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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JUN 07 2007
SRC 05 227 51064

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
for Robert P. Wiemann, Chief
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. While we withdraw the director’s adverse findings regarding the petitioner’s contributions and scholarly articles, we uphold the director’s ultimate finding that the petitioner has not demonstrated his eligibility for the classification sought. We reach this conclusion both by considering the evidence under each criterion to which it relates and 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.

Citizenship and Immigration Services (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 he has sustained national or international acclaim at the very top level.

The petitioner obtained his Ph.D. from the Tokyo University of Agriculture and Technology in 1995. He then served as a postdoctoral researcher under the supervision of [REDACTED] at the Ohio State University and then at the University of Texas at Austin. In 2001, he worked several months as a postdoctoral researcher at the National Institute of Advanced Industrial Science and Technology in Japan before returning to [REDACTED] laboratory as a research associate in 2002.

Thus, this petition seeks to classify the petitioner as an alien with extraordinary ability as a research associate, a position that [REDACTED] implies is comparable to a postdoctoral research position.¹ Postdoctoral positions are generally entry-level training positions, although we acknowledge the petitioner received his Ph.D. ten years ago. While neither the law nor the regulations expressly requires a specific job title within the hierarchy of the field, the petitioner's accomplishments must compare with the very top level of his field, including the most experienced and renowned members of the field. Significantly, in its report, the House of Representatives indicated that in the absence of a one-time achievement such as a Nobel Prize, an alien could demonstrate eligibility through a "career of acclaimed work in the field." H.R. Rep. No. 101-723, 59 (September 19, 1990).

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 relates to the following criteria.²

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 director concluded that the evidence submitted to meet this criterion was insufficient as the petitioner was not named in the materials other than in the reference section. On appeal, the petitioner goes over a 1999 article in *Current Biology*, explaining how it discusses his work and submits a review article that includes a section on his area of research. We will consider all of the evidence of record.

The petitioner initially submitted articles in *Bioworld Today*, *The New York Times* and *Science* (2003) discussing the work of the petitioner's supervisor, [REDACTED]. The articles in *Bioworld Today* and

¹ In a letter dated July 5, 2005, when the petitioner was already working as a research associate, [REDACTED] asserted that he has supervised "numerous postdoctoral scientists working on similar projects, among whom, [the petitioner] is the only molecular biologist."

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

The New York Times specifically discuss [REDACTED] 2000 article in *Science*. The petitioner is not a coauthor of the 2000 article in *Science*. Thus, the articles in *Bioworld Today* and *The New Yorker* cannot be considered “about” either the alien or his own work in the field.

The 2003 article in *Science* begins its discussion of [REDACTED] work with his 2000 article in *Science*. The 2003 article then discusses [REDACTED] work since that time, including the codification of their rules into a computer program relating to *L. lactis*, an unpublished work utilizing this computer program and the gene-insertion technology “dubbed the Targetron.” The article discusses the commercialization of the Targetron. The record contains the petitioner’s two patents, one of which [REDACTED] asserts is “one of the key patents underlying the commercial development of group II introns.” The record lacks evidence, however, that the petitioner is a credited inventor of the Targetron. None of the petitioner’s references claim that he worked on any of the projects discussed in the 2003 article in *Science*. Regardless, the 2003 article does not mention the petitioner by name. In light of the above, the 2003 article cannot be considered to be “about” the petitioner or his work.

In response to the director’s request for additional evidence, the petitioner submitted a 1999 article by [REDACTED] in *Current Biology*. The article predates the filing of the petition and, thus, may be considered. In the article, [REDACTED] discusses “two recent papers” reporting “a series of experiments aimed at characterizing the mobility mechanism of a bacterial group II intron.” [REDACTED] discusses the history of this area of research and then states that the “advantages of this bacterial system have now been successfully exploited by a collaborative effort of the [REDACTED] and [REDACTED] laboratories.” Even though the petitioner is the first author of one of the two articles [REDACTED] is discussing, [REDACTED] does not mention the petitioner by name in the body of the *Current Biology* article.

