter are ultimately delivered to and considered by the Committee on Admissions of the chapter.

The record is not persuasive that a "noteworthy achievement" is an outstanding achievement such that membership is indicative of national or international acclaim. Publication is expected of researchers and is not necessarily an outstanding achievement in the field. Regardless, the petitioner is a member of a local chapter and does not appear to be a member at large. As local chapter officials elected the petitioner, his membership was not judged by recognized national or international experts in his field.

The petitioner also submitted evidence of his membership in the American Institute of Chemists (AIC). A letter from AIC indicates that members include "chemists, chemical engineers and biochemists who have reached a high level of proficiency and achievement in their particular fields." The letter also indicates that there is a higher level of membership than members. Specifically, AIC also elects "fellows." This evidence is not persuasive that AIC requires outstanding achievements of their members.

The petitioner further submitted evidence of his membership in the American Association of Cereal Chemists (AACC), which boasts 4,000 members "who are specialists in the use of cereal grains in foods." The petitioner did not provide the specific requirements for membership. Finally, the petitioner provided evidence of his membership in the American Chemical Society (ACS), with no evidence of the society's membership requirements. Without evidence of the membership requirements for AACC or ACS, we cannot conclude that these memberships can serve to meet this criterion.

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

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

The petitioner never claimed to meet this criterion and the director concluded the record lacked evidence relating to it. The petitioner does not challenge the director's conclusion on appeal.

We acknowledge that the petitioner submitted evidence that his work has been cited and, according to unsolicited evidence submitted after the petition was filed, discussed in his employer's annual report. Articles which cite the petitioner's work are primarily about the author's own work, not the petitioner. As such, they cannot be considered published material about the petitioner. In addition, while not dated, it can be presumed that the annual report for 2003 was published in 2004, after the date of filing on November 26, 2003. As noted by the director in footnote one of his decision, the petitioner must establish his eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Regardless, annual reports are not major media. Moreover, mention in the annual report of one's own employer is not evidence indicative of or consistent with national or international acclaim. Thus, we find that the petitioner has not established that he meets this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The director concluded that the petitioner did not claim to meet this criterion and stated that any oversight duties inherent to the petitioner's various positions could not serve to meet this criterion. On appeal, the petitioner asserts that he does meet this criterion and submits evidence relating to this criterion.

Initially, the petitioner submitted letters from the Executive Editor of the *Pakistan Journal of Scientific and Industrial Research* requesting that the petitioner review a manuscript submitted to that journal and acknowledging the petitioner's subsequent review.

Subsequent to the filing of the petition, the petitioner submitted additional evidence unsolicited. Specifically, the petitioner submitted an August 6, 2004 letter acknowledging the petitioner's acceptance for a position on the editorial board of *Applied Microbiology and Biotechnology* and evidence of numerous reviews for that journal and others dated in 2004 or undated. On appeal, the petitioner submits a letter dated December 31, 2004 from the *Journal of Feed Biochemistry* and a January 27, 2005 letter from *Food Hydrocolloids* inviting the petitioner to serve on the editorial boards of those journals.

As stated above, the original petition was filed on November 23, 2003. Thus, as also discussed above, the petitioner must establish his eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. As such, we cannot consider accomplishments that relate to a given criterion but postdate the filing of the petition.

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 had 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 *as of the date of filing*, we cannot conclude that the petitioner meets this criterion.

The evidence of record does not establish that the petitioner had served in an editorial capacity or reviewed manuscripts for an unusually large number of journals as of the date of filing. Thus, the petitioner has not established that he met this criterion as of that date.

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

The petitioner obtained his Ph.D. from Wuhan University in July 2000 and in September 2000 began working at the ██████████ Center for Carbohydrate Research (WCCR) at Purdue University.

