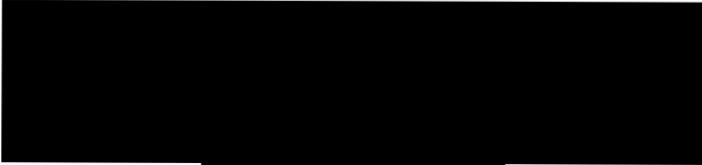




U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: MAR 01 2006

EAC 03 018 54564 (I-140)
EAC 05 073 50672 (I-290B)

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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. 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.

The Form I-140, Immigrant Petition for Alien Worker, was filed on October 16, 2002. In an October 14, 2002 letter accompanying the petition, the petitioner clearly stated: "Please note that this petition was initially filed and is again being re-filed pursuant to the provisions provided under 8 C.F.R. § 204.5(h)(1) & 8 C.F.R. § 204.5(h)(5)."

These regulations, which pertain to individuals seeking classification as an alien of extraordinary ability, correspond to section 203(b)(1)(A) of the Act.

On appeal, counsel states:

When CIS [Citizenship and Immigration Services] denied this petition, it failed to consider the evidence provided by the respondent, which established that he is an alien of extraordinary ability, or alternatively, that he is an alien who is a member of the professions holding advanced degrees who qualifies for a National Interest Waiver.

A petitioner, however, is not entitled to multiple adjudications and decisions for a single petition with a single fee. If the petitioner seeks classification as a member of the professions holding an advanced degree pursuant to section 203(b)(2) of the Act, then he should file a separate I-140 petition requesting such classification. Counsel has cited no statute, regulation, or standing precedent that permits the petitioner to bundle several adjudications into one petition, or that entitles the petitioner to multiple separate adjudications on the basis of one petition, one record of proceeding, and one fee. Pursuant to 8 C.F.R. § 103.2(a)(1), every petition must be filed in accordance with the instructions on the form. The instructions on Part 2 of the I-140 petition include the instruction to "check one" classification. Consequently, discussion in this matter may relate only to the petitioner's eligibility pursuant to section 203(b)(1)(A) of the Act.

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.

At the time of filing of the I-140 petition, the petitioner was enrolled as a full-time student at Suffolk University Law School in Boston, Massachusetts.¹ The petitioner earned a Ph.D. in Molecular Biology from Hokkaido University (Sapporo, Japan) in 1994 and Master of Science in Biotechnology from Aligarh University (Aligarh, India) in 1987.

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 pertaining to the following criteria.

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 three certificates from Hokkaido University indicating that he received a Monbusho Scholarship to attend that university. One of these certificates, dated November 19, 1999, states: "This is to certify that [the petitioner] who was given the Japanese Government (MONBUSHO) Scholarship was a student of Doctor's Course in Division of Social Environment, Graduate School of Environmental Science, Hokkaido University from April 1, 1991 to March 24, 1994."

¹ On appeal, the petitioner submits a letter from Suffolk University Law School indicating that he received his J.D. degree in 2005. The petitioner also submits a letter from Dr. [REDACTED] Executive Vice President, Science and [REDACTED] Cambridge, Massachusetts, stating that the petitioner is currently working for [REDACTED] as a patent attorney.

The petitioner also submitted a document reflecting the Japanese Government's criteria for this scholarship for 2004. According to the qualification criteria, applicants "must be under 35 years of age" and "must be university or college graduates" who "have completed 16 years of school education." The document also states:

The main concepts of selection are as follows:

1. Those who have academic excellency and who are sufficiently expected to be outstanding students and to play an active role in the future of their home country.
2. A concrete and outstanding research planning.
3. In the field in which Japanese language ability necessary, those who have sufficient ability to pursue their studies.

None of the preceding criteria require "excellence in the field of endeavor." University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. The petitioner's Mombusho scholarship was presented for scholastic achievement and the pursuit of further academic study rather than for excellence in the field. Competition for this scholarship was limited to students "under 35 years of age" seeking to continue their education rather than experienced scientific professionals (who had already completed their advanced educational training and who did not have to compete for academic scholarships). We cannot conclude that an individual selected for a graduate scholarship stands at the very top of his field. Nor do we find that obtaining financial support for one's academic studies constitutes a nationally or internationally recognized prize or award for excellence in the field.

