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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
and Immigration
Services**

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FILE:

[REDACTED]
LIN 07 070 50968

Office: NEBRASKA SERVICE CENTER

Date:

JUN 24 2009

IN RE:

Petitioner:
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)

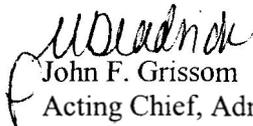
ON BEHALF OF PETITIONER:

[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.

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 for the beneficiary 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 beneficiary's sustained national or international acclaim required for classification as an alien of extraordinary ability.

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 of the beneficiary as an alien with extraordinary ability in the sciences, specifically as a director of customer programs. The petitioner initially submitted a job offer for the beneficiary, articles authored by the beneficiary, information about the petitioner, the beneficiary's educational diplomas, information about companies the beneficiary previously worked for, patents obtained by the beneficiary, and information about the beneficiary's salary. In response to a Request for Evidence ("RFE") dated February 12, 2008, the petitioner submitted letters of recommendation, an updated citation list,

information about the journals that published the beneficiary's articles, information about the petitioner's business deals, and information about the beneficiary's salary.

On August 29, 2008, the director denied the petition, finding that the beneficiary did not meet any of the regulatory criteria for establishing sustained national or international acclaim at 8 C.F.R. § 204.5(h)(3). On appeal, the petitioner argues that the beneficiary meets the criteria at 8 C.F.R. § 204.5(h)(3)(v), (vi), (viii), and (ix).

(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 he 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 March 11, 2007 letter from [REDACTED] a former co-worker of the beneficiary, states that he and the beneficiary together designed a strategy to measure kinase enzyme activity which had commercial application. He stated that the beneficiary "also made significant contributions to the understanding of the regulation of glycogen metabolism, with implications to diabetes research." The letter from [REDACTED] European Marketing Manager for the petitioner, states that the beneficiary was recruited to work for the petitioner "due to his reputation as a leader in the life science's field, and his significant contributions to Cell Signaling research." In addition, the petitioner licensed the work done by the beneficiary and [REDACTED], which "was commercialized . . . [and] proven to be highly successful in large measure because of its ability to accelerate early stage kinase drug discovery campaigns." Lastly, [REDACTED] stated that the beneficiary's "research and discoveries have impacted the scientific community and he is one of few scientists whose work has enabled pharmaceutical and biotech companies to accelerate critical therapeutic drug discovery campaigns." The letter from [REDACTED] an assistant professor at Harvard Medical School, states that he is "familiar with [the beneficiary's] work and writings . . . [as the beneficiary's] articles have significantly impacted the field of life science in many ways."

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 postdoctoral 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 to the field as a whole. 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 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. Without evidence showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of contributions of major significance, we cannot conclude that he meets this criterion.

The petitioner also submitted evidence of two patents obtained by the beneficiary (obtained in multiple jurisdictions): “Methods and reagents for assaying protein kinase activity” and “Protein domains in the hepatic glycogen-targetting [sic] subunit of protein phosphatase 1 and methods of making and using the same.” The letter from ██████ stated that the information in these patents was being used as it “allows for research to be performed at a dramatically accelerated pace leading to more readily available drug candidates for the treatment of debilitating and deadly diseases.” ██████ states that “[r]esearchers at many of the top pharmaceutical companies in the world are currently using [the beneficiary’s] product portfolio to accelerate kinase drug discovery programs.” ██████ also noted that the beneficiary “also significantly contributed to the life sciences field through his studies on the regulation of glycogen metabolism and hormone action.” The petitioner presented no evidence to support ██████ assertions nor did ██████ explain how he came to learn about the use of the beneficiary’s inventions by pharmaceutical companies. 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm. 1972)). The petitioner submitted no evidence of the use of the beneficiary’s diabetes research or the impact that research has had on the field.

For all of the above stated reasons, the petitioner has not demonstrated the beneficiary’s 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.

The record contains evidence of numerous articles authored in professional publications by the beneficiary as well as an extensive amount of independent citations to the beneficiary’s articles. We find such evidence sufficient to establish the beneficiary’s eligibility under this criterion. We, therefore, withdraw the director’s finding on this issue.

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

To meet this criterion, a petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization itself. Counsel claims that the beneficiary is eligible under this criterion by virtue of his work with the petitioner, the University of Dundee (“University”), and Upstate.

The petitioner submitted its Securities and Exchange Commission filings, its 2005 and 2006 Annual Reports, information from its website, information about its grant program, and a list of Life Science Awards won by the company. The petitioner also submitted an article from the “BioInformatics” website entitled “[The petitioner] Ranked Top supplier in Drug Discovery Market” and a news release entitled “[The petitioner’s] Products In Use for Mad Cow Disease Testing; Patents Issued for Electrophoresis Gel Solutions.” The petitioner submitted no evidence that the receipt of a Life Science Award conveyed acclaim upon the recipient or that those awards indicate that the petitioner enjoys a distinguished reputation. Similarly, the petitioner submitted no evidence to show that BioInformatics is an accepted judge of companies’ standing within the drug discovery market. The

November 30, 2006 letter from [REDACTED] corporate counsel to the petitioner, provides background information about the petitioner including its basic business and pursuits, however, it does not indicate the petitioner's reputation in the field. As such, the petitioner did not present evidence that it enjoys a distinguished reputation. The petitioner did submit evidence showing that the beneficiary performs in a leading or critical role. The November 30, 2006 letter from [REDACTED] states that the beneficiary holds the position of Director of Customer Programs, which is a "senior leadership position that directly impacts [the petitioner's] bottom line success." [REDACTED] continues: "[the beneficiary] routinely interfaces with top scientific professors, researchers, doctors, academicians, business leaders and other professionals . . . [he also] serves as a critical link between [the petitioner's] Research and Development and Marketing functions, its pharmaceutical research customers, and the biotechnology marketplace. In this position, [the beneficiary] is responsible for driving and expanding [the petitioner's] product and services portfolio into the marketplace on a global basis." This description of the beneficiary's duties shows that he performs in a leading role for the petitioner.

