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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

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LIN 07 126 53074

Office: NEBRASKA SERVICE CENTER

Date: JUL 06 2009

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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office 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 sustained national or international acclaim required for classification as an alien of extraordinary ability. The director also determined that the petitioner had not submitted clear evidence that she would continue to work in her area of expertise in the United States.

On appeal, the petitioner argues that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Section 203(b) of the Act states, in pertinent part:

(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.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. 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).

In this case, the petitioner seeks classification as an alien with extraordinary ability in the sciences, specifically as a psychophysicologist. The petitioner initially submitted educational achievements, a copy of her dissertation, employment history, articles she authored, letters of recommendation, and an honorary certificate. In response to a Request for Evidence (“RFE”) dated April 24, 2008, the petitioner submitted additional letters of recommendation, citing references to her articles, information about the publications in which her articles appeared, and evidence of her membership in various organizations.

On July 9, 2008, the director denied the petition, finding that the petitioner did not meet any of the regulatory criteria for establishing sustained national or international acclaim at 8 C.F.R. § 204.5(h)(3) and that she had not submitted clear evidence demonstrating that she would continue to work in her area of expertise in the United States. On appeal, the petitioner argues that she meets the criteria at 8 C.F.R. § 204.5(h)(3)(i), (ii), (v), and (vi).

(i) 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 a certificate of Honorary Mention for 25 years of contributing to the Institute of Cybernetics, her previous employer. This certificate is not an award contemplated by this criterion. First, the certificate does not reward excellence in the field as opposed to marking a milestone with the petitioner’s employer. Second, any “contest” that results in this type of certificate would be limited to those employed by the Institute of Cybernetics instead of being a contest open to the field as a whole, so could not evidence excellence in the overall field. Third, the petitioner submitted no evidence of any national or international recognition due to the recipient of such a certificate. For example, no evidence of news articles appears in the record to show that the award was announced to the general public or to the field.

The petitioner also submitted evidence of her receipt of a senior researcher position in 1975. The information submitted from the *Greater (Big) Soviet Encyclopedia (Encyclopedia)* states that a senior researcher “is a scientific rank and a permanent job appointment” in scientific research institutes or institutions of higher education. The rank of Senior Researcher is awarded by a decision of Higher Attestation Commission (VAK) of Council of Ministers of USSR and for institutions of Academy of Science of USSR and Academy of Science of the Union Republics.” The *Encyclopedia* sets forth the requirements for the position as a PhD, published research or inventions, five years of scientific employment with at least three years of scientific research, and that the potential Senior Researcher must have been “chosen on a competitive basis to the position of Senior Researcher, Head of the Department, Head of the Laboratory or Head of the Sector of institution of high education, scientific research institute or scientific-production organization.” In the response to the RFE, counsel stated that “only four percent (4%) of the total number of scientists in the former Soviet Union” received this title.

However, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I. & N. Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I. & N. Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980). Being chosen for particular employment does not constitute an award as contemplated by this criterion. Most jobs have requirements such as minimum education or experience so that qualifying for a position or securing employment does not constitute an "award." In addition, the petitioner presented no evidence to show that her receipt of the appointment was nationally or internationally recognized as required by this criterion. Last, the date of the appointment indicates that it was bestowed more than thirty years prior to the filing of this petition so cannot evidence *sustained* acclaim in the field.

On appeal, counsel repeats the petitioner's assertion that as manager and executive in charge of nine special research projects for the USSR Ministry of Defense and the resulting bonus received upon the successful completion of those projects qualifies her under this criterion. The petitioner's statement included with her original submission named the different projects. That information indicates that the last project concluded in 1990. The evidence submitted, a statement from the Institute of Cybernetics, indicates only that the petitioner worked on 13 projects for the Institute of Cybernetics and that the projects came to the Institute via the Georgian Academy of Science. The letter from the Institute of Cybernetics does not mention the USSR Ministry of Defense nor does it state that the projects that the petitioner worked on were awarded based on a competitive basis. As such, we are left only with the petitioner's and counsel's assertions regarding the importance of these projects. Without documentary evidence to support the claim, neither the petitioner's unsupported assertions nor the assertions of counsel will not satisfy the petitioner's burden of proof. *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)); *Matter of Obaigbena*, 19 I. & N. Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I. & N. Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980). In any event, again, the petitioner submitted no evidence to show that being awarded, working on, or successfully completing these projects conveyed national or international acclaim or how projects that concluded more than 15 years prior to the filing of this petition indicate *sustained* acclaim in the field.