██████████ a professor at Wuhan University, asserts that the petitioner "played a leading role in several major projects" at Wuhan University while a Ph.D. student there. According to Professor ██████████ the petitioner "led our groundbreaking study" on the correlation between structure and function of polysaccharides from edible fungi. The petitioner's results from this project led to six published papers. The petitioner was also "one of the most valuable members of the team" working on Vitamin D2. Professor ██████████ asserts that the petitioner "enhanced the stability of vitamin D2 in a medicine developed for children to prevent and cure rickets, and this significantly upgraded the medicine and made it popular in the national marketplace."

Dr. ██████████ after whom the WCCR and a major international award are named, asserts that the petitioner is "in charge" of the carbohydrate chemistry laboratory at WCCR. Dr. ██████████ lists several technical skills unique to the petitioner and characterizes the petitioner as "irreplaceable." Dr. ██████████ then discusses the petitioner's specific projects at WCCR. Specifically, the petitioner leads a project investigating value added food and pharmaceutical products from corn hulls. Dr. ██████████ asserts that "several industry giants" have expressed interest in commercializing the petitioner's edible film from corn hulls and asserts that a patent "in writing" is based on the petitioner's results. Finally, the petitioner is leading a project investigating the extraction of starch from culled banana peels.

Dr. ██████████ impressive credentials are such that his letter carries significant weight. The classification sought, however, is extremely exclusive, requiring national or international acclaim. As such, the accolades of collaborators, however, distinguished, must be supported by evidence that the petitioner is known beyond his immediate circle of colleagues.

The petitioner initially submitted five letters from independent sources and submitted a sixth independent letter subsequently. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not

corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review.

While not all of the independent letters are remarkable, focusing more on the importance of the petitioner's area of research than his results, the petitioner submits a persuasive letter from Dr. ██████████ Chair of the Carbohydrate Chemistry Division of the ACS, who became aware of the petitioner's work at an ACS conference. Dr. ██████████ is the petitioner's discovery of "a way, using minimal amount of processing and chemicals, to separate and extract the valuable arabinoxylan from the low value corn hulls" as "groundbreaking." Dr. ██████████ concludes that the petitioner's "outstanding publications and presentations in leading peer-reviewed journals and conferences indicate his unparalleled stature within the field and indicate the unusual and insightful character of his extraordinary research."

Dr. ██████████ Chair of the Chemistry Department at the University of Konstanz in Germany, attests to the significance of the petitioner's publications appearing in *Carbohydrate Research*. We will not presume that every article published in a prestigious journal constitutes a contribution of major significance. Rather, we look to the impact of the individual article. That said, the petitioner did submit evidence that he has been consistently cited.

In light of the above, while not all of the claims in the above letters are corroborated in the record, we conclude the petitioner meets this 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 submitted evidence of 11 published articles and 10 oral and poster conference presentations.² The petitioner also submitted evidence that he had been moderately cited as of the date of filing. The director concluded that the petitioner meets this criterion and we will not disturb that conclusion.

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

The petitioner claims to meet this criterion. As noted by the director, the plain language of this criterion reveals that it relates to the visual arts. While the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of

² The petitioner subsequently submitted evidence of additional published articles, including evidence that *Feedinfo News Services* solicited and published an article by the petitioner after the date of filing. For the reasons discussed above, we cannot consider this evidence as it postdates the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49.

“comparable” evidence where a criterion is not “readily applicable,” conference presentations are far more comparable to published articles and, thus, the director considered the petitioner’s conference presentations under the criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi), discussed above. On appeal, the petitioner reasserts that he meets this criterion, but does not address the director’s conclusion that this criterion does not apply. We concur with the director’s reasoning and conclusion that this criterion does not apply to the sciences and that conference presentations are best considered under the scholarly articles criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi).

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

The petitioner claims to have played a leading or critical role for WCCR. We have considered the petitioner’s contributions while working at WCCR above. At issue for this criterion are the nature of the position the petitioner was hired to fill and the reputation of the entity that hired him. While WCCR enjoys a distinguished reputation, we cannot conclude that every senior researcher who plays an important role in a distinguished center’s laboratory plays a leading or critical role for the center as a whole. Thus, the petitioner has not established that he meets this criterion.

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, as of the date of filing, had 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 showed 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.