

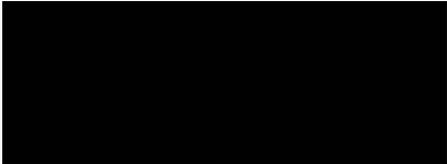


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FILE: [REDACTED]
LIN 06 232 53232

Office: NEBRASKA SERVICE CENTER

Date: NOV 29 2007

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:
[REDACTED]

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.

Naura Deadrick
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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. Specifically, the director concluded that the petitioner had established that he meets only one of the ten regulatory criteria, of which an alien must meet at least three.

On appeal, counsel submits a brief challenging the director’s adverse conclusions for three of the regulatory criteria. Counsel also submits Internet confirmation of the previously submitted citations. For the reasons discussed below, we withdraw the director’s finding that the petitioner’s publication record does not meet the scholarly articles criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi). The petitioner, however, has still not established that he meets at least three of the regulatory criteria. As will be detailed at the end of our decision, our analysis which is based on the regulatory criteria individually, is consistent with a review of 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 into 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, 60898-99 (Nov. 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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a “postdoctoral scholar-employee.” The petitioner’s supervisor confirms the petitioner’s position as a “postdoctoral fellow.” While the pertinent statute and regulation do not preclude a postdoctoral researcher from establishing eligibility as an alien of extraordinary ability, the petitioner must demonstrate that his accomplishments compare with those at the very top of the field, including those who have long since completed their postdoctoral training. *See* 8 C.F.R. § 204.5(h)(2).

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 criteria follow.

Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Initially and in response to the director’s request for additional evidence, the petitioner relies on fellowships, research grants, excellent paper awards and inclusion in lists of professionals with little explanation as to how those included on the lists are selected. Some of the evidence submitted in response to the director’s request for additional evidence postdates the filing of the petition. 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 (Regl. Commr. 1971). The petitioner also relies on a 2004 Second Prize of Scientific Technology Progress from the Chinese National Ministry of Education which was issued to another individual who affirms the petitioner’s participation on the project. As quoted above, the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires documentation of the alien’s *receipt* of qualifying prizes or awards.

The director concluded that the petitioner had not established the national or international recognition of his honors. Counsel does not directly challenge this conclusion and we find that the director’s analysis is consistent with the record. Thus, 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.

Counsel does not challenge the director's conclusion that the associations of which the petitioner is a member do not require outstanding achievements of their members. All but one of the associations are open to either those with an interest in science or who are practicing in the petitioner's field. Sigma Xi, while requiring what it terms "noteworthy achievements," has nearly 60,000 members and admits 5,000 new members every year. Moreover, the petitioner's membership in Sigma Xi had not been finalized as of the date of filing. Thus, we concur with the director's finding that the petitioner has not established that he meets this criterion.

Published material 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.

Counsel does not challenge the director's conclusion that the record lacks evidence sufficiently relating to this criterion and we concur with the director.

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's service on the editorial boards of journals in China and as an editor for a handbook serves to meet this criterion and we concur with that finding.

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

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 did not submit his curriculum vitae chronicling his education and employment. The record contains the petitioner's Doctor of Surgery degree from Shanghai Medical University, issued in July 1999. Upon receipt of this degree, the petitioner appears to have practiced as a physician and conducted research, although the record lacks letters from his employers and colleagues in China explaining his position, job duties and the significance of his work. Nevertheless, the petitioner has submitted numerous articles published in China between 1998 and 2005 as well as evidence that these articles have been cited. In 2004, the petitioner joined the laboratory of [REDACTED] of Pediatric Urology and Director of the Center for the Treatment and Study of Hypospadias at the University of California, San Francisco (UCSF).

The petitioner's achievements in China are documented almost entirely by his publications primarily in Chinese, citations in Chinese, and Chinese honors such as excellent paper awards. While the petitioner provided translations of the citations, the translation of the sentence for which the petitioner's work is cited does not appear to be an exact translation but a simple summary such as: "In this article, the author gave [the petitioner] a very high evaluation on the previous study that renal artery embolism before radical nephrectomy is an essential technique for a successful operation to achieve a long term survival for patients with renal cell carcinoma." The petitioner's research achievements in the United States are documented through his three published articles (as of the date of filing), two self-citations by [REDACTED] (the petitioner's co-author) and letters from references.