The language of the criterion at 8 C.F.R. § 204.5(h)(3)(iii) is unambiguous; it requires that the published material be “about the alien . . . relating to his work” *Cf.* 8 C.F.R. § 204.5(i)(3)(i)(C) (requiring petitions under the outstanding researcher classification, section 203(b)(1)(B) of the Act, be supported only by published material “about the alien’s work.”) While the article by [REDACTED] relates to the petitioner’s work, it cannot be considered to be “about” him, as it does not even mention him by name. We note that the regulatory criteria are designed to demonstrate national or international acclaim. An article that does not mention the petitioner by name cannot garner him any national or international acclaim.

On appeal, the petitioner submits a review article published in *Trends in Biotechnology*. The article was published in the same month as the petition was filed and was available on the Internet two months earlier. Thus, we will consider this evidence. Once again, the petitioner is not named in the article. Rather, his work is one of 61 articles cited. Even within the section discussing his work, his article is one of six articles cited. We cannot conclude that this article is primarily about the petitioner, relating to his work.

In light of the above, the petitioner has not established that he meets this criterion. That said, the articles in *Current Biology* and *Trends in Biotechnology* will be considered below as they relate to the significance of the petitioner's scholarly articles.

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

The director acknowledged the petitioner's two patents and a letter from [REDACTED] discussing the importance of the petitioner's innovations and concluded that while the petitioner's work prior to 2000 could serve to meet this criterion, the record lacked evidence of more recent evidence to meet this criterion. On appeal, the petitioner notes that he has published additional articles since 2000. As will be discussed in more detail below, the petitioner's older articles appear, from the citation evidence, to be the most influential. That said, the petitioner continues to produce publishable work at the same level, including two articles in 2001, one in 2004 and another manuscript accepted for publication as of the date of filing. Both of the petitioner's 2001 articles had been moderately cited as of the date of filing and the petitioner's 2004 article had been minimally cited. Thus, we are persuaded that the petitioner sufficiently 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.

On his curriculum vitae, the petitioner listed nine articles. The record contains seven articles that had been published as of the date of filing. The petitioner also submitted Web Science search results revealing an eighth article published prior to the date of filing. Finally, the petitioner submitted an article published after that date. 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). Thus, we cannot consider the article published after that date. The director concluded that the petitioner could not meet this criterion because he had only published two articles in the last five years. On appeal, the petitioner notes that he had two articles published in 2001 and one in 2004. The petitioner further notes that he has had two articles published since the petition was filed.

As discussed above, the petitioner worked for [REDACTED] from 1995 through 2001. In 2001, he spent time working at the National Institute of Advanced Industrial Science and Technology in Japan before returning to the United States to rejoin [REDACTED]. While we cannot consider the petitioner's articles that post date the filing of the petition as evidence of his eligibility as of the date of filing, they refute any implication that the petitioner was no longer performing research for publication when the petition was filed, especially as one of those articles had been accepted for publication as of the date of filing.

Most significantly, the petitioner submitted evidence that several of his articles had been frequently and widely cited as of the date of filing. Most notably, one of the petitioner's articles had been cited 81 times as of that date. As discussed above, the articles in *Current Biology* and *Trends in Biotechnology*,

while not about the petitioner relating to his work, appear to go beyond the typical citation and discuss the petitioner's 1997 article at length.

In light of the above, we are satisfied that the petitioner meets this criterion. Thus, the petitioner has established that he meets two criteria, of which an alien must meet at least three. As discussed above, the petitioner falls far short of meeting the third criterion claimed.

Moreover, 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 research associate, relies on his two patents, eight publications, high citation record, some recognition of his work (in the context of his supervisor's laboratory) in trade journals and the praise of his immediate circle of peers. While this may distinguish him from other postdoctoral researchers and research associates, we will not narrow his field to others with his level of training and experience. [REDACTED] is a member of the National Academy of Sciences and serves on the editorial boards of four journals. He has authored 171 articles and two books. He is the head of a laboratory on which *The New York Times* has reported. [REDACTED] one of the petitioner's coauthors and a senior scientific officer at the Howard Hughes Medical Institute, is a fellow of the American Academy of Microbiology, serves on a journal's editorial board and is Chair of an American Society for Microbiology division. Another coauthor, [REDACTED] is the Director of the Division of Genetic Disorders at the Wadsworth Center and has served on the editorial boards of several journals. Thus, it appears that the highest level of the petitioner's field is far above the level he has attained.

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 scientific researcher 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 and tremendous potential as a research associate, 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.