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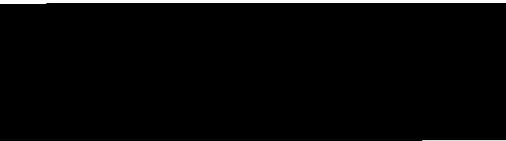
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER
LIN 07 005 52784

Date: JUN 05 2009

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:

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.

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 Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) 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. For the reasons discussed below, we affirm the director’s decision.

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.

U.S. Citizenship and Immigration Services (USCIS) 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 (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 “scientist.” On appeal, the petitioner submits a self-serving curriculum vitae listing his education, experience and accomplishments. On this document, the petitioner indicates that his education includes a Bachelor of Science in Pharmacy from the University of Tirana in Albania received in 1968 and “Research Qualifications in Pharmacognosy and Phytopharmacy” completed in 1974 at the University of Tirana. The petitioner did not submit any diplomas or official academic records of his education in support of this petition. We acknowledge, however, that the record contains a previous petition, receipt number EAC-99-071-52015. In support of this earlier petition, the petitioner submitted his 1968 diploma from the University of Tirana and an evaluation evaluating this diploma and additional credentials from the university as equivalent to a Bachelor of Science in Pharmacy. Thus, the petitioner has not established that he has any educational credentials in his field beyond the baccalaureate level.

The petitioner did submit a “declaration” from the Head of the Pharmacy Department at the University of Tirana which lists the petitioner’s research and teaching duties and other accomplishments at the university between 1974 and 1985, but does not characterize him as a professor or comparable member of the faculty. On appeal, the petitioner asserts that he was not given the title of professor because he was not a communist. The record, however, does not establish that the petitioner had the necessary education for such a position. While not every acclaimed scientist received an advanced degree in his field, it is the petitioner’s burden to demonstrate that he compares with the small percentage at the top of his field, including those with advanced degrees who hold tenured faculty positions.

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 relies primarily on his self-published book, “Herbal Vade Mecum: 800 Herbs, Spices, Essential Oils, Lipids, Etc. Constituents, Properties, Uses and Caution,” and the reactions of those to whom he sent the book and reviews in herbal remedy journals. On appeal, the petitioner lists other famous individuals who self-published their work. The act of self-publishing does not preclude eligibility. As no peer-review occurs with self-published work, however, the act of self-publication itself has little evidentiary value. While some self-published work may eventually prove influential, we will not presume such influence. It remains the petitioner’s burden to demonstrate the impact of his self-published work.

The petitioner has submitted evidence that, he claims, meets the following criteria.¹

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

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 response to the director's request for additional evidence, the petitioner submitted a "certificate" from the president of the Albanian Pharmaceutical Association Steering Committee confirming that the petitioner has been a member of this association since its founding in 1992. The petitioner did not submit the membership requirements for the association. The director concluded that the petitioner had not demonstrated that he meets this criterion. On appeal, the petitioner does not challenge the director's conclusion. We concur with the director that the record lacks the official membership requirements of the association. Thus, the petitioner cannot establish that he is a member of an association that requires outstanding achievements of its general membership as judged by recognized national or international experts and, as such, 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.

The petitioner submitted book reviews in [REDACTED] (*Chinese*) *Herb News*, *HerbalGram* and various websites, including Amazon.com. The petitioner also submitted a foreign-language article in *America Oggi*. The petitioner did not submit a full certified translation (or any translation) as required under 8 C.F.R. §§ 103.2(b)(3), 204.5(h)(3)(iii). On October 22, 2007, the director requested additional evidence, specifying that the petitioner must provide a complete certified translation for the article in *America Oggi*. The director also requested evidence of the reputation of this publication. The petitioner's response did not include any evidence relating to this criterion.