Most of the petitioner's career prior to filing the petition was in China. The petitioner, however, submits only two letters from references in China, [REDACTED] a past director of the Institute of Urology at Peking University, is not personally acquainted with the petitioner, nor does he claim to have been influenced by the petitioner's work. His letter will be discussed in more detail below. [REDACTED]

Shanghai Medical College, merely confirms that the petitioner was one of his cooperative fellows from 1999 through 2004 and played "a significant role and made remarkably [sic] contributions" on an award winning project. As discussed above, the petitioner is not a named recipient of this award.

The record does, however, contain other evidence relating to the petitioner's contributions while in China. Specifically, the petitioner authored 58 articles published in China. Initially, counsel asserted that the petitioner "has dozens of citations, some of which are presented in Exhibit E." In response to the director's request for additional evidence, counsel once again states that the petitioner "has dozens of citations." On appeal, counsel asserts that the director erred in concluding that the petitioner only has "[a] dozen citations" although early in the same paragraph the director states that the citations referenced by counsel number in the "dozens." Regardless, the record contains evidence that two of the petitioner's articles have been cited by seven independent research teams and several other articles have been cited by no more than three independent research teams. The results from a search on the Internet site [REDACTED] submitted on appeal, which searched for the last two characters of the petitioner's name in Chinese, does not suggest that there are significantly more citations of the petitioner's work than those submitted previously. Finally, as stated above, the petitioner's work in China was recognized with two excellent paper awards and he appears to have participated on a project that received a Scientific Technology Progress award although he is not a named recipient of the award.

While the above evidence suggests that the petitioner's work in China was of value, it does not establish that this work can be considered a contribution of *major* significance. We concur with the director that the petitioner's citation record, no more than seven independent citations of a single article, is not sufficient by itself to establish that the work cited is a contribution of major significance. Rather, the record would have been bolstered by the submission of letters from clinical practitioners or researchers who have applied the petitioner's work in China.

For example, [REDACTED], a Principal Investigator Scientist at the Life Science Division of the Ernest Orlando Lawrence Berkeley National Laboratory, asserts that “many urologists and researchers have followed [the petitioner’s] strategy to prevent recurrence of bladder cancer since he reported his long-term follow-up results on patients. There are seven published original articles citing [the petitioner’s article on] this particular work at this point.” [REDACTED] himself is not a physician or a researcher *in the field of urology*. He does not explain how he has first hand knowledge of any physician or urologist using the petitioner’s strategy. Similarly, [REDACTED] Chief Executive Officer of the Kidney Cancer Association, who does not claim any academic background in the sciences in addition to his experience as a cancer advocate, asserts that the petitioner’s work on bladder cancer “has really benefited patients with superficial bladder cancer and also positively impacted the practice of cancer medicine.” [REDACTED] does not assert that the Kidney Cancer Association has promoted or urged the adoption of the petitioner’s bladder cancer treatment strategy. Moreover, [REDACTED] does not provide a single example of a clinic or hospital adopting the petitioner’s bladder cancer treatment strategy.

Assistant Director and Head of Biostatistics at the European Organization for Research and Treatment of Cancer in Brussels, Belgium, explains that the organization “conducts, develops, coordinates and stimulates research in Europe on cancer through the conduct of multi-center cancer clinical trials.” [REDACTED] asserts that he requested the petitioner’s 2006 article on the use of epirubicin for superficial bladder carcinoma and its long-term outcomes. [REDACTED] does not assert that this article has prompted the European Organization for Research and Treatment of Cancer to conduct, develop, coordinate or stimulate clinical trials on epirubicin or that the organization is promoting the petitioner’s research as sufficiently definitive such that oncologists should adopt the use of epirubicin.

[REDACTED] is the only urologist in China to support the petition with a detailed letter. [REDACTED] asserts that the petitioner’s reputation in China can be inferred from the number of published articles in China, the funding the petitioner received which is “more difficult to get” than funding from the U.S. National Institutes of Health, his work on an award winning project and his invitation to be a visiting professor at the Andrology Center of Peking University. While [REDACTED] asserts that the petitioner’s work on bladder cancer “is leading peers to design their own studies,” he does not identify any of these “peers” or affirm his own application of the petitioner’s work.

Finally, we acknowledge the submission of electronic-mail messages requesting either reprints or information about the petitioner’s long-term study results, published in 2006. Most of these messages postdate the filing of the petition. The petitioner must establish his eligibility as of the date the petition is filed. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. The electronic-mail traffic that predates the petition is not indicative of a widespread influence in the field as would be expected of a contribution of *major significance*.

