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FILE: [Redacted]
SRC 06 183 51546

Office: TEXAS SERVICE CENTER Date: **MAY 29 2008**

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.

7 Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined that 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 argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). More specifically, the petitioner asserts that the evidence of record satisfies the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(ii), (v), and (vi).

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, filed on May 22, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a biomedical researcher. The petitioner earned his Ph.D. in Cell and Molecular Biology from Howard University in 2006. At the time of filing, the petitioner was working as a postdoctoral fellow in the

Department of Pathology at the Uniformed Services University of the Health Sciences (USUHS) in Bethesda, Maryland.

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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 petitioner has submitted evidence pertaining to the following criteria.

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

The petitioner's initial submission included evidence that the president and the provost of Howard University presented him with a "Student Co-Author Certificate in Recognition of Work Published During 2005-06." The petitioner also submitted a June 2003 letter from the Department of Biology, Howard University, stating that he was "awarded a stipend as a Graduate Assistant . . . for the 2003-2004 Academic year." The petitioner's initial documentation also indicated that he was honored along with scores of other Howard University "Graduate and Professional Students" for "earning the 4.0 Grade Point Average" in Fall 2001. With regard to the preceding academic honors and graduate assistant stipend awarded by the petitioner's alma mater, recognition for achievement as a student does not constitute the petitioner's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. University study is not a field of endeavor, but rather training for future employment in a field of endeavor. The preceding honors reflect institutional recognition in an educational setting rather than national or international recognition for excellence among those already working in the field. For example, competition for the preceding academic honors was limited to students enrolled in Howard University's degree programs. The petitioner's receipt of academic honors and a stipend limited by their terms to students at one university is not an indication that he "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). A student award may place the petitioner among the top students at his university, but it offers no meaningful comparison between him and professional researchers who have already completed their education and training.

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.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence showing that he is a full member of Sigma Xi, The Scientific Research Society. On appeal, the petitioner submits a November 8, 2006 letter from Philip Carter, Executive Director for the society, stating that Sigma Xi has "more than 65,000 active members" and confers full membership "upon those who have demonstrated noteworthy achievements in research." These achievements "must be evidenced by publications, patents, written reports or a thesis or dissertation, which must be available to the Committee on Admission if requested." A noteworthy achievement is not necessarily an outstanding achievement. In fact, the record reveals that the society does not take a particularly strict view of noteworthy achievements. Specifically, Philip Carter states that the "Committee on Qualifications and Membership interpreted this qualification to include primary authorship of two papers." Philip Carter continues that an "earned doctoral degree may be substituted for one paper." We cannot conclude that primary authorship of one or two papers is indicative of outstanding achievement.

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 submitted several recommendation letters in support of the petition.

[REDACTED], Associate Professor, Department of Pathology, USUHS, states:

I recruited [the petitioner] to join my laboratory in January 2006 . . . His outstanding Ph.D. research resulted in three journal articles and four more manuscripts in preparation.

* * *

[The petitioner] successfully defended his Ph.D. dissertation at Howard University in January 2006. He has contributed important research that has resulted in significant improvement of our understanding of genomic gene expression of human kidney cells under Polychlorinated Biphenyl (PCB) treatment. For example, [the petitioner] found two genomic biomarkers: the human annexin IV (ANX4) gene and the lysyl oxidase (LOX) gene. These genes are essential to the diagnosis and therapy of renal cancer caused by toxic chemicals, such as PCBs. He has also utilized high-throughput Microarray Gene-Chip technology to discover the special cellular processes induced by PCBs in human kidney cells. This kind of basic experimentation is important because whole genome research is necessary to clarify the molecular basis of toxic chemicals inducing renal injuries. [The petitioner's] excellent Ph.D. research showed his wide-spectrum ability of scientific investigation and experience in different technologies.