The director concluded that the petitioner had not submitted the required initial evidence to meet this criterion, the complete certified translation of the article in *America Oggi*, and had not established that this publication was a professional or major trade publication or other major media. On appeal, the petitioner does not address this criterion. Even if the petitioner had submitted the necessary translation and evidence of the reputation of *America Oggi* on appeal, we would not have been able to consider this evidence as the director specifically requested this evidence in October 2007 and the petitioner did not provide the evidence at that time. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

Without a complete certified translation or evidence of the distribution, circulation, or other evidence that *America Oggi* is a professional or major trade journal or other major media, we cannot consider the article in that newspaper. As stated above, however, the record also contains two published book reviews. The petitioner submitted material about [REDACTED] on the website of [REDACTED] own corporation, Earth Power, Inc., and evidence that [REDACTED] has authored his own encyclopedia on herbs. The "Note from [REDACTED] on the cover of [REDACTED] (*Chinese*) *Herb News* indicates that started the "Newsletter" in 1996. The petitioner did not submit any evidence of the

circulation of this “newsletter” or any other evidence that the newsletter is a professional or major trade journal or other major media. *HerbalGram* is the journal of the American Botanical Council. The council, established in 1988, describes itself as “the leading independent, nonprofit, international member-based organization providing education using science-based and traditional information to promote the responsible use of herbal medicine.” The materials, however, do not provide the circulation data for the journal or other evidence suggesting that the journal is a professional or major trade journal or other major media. Regardless, one book included in a series of such reviews is not published material about the petitioner relating to his work and does not particularly set the petitioner apart from other authors in his field.

The Internet reviews are not credited to a particular author and do not constitute published work about the petitioner in professional or major trade journals or other major media. Finally, the book summary by Herbalist and Alchemist, Inc. is promotional as they are one of the entities with whom the petitioner appears to have contracted to sell his book.

In light of the above, the petitioner has not demonstrated that he 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.

In response to the director’s request for additional evidence, the petitioner submits the aforementioned “Declaration” from the University of Tirana. The declaration lists three studies under “Superintendence of College Degrees through Research” and what appear to be five book titles under “Recensions of Books and Dissertations.”

The director cited a Webster’s Ninth Collegiate Dictionary (no copyright date provided) definition of “pharmacognosy” as “descriptive pharmacology dealing with crude drugs and simples” and questioned the “level of sophistication” of the materials reviewed by the petitioner. The director also concluded that the petitioner performed these reviews as part of his faculty duties, which did not set him apart from other faculty.

On appeal, the petitioner asserts that Webster’s Third New International Dictionary of English Language Unabridged defines pharmacognosy as “a science dealing with the composition, production, use and history of drugs of plant and animal origin.” The petitioner does not provide a copy of the page from this dictionary to support his assertion; rather, he submits an affidavit from [REDACTED], a professor of toxicology at the University of Tirana, who asserts that [REDACTED] a professor of pharmacognosy, defines the term as “an applied science that deals with the biologic, biochemical, and economic features of natural drugs and their constituents.”

However “pharmacognosy” is defined, it is the petitioner’s burden to demonstrate that he meets this criterion with evidence indicative of or consistent with national or international acclaim. *Accord Yasar*

v. *DHS*, 2006 WL 778623 *9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005).

The petitioner did not provide books or journals crediting him as an editor. The “declaration” does not list the authors of the reviewed work or whether they were associated with the university. If the work the petitioner reviewed while at the University of Tirana was the work of students or faculty at the university, these reviewing responsibilities do not demonstrate his recognition beyond the university and appear commensurate with his position at the university.

Finally, the record contains no evidence of review responsibilities after 1985. Thus, the evidence submitted under this criterion is not indicative of sustained national or international acclaim in 2006 when the petition was filed.

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 record contains a 1982 article by the petitioner published in the University of Tirana’s bulletin and the petitioner’s book, self-published in 2003. The petitioner also submitted 1983 “Certificates” from the Albanian Chamber of Commerce affirming that the petitioner also authored and translated into English, French and German, the book “Medicinal Plants.” The “declaration” also lists six articles purportedly published in *Pharmaceutical Studies*. In support of the instant petition, the petitioner did not submit copies of the cover of “Medicinal Plants” or the articles in *Pharmaceutical Studies*. In support of the previous petition, however, the petitioner submitted copies of the cover of “Shendeti Mbrohet Edhe Me Bimie,” published in 1977 and Albanian Chamber of Commerce editions of “Medicinal Plants from Albania,” published in an unknown year; “Heilpflanzen,” which does not identify the author, and “Bime Mjekesore,” which also fails to identify the author. In addition, the petitioner supported the previous petition with several articles published in 1984 in what appears to be a University of Tirana publication. Finally, the previous petition is supported by 1988 and 1989 articles in *Albanian Foreign Trade*.