For all of the above reasons, the petitioner failed to demonstrate eligibility under this criterion.

(ii) 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. Membership requirements based on employment or activity in a given field, minimum education or experience, proficiency certifications, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given

association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

In response to the RFE, the petitioner submitted a 2005 certificate of membership to the National Guild of Hypnotists ("Guild"). The accompanying information states that the Guild is made up of "renowned leaders, authors, and teachers in hypnotism." The information submitted does not state what the qualifications for membership are nor does it state that membership is predicated upon outstanding achievement as opposed to work within the field.

On appeal, the petitioner submitted a welcome letter from the American Psychological Association ("APA") dated August 19, 2008. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Comm. 1971). On appeal, counsel states that we have "incorrectly applie[d]" the rule found in *Matter of Katigbak* in that the alien in that case was found not to qualify for the visa petitioned for because the alien was not "academically qualified as a member of the professions as an accountant at the time the petition was filed" and no question exists in this case as to whether the petitioner achieved her academic or other qualifications at the time that her petition was filed. Counsel is correct regarding the facts of *Matter of Katigbak*, however, the holding in that case is not limited to cases in which academic credentials or experience are required for a particular category, but instead, the holding is that a petitioner must be qualified in any aspect required at the time of filing so that subsequent achievements or events can have no bearing on a previously filed petition. Here, the petitioner failed to establish that she qualified under this criterion at the time of filing. In any event, the petitioner supplied no evidence as to the requirements for membership so that we are unable to determine that membership in the APA is contingent upon outstanding achievement.

For all of the above reasons, the petitioner failed to establish eligibility under this criterion.

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

While letters of recommendation provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom she has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has achieved sustained national or international acclaim.

A letter from [REDACTED], member of the Institute of Geophysics at the Georgian Academy of Science, wrote a letter detailing the petitioner's education and experience in the field, noting that the petitioner "found out that human's behavior in probabilistic environment is regulated by the mechanism of probabilistic prognosis," discovered "connections of peculiarities of [the] behavior" of

schizophrenics that could be used “as supplementary tool[s] in psychiatric diagnostics,” and discovered “the importance of attitude for decision making of operators.” The letter from [REDACTED] head of the Jerusalem Interdisciplinary Seminar, stated that the petitioner’s work “contributed significantly to the better understanding of” probabilistic prognosis and sets and that she developed algorithms used as supplemental tools in diagnoses and other decision making. The letter from [REDACTED], deputy dean of the psychology department of Moscow State University, recognized that the petitioner “demonstrated that the individual’s behavior differs significantly depending on how he perceived the situation: as a ‘neutral’ or as a ‘conflict’” and stated that these findings were useful “in designing human-machine systems.” The letters from [REDACTED], member of the Georgian Academy of Sciences; [REDACTED], professor at Northwestern University; and [REDACTED] professor at Moscow State University, contain similar statements and highlight the same findings by the petitioner.

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. We must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. While these letters discuss the value of the petitioner’s work, there is no evidence that her work constitutes an original contribution of major significance in her field consistent with sustained national or international acclaim. Several of the above referenced letters state that the petitioner’s findings are important to different fields or have a use, but none specify how the petitioner’s findings are being used, developed, or otherwise impacted the field. For example, several letters state that the petitioner’s diagnosis algorithm was used by a Georgian hospital in aid of cancer diagnoses, but none of the letters state that the algorithm was being used outside of the one hospital or that the Georgian hospital’s use of that algorithm attracted notice of the field as a whole. Further, while the petitioner has claimed publication of many articles, the majority of which were not submitted into the record, there is no evidence (such as a large number of independent citations) demonstrating that her articles have had a significant impact on the overall field. Without evidence showing that the petitioner’s work has been unusually influential, highly acclaimed throughout her field, or has otherwise risen to the level of contributions of major significance, we cannot conclude that she meets this criterion.

