

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

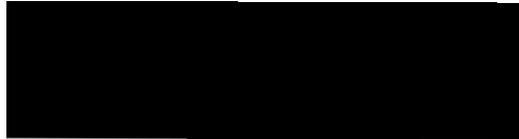
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

B2



FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: OCT 06 2009  
LIN 08 152 51627

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:



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).

*U Deadrick*  
Perry Rhew  
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, counsel submits a brief and additional evidence. For the reasons discussed below, while we find that the petitioner meets the scholarly articles criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi) (not addressed by the director), we uphold the director’s overall conclusion that the petitioner has not established his eligibility for the exclusive 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 researcher. 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 under 8 C.F.R. § 204.5(h)(3).<sup>1</sup>

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

In response to the director's request for additional evidence, counsel asserted that the petitioner meets this criterion based on his scholastic awards and "several professional awards," most notably his designation as a principal investigator on a research grant. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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). The record contains no award or prizes and, thus, the director did not address this criterion. Counsel does not challenge this conclusion on appeal.

As stated above, the record contains no awards or prizes. Regardless, academic awards for which the most experienced and renowned members of the field do not compete cannot be considered nationally or internationally recognized prizes or awards for excellence in the field. Moreover, research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement.

In light of the above, the petitioner has not established that he meets this criterion.

*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 petitioner initially submitted evidence that he is a professional member of the Botanical Society of America (BSA) and information apparently downloaded from the BSA's website indicating that membership is open to "any person who is interested in plant biology and who is not eligible for, or does not desire inclusion in, the categories that follow," including student membership, emeritus

---

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

membership, family membership, K-12 & Community College Classroom Teacher membership, affiliated membership, amateur botanist and associate membership.

The petitioner also documented his membership in the Society for Conservation Biology (SCB). While the materials about SCB submitted do not provide the actual membership requirements, they strongly suggest that payment of the membership fee is the sole or primary requirement. (Individuals residing in developing countries may qualify for a sponsored membership, which appears to be a free membership funded by the Nature Conservancy.) The petitioner further submitted evidence that he is a member of the Indian Society for Plantation Crops (ISPC). The general information about the society provided does not address the society's membership requirements. The petitioner also submitted evidence of his membership in the National Geographic Society but provided no evidence regarding the membership requirements for this society.

More significantly, the petitioner provided evidence that the petitioner is an elected fellow of the Indian Society of Genetics and Plant Breeding. The petitioner, however, provided no information about this society, including the requirements for election to fellow status.

On December 10, 2008, the director requested evidence of the membership requirements of the relevant societies. In response, counsel reiterated the memberships listed above and asserted that they "impose on their members rigid entrance requirements, including a demonstrated record of experience and original contributions to the field." The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The petitioner did not submit the requested evidence. Rather, the petitioner submitted a letter from [REDACTED] a professor at the University of Illinois at Chicago (UIC). While [REDACTED]'s letter includes a heading relating to this criterion, the discussion that follows discusses the petitioner's conference presentations, which fall under the scholarly articles criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi) and discussed below. [REDACTED] does not discuss the membership criteria for the above societies. Regardless, primary evidence of the membership requirements would include the official bylaws of the society or other official information published by the society. Affidavits in lieu of primary evidence are not acceptable unless the petitioner demonstrates that both primary and secondary evidence are either unavailable or do not exist and the affiant attests to direct personal knowledge of the information provided. 8 C.F.R. § 103.2(b)(2).

