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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JUN 11 2009
SRC 07 236 51365

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, Texas 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. For the reasons discussed below, we uphold the director’s ultimate finding that the petitioner has not established his eligibility for the classification sought.

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 postdoctoral research fellow, an inherently entry-level position.¹ While neither the statute nor the regulations preclude those just beginning their post-academic careers from eligibility, we will not narrow the petitioner's field to those with his level of experience. The petitioner must demonstrate that his achievements compare with the small percentage at the top of the field, including the most experienced and renowned members of the field.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, he claims, meets the following criteria.²

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

The director concluded that the petitioner's provincial award and scholarship at the University of Minnesota could not serve to meet this criterion. The petitioner does not contest this conclusion on appeal; rather, the petitioner asserts that his award and scholarship support a finding that his contributions have been of major significance. We concur with the director's findings under this criterion and will consider this evidence below as requested by the petitioner on appeal.

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.

The director concluded that the petitioner's memberships in Sigma Xi (which requires a "noteworthy achievement" that can be demonstrated merely by a publication or thesis) and the American Physiological Society cannot serve to meet this criterion. The petitioner does not contest this conclusion on appeal and we concur with the director.

¹ The petitioner's Ph.D. advisor, [REDACTED] explains that the petitioner's current postdoctoral position will provide "additional training in his selected area of research." See also <http://www.bls.gov/oco/ocos047.htm#training> (accessed May 21, 2009 and incorporated into the record of proceedings).

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

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 petitioner has reviewed manuscripts for *Animal: An International Journal of Animal Bioscience*. [REDACTED], a section editor for the journal, provides two letters in support of the petition. In his first letter, [REDACTED] praises the petitioner's research contributions. These statements will be considered below as they relate to the contributions criterion at 8 C.F.R. § 204.5(h)(3)(v). [REDACTED] further states that he has invited the petitioner to review manuscripts for the journal "based upon his expertise in muscle biology and the [insulin-like growth factor (IGF)] field." In his second letter, [REDACTED] asserts that the beneficiary is regularly requested to review manuscripts for the journal based on "his solid background and significant achievements in muscle biology and IGFs system." [REDACTED] further asserts that the petitioner's "scientific reputation and his international credentials mean that he is sought out [by] editors like myself to provide high quality peer review." The record, however, does not establish that the petitioner has been requested to review manuscripts for any other journal.

The director concluded that the petitioner had not demonstrated that participation in the peer review process sets the petitioner apart from other members of the field. On appeal, the petitioner notes that the manuscripts he has reviewed come from around the world, reiterates the statements in [REDACTED] letters and asserts that the director added an extra requirement to the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

The evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim if that statutory standard is to have any meaning. Thus, USCIS may consider whether the judging duties set the alien apart from others in his field. *See generally 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).

[REDACTED] praises the petitioner, but does not provide any information that would demonstrate that being asked to review manuscripts for *Animal* sets a researcher in the petitioner's field apart from other members of the field. For example, [REDACTED] does not suggest that *Animal* boasts an unusually small, elite group of reviewers that are credited in the journal.

We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted manuscripts. Thus, peer review is routine in the field and is not indicative of or consistent with sustained national or international acclaim. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner 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 the petitioner's provincial award, academic scholarship, published articles, citation record, and letters from members of the petitioner's field. The director concluded that the letters did not demonstrate that the petitioner's contributions in the field were sufficient to meet this criterion. On appeal, the petitioner reiterates many of the statements in the letters and notes that he has published cited articles, won a provincial award, received an academic scholarship, received research funding through three Chinese grants, was invited to review manuscripts and presented his research. We will consider all of this evidence below. We note, however, that evidence insufficient to meet the criteria to which they directly relate will not be presumed to demonstrate that the petitioner meets this criterion.

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 opinions of experts in the field, 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 (Commr. 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; CIS 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 (Commr. 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 far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. 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.

The petitioner obtained his Master of Science degree in Animal Science in 1993 from Zhejiang University. He then worked as an instructor and researcher at that university through August 1999. In 1999, the petitioner entered a Ph.D. program at the University of Minnesota. He received his Ph.D. in Animal Science in 2005 and went to work as a postdoctoral research fellow at the University of North Carolina, the position he held on the date of filing the petition, August 2, 2007.

The record contains only one letter discussing the petitioner's research at Zhejiang University in detail. [REDACTED] Section Head and Senior Investigator at GlaxoSmithKline's Division of Pharmacology, asserts that the petitioner's research at Zhejiang University involved animal nutrition. [REDACTED] notes that this work resulted in 21 published articles that were well cited. These assertions are supported by the record. [REDACTED] further asserts that the petitioner was the principal investigator for three national and regionally funded programs. Finally, [REDACTED] asserts that one of the petitioner's projects received the second grade Zhejiang Science and Technology Progress Award. This award is in the record. Dr. [REDACTED] indicates that he first came to know of the petitioner in 2007 when they both attended a conference in Toronto, Canada, and does not suggest that he personally was influenced by the petitioner's work in China, which all predates 1999.