Information about the University shows that the Division of Signal Transduction Therapy ("DSTT") is a collaboration between the University and several major pharmaceutical companies. The letter from [REDACTED] states that the DSTT "has become a model for knowledge transfer between the academic and commercial sectors" and that the DSTT received the Queen's Anniversary Prize, which is "the most distinguished award that can be made to a UK institution for higher or further education." The receipt of this prize was also mentioned on the University website. The petitioner also submitted an article about the continuing collaboration between DSTT and the pharmaceutical industry. An article from *Medical News Today* states that [REDACTED] runs the Protein Phosphorylation Unit and that this Unit "is recognised as the world's most important centre in this area and has pioneered collaboration with the pharmaceutical industry to help develop drug development." This information indicates that the DSTT enjoys a distinguished reputation, however, the petitioner presented no evidence that the beneficiary played a leading or critical role for the DSTT. The letter from [REDACTED] states that the beneficiary's research constituted a leading or critical role for DSTT and that "[u]nder [the beneficiary's] early leadership of the scientific operations function, the DSTT has evolved into an internationally respected academic/commercial collaboration." [REDACTED] provides no details as to how the beneficiary's work led to the DSTT's evolution. The petitioner also submitted a list of [REDACTED] past postdoctoral researchers, which indicates that the beneficiary served in such a capacity. The subordinate role of postdoctoral researcher is designed to provide temporary research training for a future professional career in the field of endeavor. There is no evidence demonstrating how the petitioner's role differentiated him from the other researchers in the department where he worked, let alone more senior faculty. [REDACTED] letter indicates that the beneficiary served as "Manager of Scientific Operations and Commercial Development" at the DSTT for three years, however no evidence was presented to show that this was a position separate from the work that the beneficiary did as a postdoctoral researcher. Although [REDACTED] obviously valued the beneficiary's contribution, the evidence presented does not indicate that the beneficiary served in a leading or critical role for the DSTT. In addition, although the DSTT received the Queen's Anniversary Prize, the prize was given to the DSTT in 2006, which was three years after the petitioner left the DSTT.

The only information submitted about Upstate is a printout of that company's website and a statement from the Serologicals Corporation. No information appears in the record to indicate that Upstate enjoys a distinguished reputation such as about its standing in the community or world. Even if Upstate had been shown to enjoy a distinguished reputation, the information provided about the beneficiary's role does not indicate that it was leading or critical. The letter from [REDACTED] states that the beneficiary served as a senior executive with Upstate and "held direct responsibility for the European Business Development team and matrix management responsibility for product development teams in R&D and Manufacturing" and that the beneficiary contributed

to Upstate through “his direct impact on the product and technology portfolio” in that the beneficiary licensed the beneficiary’s inventions and products. The information provided about Upstate indicates that it only has 31 employees and that the beneficiary did not serve at the top level as [REDACTED] served as his supervisor.

As such, the petitioner has not established that the beneficiary meets this criterion.

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

The November 30, 2006 letter from [REDACTED] states that the beneficiary earns a \$161,871 base salary and the statement from [REDACTED] global payroll manager, indicates that the beneficiary received a \$47,402 incentive bonus in March 2006. The information submitted from the Bureau of Labor Statistics indicates that a marketing manager in the field of scientific research and development services earned an annual mean wage of \$124,560 in 2005. In 2009, the mean wage in this field was \$144,720. The beneficiary’s salary is above average, but not “significantly high . . . in relation to others in the field.”

Accordingly, the petitioner did not establish that the beneficiary meets this criterion.

Lastly, the statute and regulations require that the beneficiary seek to continue work in his 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). The evidence presented concerning the articles authored by the beneficiary, the claims that the petitioner made about the beneficiary’s contribution the field, and the work done for DSTT and Upstate concerns scientific research and findings. The job described by the petitioner that the beneficiary does concerns business and its components, such as marketing. Although the position with the petitioner relies upon the beneficiary’s scientific education and experience, it does not involve the same skill set that a job as a scientist requires as evidenced by the different settings in which these jobs are performed: the beneficiary made his scientific discoveries and did his research in a laboratory as opposed to his job with the petitioner that is done in a more traditional office setting. Even though the petitioner views the beneficiary’s scientific discoveries and background as an asset and even if the petitioner would not have hired the beneficiary were it not for this scientific background, the job that the beneficiary performs for the petitioner in upper management is a business position and not a scientific position. As such, we are unable to conclude that the beneficiary will continue to work within his area of expertise.

In this case, the petitioner has failed to demonstrate that the beneficiary received a major, internationally recognized award, or that he 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 beneficiary has distinguished himself 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 is not persuasive that the beneficiary’s achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established the beneficiary’s 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.