



U.S. Citizenship
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Services

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FILE: [Redacted]
SRC 04 216 51877

Office: TEXAS SERVICE CENTER Date: MAR 31 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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 a statement and additional evidence. For the reasons discussed below, the petitioner has not overcome all of the director’s concerns.

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 biochemist. According to his curriculum vitae, the petitioner was a postdoctoral fellow at the time of filing. In general, postdoctoral appointments are entry-level positions for recent Ph.D. graduates. While recent graduates are not precluded for establishing eligibility, we will not narrow the petitioner’s field to those

just graduating. The petitioner must compare with the most experienced and renowned members of the field.

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

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 he obtained a "Postdoctoral Traineeship Award" research grant from the Department of Defense Breast Cancer Research Program in September 2001. According to the materials submitted, the awards are designed to provide opportunities for "recent doctoral or medical degree graduates with limited postdoctoral experience to gain additional experience in breast cancer research." The petitioner also received a "Servier Young Investigators' Award" in December 1999, while the petitioner was still a Ph.D. student. The President and Secretary of the Indian Pharmacological Society signed the award certificate. It appears that the Institut de Recherches Internationales Servier promotes several young investigator awards ultimately issued by other scientific societies and foundations. The petitioner submits materials regarding the "Servier Award" issued by the Endocrine Society of Australia (ESA), which is limited to members of that society. On his curriculum vitae, the petitioner indicates that the award recognized his poster presentation at a conference in New Delhi. The petitioner does not claim or document any Australian memberships. Thus the materials from the ESA are not relevant to the significance of the petitioner's award.

The director concluded that the petitioner had not demonstrated that the Servier Young Investigator Award was nationally recognized. On appeal, the petitioner submits materials about Servier awards issued by the International Osteoporosis Foundation (IOF) and "ISRA." Once again, the petitioner did not receive a Servier award from IOF or ISRA, which appears to be a Canadian society. As such, these materials are mostly irrelevant, although the ISRA materials reveal that Servier awards can include a graduate student category. The petitioner also asserts that the director erred in failing to consider his research grant.

Awards limited to graduate students, which the petitioner was when he won the Servier Young Investigator Award, or recent graduates do not compare the petitioner with the most experienced and renowned members of the field. As stated above, we will not narrow the petitioner's field to students or recent graduates. As the most experienced and renowned members of the field do not aspire to win young investigator awards or trainee research grants, they cannot constitute nationally recognized

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

awards. Moreover, research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement.

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

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.

Initially, the petitioner submitted evidence of his associate membership in the American Society of Gene Therapy (ASGT) and his active membership in the American Association for Cancer Research (AACR). Associate membership in ASGT is limited to postdoctoral fellows and graduate students. The materials from AACR, which boasted 20,000 members at the time of filing, provide:

Active Membership in AACR is open to investigators worldwide. Individuals who have conducted two years of research resulting in peer-reviewed publications relevant to cancer and cancer-related biomedical science, or who have made substantial contributions to cancer research in an administrative or educational capacity are eligible. Evidence of patents relevant to cancer research may be submitted as qualifications for membership in lieu of peer-reviewed publications.

Finally, applications for membership in AACR must include the signatures of two nominating members. The director concluded that these materials did not establish that either ASGT or AACR requires outstanding achievements of its members.

On appeal, the petitioner concedes that his membership in ASGT is not qualifying. The petitioner, however, asserts that only 5,009 of the 20,000 members in AACR are active and that only 10 of the active members are postdoctoral fellows. The petitioner then compares this membership with the National Academy of Sciences, which has 2,000 active members according to the petitioner.

First, as stated above, we will not narrow the petitioner's field to postdoctoral fellows. The petitioner must compare with the most experienced and renowned members of the field. Thus, the fact that only a few postdoctoral fellows are active members of AACR is irrelevant. Second, the petitioner misrepresents the information provided to him by AACR. The e-mail submitted indicates that there are 5,009 professors who are active members of AACR. This information in no way implies that there are only 5,009 active members total. Universities, private research firms and pharmaceutical companies around the world employ hundreds of thousands of research scientists who are not professors, some of whom could account for another large segment of active members.