[REDACTED], Professor, Department of Pathology, USUHS, states:

Living up to expectations, [the petitioner] is now a major force in the laboratory of [REDACTED] where he is making significant progress in the study of the effects of Pregnancy Specific Glycoproteins (PSGs) on the immune system. Utilizing a murine cell line as his primary model, his results have led to rapid progress in understanding the biochemical and molecular basis for certain human diseases.

Specifically, [the petitioner] is studying the role of PSGs in regulating a wide variety of biological functions during pregnancy utilizing a variety of sophisticated cellular and molecular methodologies. Aberrant functioning of PSGs and/or their receptors, with a corresponding inappropriate control of cytokine expression, could result in serious disease.

* * *

Thus, in the long-term, the work that [the petitioner] is doing could have a major effect on reproductive medicine, in particular fetal abortion and potentially other pre-natal disorders.

[REDACTED], Professor Emeritus, Department of Biology, Howard University, supervised the petitioner's Ph.D. studies starting in 2001. [REDACTED] states:

[The petitioner] showed congener specificity in PCB-induced human kidney cells (proximal tubules cell) mRNA expression. This was an important discovery. This research could have monumental significance on our understanding of PCB-induced renal diseases, and may eventually result in the development of new genome-wide biomarkers for monitoring and therapies of PCB-induced renal diseases, such as renal cell carcinoma, renal cystic disease, Lupus nephritis.

[REDACTED], Associate Professor, Department of Biology, Howard University, states:

I came to know [the petitioner] and his Scientific Research in 2005 when I was one of his Ph.D. committee members at Howard University.

* * *

[The petitioner] started several important research projects on PCB bioremediation and Human kidney cell gene expression under PCB exposure. He found that genetically modified bacteria (*Sinorhizobium meliloti*) enhanced bioremediation of PCB-contaminated soil. In human kidney cells studies, he found not only PCB-structure specificities in gene expression and cellular processes but also some genomic biomarkers in these PCB-induced renal injuries. These projects have been exploring the relationship among PCBs and human kidney diseases for which little is known.

* * *

[The petitioner] found ANXA4, one of the most important biomarkers, can be detected in the renal carcinomatous diseases induced by coplanar PCB but not by noncoplanar PCB. This result indicates that an abnormal calcium-activated cellular signal transduction event happened in the PCB-induced

renal cancer, which had not been previously detected in PCB induced renal diseases. This is an incredibly important discovery.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or published research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance 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. While the petitioner's superiors discuss the value of his work, there is no evidence that it constitutes an original contribution of major significance in his field consistent with sustained national or international acclaim. For example, there is no supporting evidence showing that the published research resulting from the petitioner's work at Howard University or the USUHS was frequently cited by independent researchers.

[REDACTED] at, Principal Investigator, Center for Drug Evaluation and Research, U.S. Food and Drug Administration, states:

[The petitioner] and I had a nice talk in November 2004 about the possibility of his employment in my lab.

* * *

[The petitioner] has done important work . . . which has resulted in significant improvement of our understanding of genomic gene expression of human kidney cells under Polychlorinated Biphenyl (PCB) treatment. He has found that two genomic biomarkers, human annexin IV (ANX4) gene and lysyl oxidase (LOX) gene, are characteristic of renal cancer caused by PCB. He has also elucidated the molecular mechanism of kidney cell apoptosis and modeled the functional mechanism of renal cancer induced by two different structures of PCBs. This fundamental research is absolutely necessary to identify the molecular basis of toxic chemical inducing renal cancer and, ultimately, to apply this knowledge to develop a cure or treatment

We accept that the petitioner has performed important research to clarify the molecular basis of toxic chemicals inducing renal injuries, but there is no evidence (such as an extensive citation history) showing that these findings have been unusually influential, highly acclaimed throughout his field, or have otherwise risen to the level of original contributions of major significance.

Tenure-Track Investigator, Laboratory of Molecular Biology, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, states;

[The petitioner's] work reveals various abnormal calcium-activated cellular signal transduction events associated with coplanar PCB (PCB-77) induced renal cancer. His work has also shed light on the molecular mechanism of kidney cell apoptosis, a highly regulated cell death program that is closely

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.