



U.S. Citizenship
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FILE:

SRC 07 800 15601

Office: TEXAS SERVICE CENTER

Date: MAY 20 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:

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.

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 sustained and the petition will be approved.

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. Specifically, the director concluded that the petitioner met only one of the ten regulatory criteria, of which an alien must meet at least three.

On appeal, the petitioner submits a statement and new evidence. For the reasons discussed below, while many of the director’s concerns are valid and not all of the evidence carries the weight imputed by the petitioner, we find that the petitioner has submitted evidence of judging the work of others that goes beyond what is inherent to the field, pursuant to 8 C.F.R. § 204.5(h)(3)(iv), and objective evidence that his contributions have impacted the field pursuant to 8 C.F.R. § 204.5(h)(3)(v).

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 life and environmental scientist. 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 director concluded that the petitioner has established that he meets the scholarly articles criterion set forth in the regulation at 8 C.F.R. § 204.5(h)(3)(vi). While we strongly reject the petitioner's assertions regarding his inclusion in "Who's Who" publications as they relate to the published materials criterion set forth at 8 C.F.R. § 204.5(h)(3)(iii), we find that the record adequately demonstrates that the petitioner meets two criteria in addition to the criterion found to be met by the director.

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 evidence of his selection for inclusion in Marquis' "Who's Who in America." The edition includes 110,000 biographies; 21 biographies appear on the petitioner's page alone. The petitioner was also selected to appear in "Who's Who in Science and Engineering," which includes 50,000 biographies. While the letters inviting the petitioner to submit his biography state that no payment is required, they heavily promote the purchase of the volume.

The petitioner also submitted evidence that the International Atherosclerosis Society's Internet newsletter featured one of the petitioner's articles on a list of recommended literature articles in the field. In addition, the Duke University Medical Center's newsletter, *Inside*, included a brief mention of the petitioner's selection for "Who's Who in America." The accompanying materials reveal that it is distributed "throughout the Health System and Medical Center."

Finally, the petitioner submitted an article on the American Physiological Society's website about the petitioner's Ph.D. collaborator, [REDACTED] and the work he will present at an upcoming conference. The article does not mention the petitioner by name.

The director concluded that the materials did not constitute published materials about the petitioner in professional or major trade journals or other major media. On appeal, the petitioner asserts that "Who's Who in America" is the leading biographical reference publisher of the nation's highest achievers and should be considered major media. The petitioner asserts that while Marquis' selection standards are not available to the general public, they utilize "more than 80 proprietary standards."

The petitioner is not persuasive. The petitioner is relying primarily on Marquis' own promotional materials regarding their prestige. As stated above, the petitioner's one-paragraph biography appeared along with 110,000 and 50,000 other brief biographies in these volumes. The company heavily promotes the sale of volumes to those invited to submit biographies, demonstrating that each volume is similar to a vanity press. Appearing as one of tens of thousands of other successful individuals in a frequently published directory is not indicative of or even consistent with national or international acclaim.

The petitioner also submits an article posted on www.medicalnewstoday.com about one of the petitioner's articles published after the date of filing, *Evolution of a Sperm Activator*. In addition, the petitioner submits evidence that an Internet search on the website www.google.com for the phrase "evolution of a sperm activator" produced 1,100 results. While the petitioner submitted the first page of results, the petitioner has not established that all or even the majority of these results represent discussion of the petitioner's article rather than simple links. Moreover, a search for a phrase does not establish that every result relates to the petitioner's article rather than an unrelated discussion that uses that particular phrase. Regardless, the petitioner's article and the article posted on www.medicalnewstoday.com postdate the filing of the petition. The petitioner must establish eligibility as of that date. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Thus, we cannot consider evidence of achievements after the petition was filed.

The petitioner does not contest the director's conclusion that the remaining materials submitted initially are either not about the petitioner or did not appear in a professional or major trade journal or other major media. We concur with the director.

In light of the above, the petitioner has not established 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.