In support of the instant petition, [REDACTED] Director of the Albanian Directorate of Standardization and Quality, asserts that the petitioner “has been the expert that has given a great contribution in the compilation of Albanian Standarts [sic] (STASH 1988) for Medicinal Plants (Herbs), consisting of 270 Articles.” The record contains no primary evidence of the petitioner’s authorship of 270 articles or even secondary evidence such as a science index listing these articles as authored by the petitioner. The nonexistence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Only where the petitioner demonstrates that both primary and secondary evidence are unavailable may the petitioner rely on affidavits. *Id.* The petitioner has not submitted any documentation that primary and secondary evidence of the petitioner’s other articles is unavailable.

The petitioner also submitted materials from Bowker's Books in Print's website showing that the petitioner had five upcoming books, all to be self-published. The petitioner must establish eligibility as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). A book that has yet to be published cannot be considered to have already impacted the field such that we can consider it a contribution of major significance.

As stated above, the petitioner submitted positive reviews of his 2003 book and evidence that members of the herbal remedy community have promoted the book favorably on their websites. The petitioner also submitted letters from individuals to whom he sent the book as well as evidence of the sale of several copies. Specifically, the petitioner's 2003 book is part of the National Library of Medicine's collection. The book was also purchased by Herbalist & Alchemist, Inc.; Bastyr University Bookstore in Kenmore, Washington; the University Co-op Bookshop, Ltd. in Alexandria, Australia; Coutts Library Services, Inc. in Niagara Falls, New York; Blackwell's Book Services in Blackwood, New Jersey; the Book House, Inc. in Jonesville, Michigan and the University of Newcastle in Callaghan, Australia. The petitioner's book is also available for purchase on Internet sites.

The director concluded that the petitioner had not demonstrated that the petitioner's book or his other work constitutes a contribution of major significance in the field. On appeal, the petitioner submits an affidavit from [REDACTED]. Dr. [REDACTED] asserts that the petitioner "is the specialist who has compiled the strict and highly scientific standards for Albanian Botanicals, known today all over the world." [REDACTED] does not identify any specific independent pharmaceutical company or university using the petitioner's standards or provide any examples of their widespread use in Albania or beyond as claimed by Dr. [REDACTED].

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.

While the Albanian Chamber of Commerce maintains editions of the petitioner's earlier work, the record lacks evidence as to the use of these materials in the medical or nutrition communities. For example, the record contains no evidence that medical journals frequently cite this earlier work or that it is routinely assigned as reading in medical schools. While the petitioner submitted evidence that his 2003 book has been favorably reviewed in a newsletter and a journal with an unknown distribution, these reviews reveal only that the petitioner's book was seen as a useful tool by these reviewers. The record contains no evidence that the petitioner's work has actually been applied, such as evidence of wide and frequent citation. While the petitioner submitted evidence of a limited

number of university and other bookstores that have purchased a small number of the petitioner's book, it can be expected that a book that has already impacted the field at the national or international level would show far more significant sales volume. Significantly, Amazon.com shows the book's sales rank as only 545,622.

We will consider the letters and Internet comments below. The opinions of experts in the field, however, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS 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; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS 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 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions 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. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

██████████ asserts that the petitioner's contributions consist of collecting and cataloguing over 500 Albanian medical plants, evaluating the active principles in "almost all chemical groups of pharmacognostical interest," isolating active principles, preparing extracts from crude botanicals, preparing and standardizing a number of extracts and preparing phytomedicines. ██████████ asserts that the petitioner is the only expert on the Albanian Standards for Crude Botanicals panel. The record, however, lacks published standards crediting the petitioner as the author of those standards and confirmation from independent national or international sources explaining their reliance on the petitioner's work in Albania. The English language "Medical Plants from Albania" appears to be a compendium of current uses of herbs rather than a report of the petitioner's own research or a scientific examination of the data supporting these uses. Moreover, the most recent Albanian publication is from 1989, 13 years before the petition was filed. Thus, his accomplishments there are not evidence of sustained acclaim in 2006 when the petition was filed.