For all of the above stated reasons, the petitioner has not demonstrated eligibility under this criterion.

(vi) Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.

In her original submission, the petitioner lists 52 articles that she claims to have authored from 1967 to 2007. She, however, only provided us with copies of 13 of these articles. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I. & N. Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm. 1972)). In addition, these articles, which all but two of which appear in the Russian language, were not accompanied by a full translation. 8 C.F.R. § 103.2(b)(3) requires that

“[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.” The English language translations accompanying the petitioner’s articles do not specifically name the petitioner in the translation as author and consist of only summaries of the articles and not full translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). We also note that the petitioner submitted an additional article in response to the RFE that was accepted for publication in the September 2008 edition of *Zdorovie*. As the director noted, this article was accepted and published after the date that the original petition was filed and thus cannot be considered. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I. & N. Dec. at 49.

The petitioner also submitted evidence pertaining to her participation in the XXII and XXIV International Psychological Conferences in 1980 and 1988. We note that in the field of psychology, acclaim is generally not established by the mere act of presenting one’s work at a conference or symposium along with scores of other participants. Nothing in the record indicates that the presentation of one’s work is unusual in the petitioner’s field or that invitation to present at the sessions where the petitioner spoke was a privilege extended to only a few top scientists. Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not establish that she has authored scholarly articles in major media or elevate the petitioner above almost all others in her field at the national or international level.

In response to the director’s request for evidence, the petitioner submitted evidence of four articles that cite to her scholarly work. The English language translations accompanying these articles consisted of only summaries of the articles and not full translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). With regard to the submitted citations, numerous independent cites to the petitioner’s scholarly work would provide solid evidence that other researchers have been influenced by her work and are familiar with it. On the other hand, few or no citations of an article or a conference paper authored by the petitioner may indicate that her work has gone largely unnoticed by her field. While the four citations submitted by the petitioner demonstrate a small degree of interest in her scholarly work, they are not sufficient to demonstrate that her published and presented work has attracted a level of interest in her field consistent with sustained national or international acclaim.

Aside from the preceding deficiencies, we note that the articles submitted by the petitioner for this criterion have dates of publication ranging from 1967 to 2002. There is no evidence showing that the petitioner has published any scholarly articles during the four-year period preceding the petition’s filing date. The statute and regulations require the petitioner to demonstrate that her national or international acclaim has been sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

For all of the above reasons, the petitioner failed to establish her eligibility under this criterion.

Lastly, the statute and regulations require that the petitioner seek to continue work in her area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how she intends to continue her work in the United States. The Form G-325A, Biographic Information, submitted in conjunction with the petitioner's Form I-485, Application to Register Permanent Residence or Adjust Status, indicates that the petitioner has been unemployed since 1998 when she left the Institute of Cybernetics. The I-140 submitted in support of the petition contains no information about proposed employment and, instead, Part 6, Basic information about the proposed employment, indicates "N/A." The petitioner's statement submitted in conjunction with the I-140 states that she "can offer a unique and beneficial service as a scientist in the field of Psychophysiology," but the petitioner does not state that she has potential employment in that field. Although the alien may self-petition for an employment-based immigrant pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), the statute requires that the alien show that she will continue to work in her area of expertise in the United States. The petitioner here has failed to establish how or that she will pursue psychophysiology in the United States.

In this case, the petitioner has failed to demonstrate that she received a major, internationally recognized award, or that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Review of the record does not establish that the petitioner has distinguished herself 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 is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. Nor does the record establish that the petitioner will continue to work in her field of expertise in the United States. Therefore, the petitioner has not established her 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.