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**U.S. Citizenship
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FILE: EAC 05 249 51559 Office: VERMONT SERVICE CENTER Date: **JUL 02 2007**

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:

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.

Maura Deadrick
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 requests oral argument. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner identifies no unique factors or issues of law to be resolved. In fact, the petitioner sets forth no specific reasons why oral argument should be held. Moreover, the written record of proceeding fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

In addition, the petitioner asserts that the director failed to consider the evidence submitted in response to the request for additional evidence. The most efficient means of addressing the petitioner’s concerns is to address all of the evidence of record on appeal. For the reasons discussed below, however, the evidence does not demonstrate the petitioner’s eligibility for the highly exclusive classification sought. We reach this conclusion based on an evaluation of the regulatory criteria separately and the evidence in the aggregate.

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.

CIS and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). 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 she 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 postdoctoral researcher, an inherently entry-level position. While nothing in the regulations precludes a researcher at the beginning of her career from establishing eligibility, the petitioner must establish that she is one of the very few at the top of her field, including in comparison with the most renowned and experienced members of that 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, she 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 director concluded that the petitioner’s awards recognized academic accomplishments and could not serve to meet this criterion. We will evaluate the evidence below. At the outset, however, it is important to note that a qualifying award is one that is nationally or internationally *recognized* and, thus, is one that the most renowned and experienced members of the field aspire to win.

The petitioner submitted an e-mail notification of her selection to receive the Nat L. Sternberg Thesis Prize for 2004. She also submitted e-mail correspondence from her colleagues at the University of Maryland, Baltimore County (UMBC) congratulating her for this award. In addition, the Biological Sciences Department at UMBC posted this accomplishment on their website, which included a profile of the petitioner.

The record contains Internet materials about the Nat. L. Sternberg Thesis Prize. The award is issued each year “to a student for the most outstanding Ph.D. thesis in the field of prokaryotic molecular genetics.” The nominee must have completed and successfully defended his or her Ph.D. thesis within

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

a 12-month period prior to June 1, of the year of the award. The record also establishes that the petitioner was selected by UMBC as the recipient of the Richard E. Wolf, Jr. Doctoral Dissertation Endowment.

The award from UMBC is limited to doctoral students at UMBC and cannot be considered national. While we acknowledge that the Nat L. Sternberg prize has a much larger pool of candidates, it remains that the prize is limited to doctoral students. The most experienced experts in the field do not aspire to win this prize. Thus, it cannot establish that a petitioner is one of the very few at the top of her field.

In light of the above, the petitioner has not established that she 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.

The petitioner asserts that she has not held a senior enough position to be considered for membership in the National Academy of Sciences but claims that she is a member of the American Society of Microbiology, which is to open students, postdoctoral researchers and principal investigators. The fact that the petitioner does not have sufficient experience to be eligible for membership in a qualifying association does not allow us to waive the stringent requirements set forth in the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). It is precisely because membership requirements for the National Academy of Sciences are so exclusive that membership sets members apart from their peers. We will not accept membership that is open to everyone in the petitioner's field. Thus, the petitioner has not established that she 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 submitted the above-mentioned UMBC website and an article in *India Abroad*. The director appears to have rejected this evidence because it discusses the Nat L. Sternberg Thesis Prize, found not to qualify as a lesser national or internationally recognized award or prize. At issue for this criterion, however, is not whether the prize qualifies under 8 C.F.R. § 204.5(h)(3)(i), but whether the published material is about the petitioner and whether it appears in major media. Moreover, independent journalistic coverage is far more persuasive than press releases from an institution with which the alien is affiliated.

Clearly the materials are about the petitioner. The UMBC materials, however, do not constitute independent journalistic coverage. Rather, the website acknowledgment of the petitioner's accomplishment on her department's website is more akin to a promotional press release. Finally, the petitioner has submitted no evidence that *India Abroad* is major media, such as evidence that it enjoys a

national circulation among the general population or science community in India or the United States. We note that all of the advertisers are New York businesses. Thus, *India Abroad's* audience would appear to be Indian nationals residing in the New York area.

In light of the above, the petitioner has not established that she 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 petitioner asserts that she judged the poster presentations of undergraduates from various institutions who were presenting their work at UMBC. She concedes that she is unable to document this responsibility. The evidence submitted to meet each criterion must be evaluated as to whether it is indicative of or at least consistent with national or international acclaim. Even if she were able to document this responsibility, we are not persuaded that judging the work of undergraduate researchers for the institution where she was a graduate student at the time is sufficient to meet this criterion.

Without evidence that sets the petitioner apart from others in her field, such as evidence that she has reviewed an unusually large number of articles for trade journals or major conferences, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner 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 asserts that her publication record, including the pace of publication and moderate citation record, serve to meet this criterion. We will consider the petitioner's publication record below.

We acknowledge a relationship between publication of scholarly articles and contributions within the field. We will not presume, however, that every alien who meets the scholarly articles criterion also meets this criterion. To do so would render meaningless the regulatory criterion that an alien meet at least three criteria.

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. 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 failed to submit any reference letters, especially those from independent researchers who have applied her work. Moreover, while the petitioner has been moderately cited, she has not

been cited to such an extent that we will presume that her work must be of major significance without expert letters explaining her influence.

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

The petitioner has established that she is a prolific author whose Ph.D. thesis was recognized among other theses and who had been moderately cited. As such, we are persuaded that the petitioner 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 asserts that she has been "very productive" at the Hillman Cancer Center since she began working there. She references a manuscript in progress. Had the petitioner provided evidence of more specific accomplishments at the Hillman Cancer Center, we would have considered that evidence under the criterion at 8 C.F.R. § 204.5(h)(3)(v) relating to contributions of major significance. At issue for this criterion, however, are the prestige of the position the petitioner was hired to fill and the reputation of the entity that hired her.

We do not question the reputation of the Hillman Cancer Center, although the record contains no specific evidence regarding their prestige. The record, however, contains the job offer letter from the center, which indicates that the petitioner was hired as a postdoctoral associate. 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 is the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career." The petitioner has not demonstrated that the position of postdoctoral associate is a leading or critical position with the center beyond the obvious need for the center to employ competent and talented postdoctoral associates.

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

Finally, the conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner, a postdoctoral associate as of the date of filing,² relies on her thesis award and publication record which includes moderate citation. While this evidence may distinguish her from other postdoctoral researchers, we will not narrow her field to others with her level of training and experience.

² The petitioner must establish 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).

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 herself as a researcher to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a postdoctoral researcher, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.