██████████, Vice President and Chair of Research and Training and Director and Philecology Curator at the Institute of Economic Botany of the New York Botanical Garden, thanks the petitioner for sending a copy of his book. ██████████ characterizes the book as a "handy reference" and affirms

that he looks forward to using it in his studies. He speculates that the book “will certainly be a useful reference for professional and interested lay people involved with herbs and herbal remedies.”

The petitioner submitted a copy of two electronic mail message from [REDACTED] Director of Ethnopharmacology at the Heffter Research Institute, which promotes research on psychedelic substances in order to better understand the mind, improve the human condition and alleviate suffering. [REDACTED] asserts that his impressions of the petitioner’s book are favorable, especially the petitioner’s coverage of so many herbs, including ones that are relatively obscure. [REDACTED] speculates that the book “could be an excellent reference to pharmacognosists, natural product researchers, food scientists, and others who, for one reason or another, are interested in obscure and little-known plants.” [REDACTED] recommends that the petitioner send a copy of the book to [REDACTED] at Haworth, but the record does not establish [REDACTED] credentials or the significance of Haworth. The record also lacks evidence of [REDACTED] response to receiving the book.

The petitioner submitted evidence that a website maintained by [REDACTED] Director of the Southwest School of Botanical Medicine in Bisbee, Arizona, provides a link to the petitioner’s book under “My favorite (unsponsored) links.” [REDACTED] praises the petitioner’s book and promotes its sale, but the record lacks evidence that this link has resulted in widespread purchase and use of the petitioner’s book.

On October 1, 2003, [REDACTED] sent an electronic mail message to the petitioner advising that the petitioner could use him as a reference to promote the sale of the petitioner’s book. [REDACTED] describes the book as a “major contribution to our knowledge on the safety and efficacy of herbs” and concludes: “Properly used could save lives.” According to Internet materials submitted by the petitioner, [REDACTED] website indicates that he is a nationally syndicated radio talk show host and has been identified by the *New York Daily News* as “Radio’s leading health and fitness expert.” The record, however, contains no evidence that [REDACTED] routinely relies on the petitioner’s book in his show or invites the petitioner as a frequent guest.

On May 1, 2006, [REDACTED], Book Review Editor for *Phytomedicine* and an assistant professor of Pharmacology and Pharmaceutics at the University of Illinois at Chicago, requested a copy of the petitioner’s book for possible review in the journal. The record contains no evidence that the journal decided to complete and publish the review upon receiving a copy of the book.

The record demonstrates that the petitioner is a dedicated author on the subject of pharmacognosy and has secured some praise for his self-published book. The record, however, falls far short of demonstrating that the petitioner’s work in pharmacognosy is widely recognized in the field as a contribution of major significance to the field. 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.

The articles published in the bulletin and a journal published by the university where the petitioner performed research and taught is not evidence of the petitioner's recognition beyond that university. The articles from 1988 and 1989 in *Albanian Foreign Trade* have not been demonstrated to have had a major impact in the field of pharmacognosy, as opposed to marketing, such as through widespread citation by other pharmacognosists, and cannot demonstrate sustained national or international acclaim 13 years later in 2006 when the petition was filed. The act of self-publishing, lacking any peer or industry review, does not by itself demonstrate any recognition in the field. Thus, the petitioner must demonstrate the book's influence in the field. While the book has received two favorable reviews, the significance of the publications that published these reviews has not been established. Without evidence of the book's impact in the field, we cannot conclude that it sets the petitioner apart from other members of his field.

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 self-published scientist with no documented advanced degree, relies on his work predating the petition by 13 years or more and a recent self-published book that has garnered limited attention within the herbal remedy community and no attention within the general medical media. [REDACTED] is an adjunct professor at Columbia University, is a principal investigator on numerous research grants, including grants awarded by the National Institutes of Health, and has authored articles in such journals as *Economic Botany* and the *Journal of Ethnopharmacology*. [REDACTED] has authored a book and nine articles in what appear to be peer-reviewed journals. [REDACTED] in addition to hosting the longest running continuously aired health talk radio show in the United States, has published over 70 books on natural health, nutrition, disease prevention, public health issues, self-empowerment and healthy cooking. 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 scientist 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 has recently authored self-published material in his field, but is not persuasive that his achievements currently 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.