The petitioner also submitted a "Certificate of Merit" issued to him by Pharmacia Biotech and the journal *Science* "in recognition of the high standard of work entered in competition for the Pharmacia Biotech & Science Prize for Young Scientists 1995." This certificate acknowledges that the petitioner "entered" this competition, but there is no evidence showing that the petitioner was ultimately named as a prize winner.² The petitioner submitted information about this award from the American Association for the Advancement of Science website, which states: "The top five essays from each geographic region will be forwarded to a panel of judges. . . . The judges may select up to three winners for each of the four geographic regions. . . . All regional winners will compete for the grand prize of \$25,000." There is no evidence showing that the petitioner was ultimately selected as one of several regional winners or as the overall grand prize winner. Further, according to the "Rules of Eligibility" submitted by the petitioner, this prize sought to recognize "only work that was performed while the entrant was a graduate student."

The petitioner also submitted award certificates from the Zoological Society of Aligarh University and the Literacy and Culture Society of Aligarh University, but such awards reflect local or institutional recognition rather than national recognition.

On appeal, counsel argues that the Monbusho Scholarship and the Certificate of Merit indicate that the petitioner "has been recognized internationally for his accomplishments" in the fields of environmental science and

² The record includes no information indicating whether or not all of the competitive entrants receive a Certificate of Merit similar to that of the petitioner.

molecular biology. We find, however, that the petitioner's receipt of these awards offers no meaningful comparison between the petitioner and experienced scientists in his field of endeavor. There is no indication that the petitioner faced competition from throughout his field, rather than only among his approximate age group within that field. Receipt of an academic scholarship and a certificate reflecting participation in a competition limited to "promising scientists at the beginning of their careers" is not an indication that the petitioner has reached the "very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2).

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. 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 membership in the Boston Patent Law Association (BPLA). According to information submitted by the petitioner from the BPLA website, "ACTIVE MEMBERS must be attorneys at law who are in good standing in any Court of record in the United States, or any of the States or territories thereof, and engaged in the practice of patent, trademark, copyright or other intellectual property law and who reside or have a principle office in the First Federal Judicial Circuit."

We find no evidence demonstrating that admission to membership in the BPLA required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership.

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

On appeal, the petitioner submits letters of support from five of his law school professors at Suffolk University, his former supervisor at [REDACTED] of Boston, a former co-worker from the Dana-Farber Cancer Institute of Boston where the petitioner worked from 1999 to 2000, a partner of the Boston law firm of [REDACTED] where the petitioner served as a legal intern, and his current superior at [REDACTED]. These letters detail the petitioner's extensive educational background and employment experience, but they provide no information regarding how his work has significantly influenced the greater field. The issue here is not the petitioner's legal or scientific expertise, but, rather, whether any of his past accomplishments would qualify as a contribution of major significance in his field of endeavor.

Dr. [REDACTED], Professor Emeritus, Hokkaido University, Sapporo, Japan, states that the petitioner worked under his supervision "for more than 6 years." Dr. [REDACTED] further states:

[The petitioner] performed highly innovative work and help to shape the filed [sic] of the research in understanding how the transcription of a cancer-causing gene, hst (also known as fibroblast growth factor-4) is developmentally and transcriptionally regulated in embryonic stem cell carcinoma, an in vitro model used to study the role of this gene in stomach cancer.

* * *

In fact, [the petitioner] was able to publish his Ph.D. thesis in [REDACTED] which is a peer-reviewed journal polished [sic] from United States and held in high prestige in the scientific community.

We accept that the petitioner's work at Hokkaido University has yielded some useful and valid results; however, it is apparent that any scientific manuscript, in order to be accepted for publication, must offer new and useful information to the pool of knowledge.³ It does not follow that every graduate student whose scholarly research is accepted for publication has made a contribution of major significance in his field.

Dr. [REDACTED] Chief Scientist, Novartis Institutes for Biomedical Research, Tsukuba, Japan, states:

[The petitioner] worked at Novartis until June of 1997. During his stay with us he used his expertise and [sic] applied his innovative skills to make valuable contributions in elucidating the mechanism of cancer, cancer metastasis and osteoporosis and specifically and [sic] transcriptional regulation of genes involved in cancer metastasis. In spite of the fact that most of the work conducted by [the petitioner] was performed under a confidentiality agreement, he was able to persuade the management committee that he should be allowed to publish some of the scientific work he performed at Novartis, which he did by publishing his work in the internationally respected journal *Biochemical and Biophysical Research Communications*, which was well acclaimed by experts in this field.

The record, however, includes no evidence of the citation history for this article to demonstrate its acclaim. Nevertheless, published work falls under the next criterion, a criterion that we find the evidence in this case adequately satisfies. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for published work and contributions, Citizenship and Immigration Services (CIS) clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. We will fully address the petitioner's published works and citations under the next criterion.