Finally, while a large membership suggests that an association or society is not exclusive, it does not follow that every association or society with a small membership requires outstanding achievements of its members. At issue are the actual requirements for membership, not the number of members. We cannot conclude that two years of experience, publication in peer-reviewed journals and the signatures of two members are outstanding achievements. The petitioner submits no evidence that eligibility for the National Academy of Sciences requires nothing more than two years of experience and peer-reviewed articles.² Significantly, AACR has emeritus members, suggesting a more exclusive level of membership the petitioner has not yet attained.

In light of the above, 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.

In response to the director's request for additional evidence, prior counsel asserted that the petitioner, "while a postdoctoral fellow at M.D. Anderson Cancer Center, had been given the responsibility of reviewing, mentoring and **judging other scientists' work before their work is published.** Prior counsel references a letter from Dr. [REDACTED] the petitioner's supervisor at the University of Texas M.D. Anderson Cancer Center. Dr. [REDACTED] asserts that the petitioner has supervised a part-time research scientist, mentored a graduate student and reviewed manuscripts and grant proposals generated in Dr. [REDACTED]'s laboratory.

The director concluded that the above responsibilities constitute routine job duties that do not set the petitioner apart from others in the field. On appeal, the petitioner submits a new letter from Dr. [REDACTED]. Dr. [REDACTED] asserts that the petitioner "officially" judges the work of others by authoring their evaluations and advising them on their scientific work.

The issue is not whether the petitioner's responsibilities can be accurately defined as "judging." Every professor "judges" the work of his students and every first-line supervisor "judges" the work of his subordinates, but not every professor or first-line supervisor enjoys national or international acclaim. In order for the statutory standard of national or international acclaim to have any meaning, the evidence submitted to meet a given criterion must be indicative of or at least consistent with national or international acclaim. The petitioner's responsibilities in Dr. [REDACTED] laboratory suggest his confidence in the petitioner, but they do not compare with serving as an external dissertation advisor at institutions with which the petitioner is not affiliated or serving on the editorial board of a peer-reviewed journal.

² According to the Academy's website, www.nasonline.org, election to membership in the National Academy of Sciences is recognizes those who have made distinguished and continuing achievements in original research. Significantly, nominations must come from academy members or a voluntary nominating group and go through preliminary, informal and formal balloting. The academy announces those elected, limited to 72 annually, in a press release.

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

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

The petitioner submits several reference letters from his advisor at the University of Hyderabad and his colleagues in Texas. The director concluded that the letters established the petitioner as an accomplished "young researcher" but did not elevate him to the top of his field.

On appeal, the petitioner asserts that the authors of the reference letters praise his work and it is typical for reference letters to discuss a researcher's future promise. After the date of filing, Dr. [REDACTED] wrote a memorandum to the Chair of the Molecular and Cellular Oncology Department asserting that the petitioner is an excellent postdoctoral fellow and "is comparable to some of the best junior researchers I have known either here or at other institutions." As discussed above, however, we will not narrow the petitioner's field to postdoctoral fellows or junior researchers. While he is not precluded from eligibility as a postdoctoral fellow, he must provide evidence demonstrating that his accomplishments are comparable to the most experienced and renowned members of his field. We will evaluate the letters addressing the petitioner's accomplishments below.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. 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. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An

individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

Dr. [REDACTED], the petitioner's Ph.D. advisor at the University of Hyderabad, discusses the petitioner's work on the design and development of anticancer organometallic complexes. The petitioner focused on circumventing past problems with side effects from anticancer metal compounds, targeting the cellular enzyme topoisomerase II. The petitioner used structure based design strategies to synthesize ruthenium and iron to poison topoisomerase II, reporting for the first time on organometallic compounds that poison this enzyme. Dr. [REDACTED] asserts that several laboratories are "actively pursuing similar research based on his findings."