The petitioner submitted evidence that he has reviewed articles for the *Medical Science Monitor*, the *Journal of Cellular Physiology*, *Future Cardiology*, *Expert Review of Cardiovascular Therapy* and *Molecular Biology and Evolution*. In addition, the petitioner submitted evidence that he was the sole author of one review article and a coauthor of another review article. Finally, the petitioner submitted a letter from [REDACTED] a professor at Northwestern University and Chair of the American Society for Cell Biology (ASCB), who asserts that the petitioner was a member of the Peer Screening Panel for ASCB and helped identify 12 of 1,277 abstracts as "novel and noteworthy" picks for a conference press book. The petitioner also submitted the table of contents for the press book identifying the petitioner as a Public Information Committee associate and one of 15 members of the screening panel.

The director concluded that peer review was routine in the field and that the review articles, while informative, did not involve judging the work of the cited authors. The director then stated that the

evidence “does establish that the [petitioner] functioned as a judge of other researcher’s work.” Given the director’s full analysis, the final sentence appears to be a typographical error. On appeal, the petitioner asserts that the director found that the petitioner meets this criterion. This conclusion is not supported by the director’s analysis. The petitioner, however, does address the director’s analysis, asserting that he was invited to review articles because of his recognition in the field, that he evaluated abstracts submitted for a symposium and that his review articles did evaluation the work being reviewed, including identifying some of the articles as “of interest” and “of considerable interest.”

We concur with some of the director’s concerns. We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys sustained national or international acclaim. Moreover, review articles would appear to fall under the scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi). Review articles are primarily a compilation of other work in the field. Of all the references cited in the petitioner’s sole author review article, only one is identified as “of interest” and all of the articles identified as “of considerable interest” are other review articles. Without evidence of the standards for identifying an article as “of interest” or “of considerable interest,” we cannot determine whether the inclusion of these designations suggests that the petitioner was truly judging the work of the references cited. For example, if the number of citations is a factor, merely determining the number of times each reference has been cited is not judging the work of that reference.

While we concur with the director regarding the above concerns, the director does not appear to have considered the petitioner’s participation on the review panel for ASCB. While serving as a peer reviewer and authoring review articles cannot serve to meet this criterion alone, when considered in the aggregate with the petitioner’s participation on the ASCB review panel, which involved evaluating 1,277 abstracts to rank the top 12, we are satisfied that the petitioner meets this criterion.

Thus, the petitioner has established that he meets this criterion.

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

The petitioner received his medical degree from Hunan Medical University and then worked as a physician in China, focusing on clinical cardiology. The petitioner then obtained a Ph.D. from the University of Calgary and currently works at the Duke University Medical Center.

The petitioner submitted several letters detailing his research contributions to the field of cardiology. [REDACTED] a professor at the University of Manchester School of Medicine, asserts that the petitioner identified the molecular identity of K^+ -dependent Na^+/CA^{2+} exchange (NCKX) activity outside eye and brain tissues (non-neuronal tissue). [REDACTED] explains that this was “the first demonstration in the world that these exchanges, named NCKX3, is rich in many tissues and cell types that are previously unappreciated, for instance, vascular smooth muscles.” [REDACTED] notes that this study was widely cited, a fact amply supported in the record.

██████████ continues that the petitioner performed “groundbreaking research into characterizing a novel family of cation/Ca²⁺ exchangers, which changed the long-held classification of the cation/Ca²⁺ exchanger superfamily by scientists in the field.” ██████████ concludes that these “discoveries received widespread acclaim in the field and [are] cited frequently as in [sic] prestigious journals such as *Science*, *Circulation Research*, and *Physiological Reviews*.” Once again, the assertion that this work is widely cited is amply supported in the record.

The remaining letters, from both the petitioner’s close colleagues and more independent sources, provide similar information. Given the letters in combination with the remaining evidence in the record, including the petitioner’s citation record, we are persuaded that the petitioner meets this criterion.

In review, while not all of the petitioner’s evidence carries the weight imputed to it by the petitioner, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. The petitioner has established that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.