In 1998, the petitioner received the second grade Zhejiang Provincial Science and Technology Advancement Award for his project "Development and Marketing of Nutrients Partition Additive (Betaine) for Livestock." The petitioner's 1999 article on the effect of exogenous enzyme preparations on activity of endogenous digestive enzymes in livestock has been cited 50 times; his 2000 article on the growth response of pigs fed a pharmacological level of copper has been cited 24 times and his 1998 article on the effect of neutral protease on nitrogen utilization and activities of endogenous digestive enzymes in domestic bison has been cited 14 times. Two additional articles published in China have been cited 12 and 7 times. The remaining articles published while the petitioner was a researcher in China have been cited no more than five times.

The provincial recognition and citation certainly suggest an interest in the petitioner's research in China. This evidence, however, would have been bolstered by letters from researchers with first-hand knowledge of the influence of this work explaining why this work was significant and original and how it was actually applied in China.

The petitioner submitted three letters from members of his Ph.D. advisory committee at the University of Minnesota. [REDACTED] explains that while pursuing his Ph.D., the petitioner displayed a strong background in animal agriculture and mastery of several techniques, including the use of SiRNA to suppress expression of a binding protein. [REDACTED] continues that the petitioner's doctoral research focused on the insulin-like growth factor binding protein IGFBP-3. Specifically, according to Dr. [REDACTED] the petitioner discovered and characterized the mechanism of action by which IGFBP-3 regulates proliferation and differentiation of cultured embryonic porcine muscle cells, demonstrating

that IGFBP-3 plays a key role in regulating both the rate and extent of muscle growth in pigs. Dr. [REDACTED] projects that these studies “along with those he will accomplish in the future, will provide the information necessary to use molecular biology and genetic engineering strategies to increase rate and efficiency of muscle growth in pigs.” In addition, [REDACTED] suggests that because loss of sensitivity to IGFBP-3 is “thought to play a role in the uncontrolled proliferation of some cancer cells,” the petitioner’s research may be applicable to cancer research. [REDACTED] asserts that the petitioner’s publication rate was one of the best achieved by any of [REDACTED]’s Ph.D. students. We will not, however, narrow the petitioner’s field to other Ph.D. students. Finally, [REDACTED] notes that the petitioner’s research served as the basis for the renewal of a competitive research grant. [REDACTED] does not explain whether it is unusual for him to utilize his collaborations with his students to seek renewals of his grants. [REDACTED] and [REDACTED], the petitioner’s other Ph.D. advisors, provide similar information.

[REDACTED], the petitioner’s postdoctoral supervisor, discusses the petitioner’s somewhat new area of research at the University of North Carolina, insulin-like growth factors and their relation to the control of atherosclerosis in patients with diabetes. [REDACTED] explains that by focusing on cell stress caused by high blood glucose, the petitioner discovered “a new signaling mechanism by which the stress impulse is conveyed to the cells through a unique signaling protein” and showed “how induction of this protein changes the signaling environment such that cells will become much more susceptible to growth stimulation by this growth factor in response to this injury.”

[REDACTED] speculates as to the future potential of the petitioner’s work in this area and notes that the petitioner presented this work shortly before the petition was filed. The petitioner submits letters from members of the field who attended this presentation. [REDACTED], a senior investigator at GlaxoSmithKline, asserts that the petitioner’s work at the University of North Carolina provides new molecular targets to develop a potential new anti-atherosclerotic drug. [REDACTED] does not suggest that GlaxoSmithKline has expressed any interest in pursuing such a drug based on the petitioner’s research. [REDACTED], an associate professor at the University of Tokyo, asserts that the petitioner’s results on the difference of three amino acids in human and mouse $\beta 3$ integrin “partially explain why diabetic mouse does not spontaneously form atherosclerotic lesion under the hypoglycemia condition.” [REDACTED] explains that this work is important in determining the appropriate animal model to study atherosclerosis.

The remaining independent references provide general praise of the petitioner’s work and the importance of his area of research, but fail to explain how the petitioner’s work is already impacting the field.

The evidence of citation as of the date of filing does not demonstrate that any one of the petitioner’s articles reporting his research at the University of Minnesota or the University of North Carolina has been cited more than seven times. Subsequent citation does not relate to the petitioner’s 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 (Reg’l. Comm’r. 1971).

The record reflects that the petitioner's work in China, before obtaining his Ph.D., is well cited and was recognized with a provincial award, but the record lacks an explanation of this impact. Regardless, the petitioner must demonstrate sustained national or international acclaim. The petitioner has been performing research in the United States in a somewhat different area since 1999. The petitioner's recent research is not documented to have been as influential. While this work has been moderately cited, the letters in the record provide mostly speculation as to the future significance of this work rather than an explanation as to how this work has already had a major impact on the field.

In light of the above, 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 director concluded that the petitioner meets this criterion. Based on the petitioner's extensive publication record, including evidence of consistent citation, we reaffirm the director's finding.

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.

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 postdoctoral research fellow, relies on his publications, citation record, participation in the peer review process, provincial and academic awards and the praise of his peers. 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] has served as a panel manager, evaluating hundreds of research proposals. [REDACTED] and [REDACTED] have also reviewed research proposals for the U.S. Department of Agriculture. [REDACTED] is a senior editor for an international journal. Dr. [REDACTED] is Chair of the Animal Science Department at Iowa State University and has evaluated faculty for promotion to tenure "at various universities throughout the United States." Independent reference [REDACTED], a program leader at the Medical Research Council in Scotland, asserts that he serves on the editorial board of two journals. Thus, the top of the field appears significantly higher than the level the petitioner has attained.

Review of the record does not establish that the petitioner has distinguished himself as a 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 research 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.