Dr. [REDACTED] discusses the petitioner's work on pharmacological regulation of a targeted gene, the HER-2 oncogene, often overexpressed in breast cancer and indicative of poor patient prognosis. While working with hairpin polyamides, the petitioner was inspired to pursue chimeric transcription factors, demonstrated to be highly efficient transcriptional repressors. Specifically, the petitioner found that KRAB-AP2 α ^{DBD} proteins inhibit HER-2 expression and result in programmed cell death of cancer cells. According to Dr. [REDACTED], another professor at the M.D. Anderson Cancer Center, the chimeric transcription factors constructed by the petitioner could also be used for "genomic scale discovery of target genes involved in cancer" in addition to their therapeutic value. While the petitioner was still preparing the manuscript reporting these results as of the date of filing, according to another reference at the M.D. Anderson Cancer Center, Dr. [REDACTED] the petitioner had presented this work at the U.S. Department of Defense Breast Cancer Program meeting in 2002.

While Dr. [REDACTED], another professor at the M.D. Anderson Cancer Center, asserts that the petitioner's work "should have a direct and significant impact on the improvement of the current cancer treatment," he does not indicate that the petitioner's work has already done so or that it is being actively pursued beyond Dr. [REDACTED] laboratory. Dr. [REDACTED] ultimately characterizes the petitioner as a "promising young cancer researcher." Similarly, Dr. [REDACTED] initially describes the petitioner's work as "revolutionary in the sense that it provided a new way of dealing with oncogenes" but ultimately concludes that it is merely "promising" and heading "in the right direction of developing a therapeutic reagent for cancer."

Dr. [REDACTED] formerly a visiting professor at the M.D. Anderson Cancer Center, asserts that the petitioner is "at the forefront of breakthrough research in the field of transcriptional regulation for gene therapy." Dr. [REDACTED] predicts that the petitioner's upcoming manuscript will "establish his research idea as a practical solution, which could then be pursued for clinical use." Dr. [REDACTED], an assistant professor at the Baylor College of Medicine in Houston, asserts that the petitioner's work is in the national interest, an issue not relevant to the classification sought. Dr. [REDACTED] asserts that the petitioner's work has led to other projects in Dr. [REDACTED] laboratory. Dr. [REDACTED], an assistant professor at the University of Texas at Austin, asserts that he met the petitioner at a course and concludes that the petitioner "is well poised to use his training to make a strong impact in

breast cancer research.”

The above letters are all from the petitioner’s collaborators and immediate colleagues in India and Texas. While such letters are important in providing details about the petitioner’s role in various projects, they cannot by themselves establish the petitioner’s national or international acclaim. The record lacks letters from independent researchers who have been influenced by the petitioner’s work or pharmaceutical companies interested in pursuing clinical trials based on the petitioner’s work.

The petitioner’s field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien’s contributions must be not only original but of major significance. We must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. *See Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner’s work.

The petitioner initially submitted evidence that 20 other articles have cited the petitioner’s five articles, although the data was not broken down as to the number of citations for each of the petitioner’s articles. On appeal, the petitioner submits evidence that four of his articles have been cited, with the most citations for any one article being 22. Of those four articles, only three had been cited as of the date of filing, the date as of which the petitioner must demonstrate his eligibility. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Independent research teams had cited three of the petitioner’s articles as of the date of filing, thirteen times, two times and one time respectively. It can be expected that a contribution of major significance in breast cancer research would be more widely and frequently cited.

In light of the above, the petitioner has not established that he 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 that he has authored six published articles. 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 are the acknowledgement that “the appointment is viewed as preparatory for a full-time academic and/or research career,” and 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 CIS’s position that publication of scholarly articles is not

automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

As discussed above, the petitioner work has been and continues to be moderately cited. While the petitioner's citation record is not indicative of a contribution of major significance, we are persuaded that he meets this criterion.

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 the M.D. Anderson Cancer Center. We have already considered the petitioner's claimed contributions to the field while working there. At issue for this criterion are the role the petitioner was hired to fill and the reputation of the employer. As of the date of filing, the petitioner was working as a postdoctoral fellow. After the date of filing, the petitioner was promoted to Instructor. As discussed above, the petitioner must establish his eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). While the M.D. Anderson Cancer Center may have a distinguished reputation, we cannot conclude that every postdoctoral researcher or instructor who plays an important role in a distinguished institution's laboratory plays a leading or critical role for the institution as a whole. Therefore, 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 has distinguished himself as a biochemist 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 shows talent as a postdoctoral fellow, 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.