In regard to the petitioner's conference presentations, we note that in the fields of science and medicine, acclaim is generally not established by the mere act of presenting one's work at a conference. The record

³ According to the citation history submitted by the petitioner, the article published in the *Journal of Biological Chemistry* was cited approximately a dozen times.

includes no documentation demonstrating that presentation of one's work is unusual for biomedical researchers or that the invitation to present at conferences where the petitioner spoke was a privilege extended to only a few top scientists. Participation in scientific conferences and symposia of the petitioner's kind is routine and expected in the scientific community. Many professional fields regularly hold conferences and symposiums to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the petitioner above almost all others in his field at the national or international level.

We cannot ignore that the witnesses in this case consist entirely of individuals with whom the petitioner has studied and worked. With regard to the personal recommendation of individuals from institutions where the petitioner has studied or worked, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the petitioner has earned sustained acclaim outside of his affiliated institutions. If the petitioner's reputation is mostly limited to those institutions, then he has not achieved national or international acclaim regardless of the expertise of his witnesses. In the present case, we cannot conclude that petitioner's past contributions far exceed those of other capable biomedical researchers or patent attorneys. The evidence submitted by the petitioner is not adequate to show that his work is nationally or internationally acclaimed throughout his field as a contribution of major significance.

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 his authorship of articles appearing in publications such as *The Journal of Biological Chemistry* and *Biochemical and Biophysical Research Communications*. On appeal, the petitioner submits a citation index showing that his article in *The Journal of Biological Chemistry* has been cited by others approximately a dozen times. We find that the petitioner's evidence is adequate to minimally satisfy this criterion.⁴

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

The petitioner submitted the following:

1. A March 11, 1997 letter from Dr. [REDACTED] Assistant Professor, Cutaneous Biology Research Center/Massachusetts General Hospital, Harvard Medical School, offering the petitioner a Research Fellow in Dermatology position at a salary of \$24,000/year in his laboratory at Massachusetts General.

⁴ While the citation history provided by the petitioner demonstrates a degree of interest in this one article, he has not shown that the citation frequency of his body of work over the last 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 a few 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 were significantly influential.

2. A November 4, 1998 letter from Dr. [REDACTED] Associate Dean of Medicine, Brown University, appointing the petitioner as Research Fellow in Hepatology at Rhode Island Hospital for a term of three years from January 1, 1999 to December 31, 2001.
3. A December 11, 2000 memorandum from Dr. [REDACTED] Business Manager for Research, Dana-Farber Cancer Institute, confirming that the petitioner was employed as a "Research Associate" in the Department of Cancer Immunology and AIDS from December 1, 1999 to December 31, 2000.

On appeal, counsel states:

[The petitioner] has submitted evidence that he has performed in a leading or critical role for organizations that have a distinguished reputation. [The petitioner] completed research fellowships with several prestigious institutions, including Dana-Farber, Massachusetts General Hospital, and Rhode Island Hospital. [The petitioner's] work was an integral part of their cancer research. Thus, he played a critical role at these renowned institutions.

The record, however, includes no letters of support originating from these institutions explaining the importance of the petitioner's role to their cancer research programs.

In his letter of support, Dr. [REDACTED] now Associate Director of Business Development, Genzyme Genetics, Westborough, Massachusetts, states that he briefly worked at Dana-Farber Cancer Institute with the petitioner. Dr. [REDACTED] further states: "[The petitioner] has gained scientific work experience by working in highly prestigious commercial and academic institutions, such as . . . the Dana Farber Cancer Institute, affiliated with Harvard Medical School, where he has gained extensive experience in cancer biology and immunology."

Dr. [REDACTED] states that the petitioner "gained scientific work experience" at the Dana-Farber Cancer Institute, but he does not indicate that the petitioner performed in a leading or critical role for that institution. The petitioner's role at the Dana-Farber Cancer Institute, Massachusetts General Hospital, and Rhode Island Hospital was that of a Research Fellow or a Research Associate. These subordinate roles provide temporary scientific training for a future professional career in a field of endeavor. The record includes no evidence showing the extent to which the petitioner has exercised substantial control over personnel or research decisions executed on behalf of these institutions. While we accept that these institutions have distinguished reputations, there is no evidence showing that the petitioner's role was of significantly greater importance than that of the other researchers employed by these institutions (including tenured faculty). The petitioner's evidence fails to demonstrate that he has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

In this case, we find that the evidence satisfies only one of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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.

ORDER: The appeal is dismissed.