Ultimately, the petitioner does not submit a single letter from physicians or urologists in China or anywhere else who affirms successfully applying the petitioner’s strategy to prevent recurrence of bladder cancer. The petitioner also fails to submit letters from hospital administrators affirming that

they have adopted the petitioner's strategy as official policy at their hospitals. The petitioner has not provided statistics that might confirm longer survival rates for bladder cancer in China since the 1998 publication of the petitioner's article on treatment of this cancer. While the record adequately establishes that the petitioner is a prolific writer, without evidence that the petitioner's strategies or other results are widely and successfully applied, we cannot conclude that his research articles in China have profoundly influenced the practice of urology in China or elsewhere such that it can be considered a contribution of *major* significance.

The petitioner does submit letters from researchers regarding the petitioner's work in the United States, including those from references who affirm their independence of the petitioner (the record does not contain their curriculum vitae). Those letters, however, provide insufficient specifics and examples of the petitioner's work being utilized in the field. In general, 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 (Commr. 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. 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In evaluating the reference letters, we note that letters that simply attest to the importance of the petitioner's area of research, provide vague claims of contributions and speculate as to the potential applications of the petitioner's work 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 the most persuasive. Finally, we note that several of the initial letters attest to the national interest in retaining the petitioner's services. CIS electronic records confirm that the petitioner has filed another Form I-140 petition seeking classification as a member of the professions with an advanced degree or an alien of exceptional ability and a waiver of the job offer requirement in the national interest pursuant to section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2). A track record of success in an area of national significance, however, is not, by itself, sufficient to establish eligibility under the more exclusive classification sought in this matter pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A).

asserts that the petitioner is currently studying the molecular mechanisms of one of the most common congenital anomalies, hypospadias. explains the importance of preventing this condition and, thus, determining its etiology.

[The petitioner] checked gene status in tissue from patients and found over-expression of Activating Transcription Factor 3 (ATF3) gene is related to hypospadias. This interesting result had not been reported ever before. Also, he tried serial experimental

methods to confirm this new discovery. In the two years he has been working in the lab, [the petitioner] has had three first-author papers, with two more submitted. In the course of competing these major studies, he has mastered several cutting-edge molecular techniques and mined a huge expression array database for genes that are candidate actors in the mechanism of hypospadias. His investigations have led us to genes that no one had even considered before in relation to the causes of this penile malformation, and his results are novel and make fruitful contributions to the field.

concludes that his laboratory would not be making the progress they are making without the petitioner's contributions.

Founder of Receptor BioLogix, Inc. in San Francisco, discusses his own expertise with the discovery and development of Herceptin as a treatment for breast cancer. does not purport to have any experience in urology. affirms learning of the petitioner's work at a conference at UCSF and notes the importance of research in this area. reiterates that the petitioner discovered the role of ATF3 in hypospadias. explains that this research was conducted "using gene microarray techniques which is very new and state of the art." The petitioner then corroborated his work "using human tissues, mouse models, and cultured cells made by many diverse experimental methods." then speculates: "If diagnostic testing confirms the over-expression of this gene in the male fetus, the physician can begin preventive treatment that may reduce or eliminate the problems of this disorder."

another professor at UCSF and a member of the National Academy of Sciences whose research focuses on hematology and genetics, asserts that as a result of the petitioner's discovery of the significance of ATF3, "investigators from around the world have requested information, research reagents or advice from" the petitioner. further asserts that some investigators have requested the petitioner's "collaboration to set up this test."

Throughout the proceedings, the petitioner has provided electronic-mail messages between the petitioner and other researchers. Specifically, the laboratory providing the knock-out mice and another independent research team requested a copy of the final article reporting the results of using these mice. In addition, an Internet-based layman support group requested that the petitioner explain his results with ATF3 in layman terms. The petitioner submitted additional electronic-mail notices dated after the filing of the petition. These notices cannot demonstrate the petitioner's acclaim in the field as of the date of filing, the date as of which the petitioner must establish his eligibility. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. Ultimately, these electronic-mail messages do not demonstrate that the petitioner's work is widely influential.

Laboratory at UCSF, asserts that the petitioner is also investigating the mechanism of overactive bladder (OAB). importance of research in this area and asserts that the petitioner's work "gave us a new view of the mechanism of OAB and provided instruction for clinical work."

Senior Research Scientist at the Stanford University of Medicine, discusses the prestige of the laboratory in which the petitioner now works and asserts that the petitioner's work on OAB "will potentially benefit" millions of Americans. Similarly, who lectured at UCSF in March 2006, asserts that the petitioner's work on OAB "will answer several important questions, no[w] under dispute in the scientific community, and will formally and systematically enable us to find an appropriate response to the question of the rational use of anticholinergics as well as helping us find alternative therapies." asserts that the petitioner was the first researcher to clarify developmental regulation of nerve control and cellular signaling of the urinary bladder and that he has "made some interesting observations and drawn conclusions which merit further consideration" but does not explain how the petitioner has already impacted OAB research.

The record shows that the petitioner is respected by his colleagues and has made useful contributions in his field of endeavor. While the record includes numerous attestations of the potential impact of the petitioner's work, some of which are from researchers in different fields, and general assertions that other, unidentified researchers have been impacted by the petitioner's work, none of the petitioner's references provide specific examples of how the petitioner's work is already being successfully applied in the field. While the evidence demonstrates that the petitioner is a talented researcher with potential, it falls short of establishing that the petitioner had already made contributions of major significance. Thus, 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.

As discussed above, the petitioner has authored numerous published articles in both Chinese and English-language journals, many of which have been cited. The director questioned whether these articles were sufficiently "scholarly." Throughout the proceedings, the petitioner has submitted evidence of the reputation of many of these journals.

We withdraw the director's concern that the petitioner's articles are not "scholarly." The petitioner's articles have appeared in peer-reviewed journals and report the results of scholarly research in urology. That said, the submission of evidence that *relates* to a given criterion is not necessarily sufficient to *meet* that criterion. The evidence must at least be consistent with national or international acclaim in the field. The petitioner in this matter has authored numerous articles. While volume alone is not necessarily sufficient to meet this criterion, the petitioner has also demonstrated that many of his articles have been cited. Moreover, while the petitioner's excellent paper awards do not appear to be nationally or internationally recognized, they are factor to be considered under this criterion. We are satisfied that the evidence serves to meet this criterion.

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

Counsel does not challenge the director's conclusion that this criterion has no relevance to the petitioner's field and we concur with the director.

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

_____ asserts that the petitioner is "playing a leading or critical role in my lab." Other references reiterate this assertion. After the date of filing, the petitioner became a principal investigator of a government-funded study. The director concluded that the petitioner does not claim to meet this criterion. On appeal, counsel asserts that the director erred in this conclusion.

Counsel did not focus on the petitioner's various roles in his initial cover letter. In response to the director's request for additional evidence, however, counsel did assert that the petitioner meets this criterion and included an entire exhibit, Appendix E, dedicated to this criterion. Thus, we withdraw the director's implication that this criterion was not claimed and will discuss the evidence below.

At the outset, we note that we have already considered the petitioner's research contributions above. At issue for this criterion are the reputation of the entity that employs the petitioner and the role that he was hired to fill. While the alien need not be so indispensable to the employer that the employer could not continue at all without the petitioner in that role, the role itself must be one that is indicative of or consistent with national or international acclaim. As discussed above, the petitioner must establish his eligibility as of the date of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. As of that date, the petitioner was working as a postdoctoral fellow, a typically entry-level position in the sciences. While we do not question the national or international distinguished reputation of UCSF and, to a lesser extent, _____ laboratory, **the petitioner has not demonstrated that the role of postdoctoral fellow is, in and of itself, a leading or critical role for UCSF or _____ laboratory beyond the obvious need for research institutions to employ competent postdoctoral fellows.** Thus, the petitioner has not established that he meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

Counsel does not challenge the director's conclusion that the record is absent evidence relevant to this criterion and we concur with the director.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Counsel does not challenge the director's conclusion that this criterion has no relevance to the petitioner's field and we concur with the director.

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.

The conclusion we reached above 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 fellow as of the date of filing, relies on his publication record, service as an editor, electronic-mail correspondence that appears commensurate with his level of experience and letters from his colleagues in San Francisco and elsewhere, some of which do not even profess research experience in his field of urology. While this may distinguish him from other postdoctoral researchers, we will not narrow his field to others with his level of training and experience. [REDACTED] is a past president of the Society of Fetal Urology and founded the Center for the Treatment and Study of Hypospadias at UCSF. [REDACTED] is the Medical Director of the Knuppe Molecular Urology Laboratory at UCSF and has authored or coauthored more than 380 publications and 12 books. [REDACTED] led the team that discovered and developed the antibody Herceptin, now widely used in the treatment of breast cancer. [REDACTED] is the Chair of the Department of Urology at UCSF. Dr. Kan is a member of the National Academy of Sciences. Thus, it appears that the highest level of the petitioner's field is far above the level he has attained.

As discussed above, review of the record, however, does not establish that the petitioner has distinguished himself as a urology 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 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.