The director concluded that the petitioner had not demonstrated that the societies of which he is a member limit membership to those with outstanding achievements. On appeal, the petitioner does not address the previously documented memberships or provide evidence of their membership requirements. Notably, the record is still absent the requirements for fellowship in the Indian Society of Genetics and Plant Breeding. Rather, the petitioner submits evidence of his full membership in Sigma Xi and evidence that Sigma Xi membership is limited to those who have demonstrated a "noteworthy achievement." A "noteworthy" achievement, however, may be demonstrated by first authorship on two

articles, patents, written reports or a thesis dissertation, none of which are outstanding achievements in the petitioner's field. Regardless, the petitioner was elected to membership in Sigma Xi in 2009, after the petition was filed. Thus, this new membership cannot serve to establish the petitioner's eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 4 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

It is the petitioner's burden to submit evidence relating to each factor of the criterion set forth at 8 C.F.R. § 204.5(h)(3)(ii). While counsel is correct that the burden of proof in these proceedings is only a preponderance of the evidence, we will not presume that a given society requires outstanding achievements of its members. From the evidence submitted, BSA and SCB clearly do not require outstanding achievements of their members. The record is silent as to the membership requirements for the National Geographic Society, which the petitioner has not established is anything other than a magazine subscription, or ISPC. While we acknowledge that the petitioner is a fellow of the Indian Society of Genetics and Plant Breeding, the petitioner has submitted no information about this society at all. The petitioner's membership in Sigma Xi postdates the filing of the petition and, for the reasons discussed above, cannot be considered. Thus, in light of the above, the petitioner 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.*

Counsel initially asserted that four letters, three of which are from within the State of Kerala in India where the petitioner was employed, requesting reprints of the petitioner's articles serve to meet this criterion. Counsel does not explain how these requests, which are not published and do not appear in professional or major trade journals or other major media, are covered under the published materials criterion set forth at 8 C.F.R. § 204.5(h)(3)(iii). The director's request for additional evidence asserts that the petitioner had initially submitted citations of his work, but the record does not support this statement. The director, however, noted that footnoted references to the petitioner's work cannot serve to meet this criterion.

In response, counsel asserted for the first time that the petitioner's work has been "widely" cited and that the citations serve to meet this criterion. Counsel opined that citations should serve to meet this criterion because in the petitioner's "selective, specialized field," review articles and monographs rarely contain an evaluation of the work cited. The petitioner submitted ISI Web of Knowledge results for three of the petitioner's articles reflecting no citations of these articles. A fourth result reflects an article coauthored by the petitioner which has been cited six times. Counsel does not explain how six citations amount to widespread citation.

The director did not specifically address this criterion in the final decision. On appeal, counsel no longer asserts that the petitioner meets this criterion. The plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(iii) requires evidence of published material "about" the petitioner relating to his work.

Articles that merely cite the petitioner are about the authors' own work or, in the case of review articles, about recent trends in the field. As such, 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.*

Initially, the petitioner submitted a letter from [REDACTED] confirming that the petitioner served as a member of the Editorial Committee of the Rubber Research Institute of India's "Annual Report" from 1996 through 2004. Counsel explicitly stated that this evidence was submitted to meet this criterion. The petitioner also submitted a laboratory manual co-edited by the petitioner. This manual was published by the Rubber Research Institute of India in preparation for a course in 2005. Despite this evidence, the director's request for additional evidence stated that no evidence was submitted relating to this criterion. In response, counsel reiterates the petitioner's position as a report editor and asserts that the petitioner has also supervised student work.

[REDACTED] asserts that at UIC, the petitioner serves as a "research mentor," supervising and evaluating student research. [REDACTED] further asserts that the petitioner has supervised student work at Mahatma Gandhi University, but does not explain how she has first hand direct knowledge of this supervision.

The director acknowledged the petitioner's service on the editorial committee but concluded that the record lacked the selection criterion for this committee. The director then implied that service in an editorial position would carry more weight than the evidence submitted without explaining why the petitioner's membership on the editorial committee is not an editorial position.

On appeal, the petitioner submits several annual reports which list him as one of a small number of editors and noting India's rank as first in productivity of rubber. The petitioner also submitted a new letter from [REDACTED] asserting that the peer review of the report requires an extraordinary grasp of the field and "attests to [the petitioner's] standing as an influential member of the scientific community whose achievements have extended his reputation beyond his immediate circle of peers."

The evidence submitted to meet this criterion, or any criterion, must be indicative of or consistent with sustained national or international acclaim.<sup>2</sup> Internal review of student work is not indicative of or consistent with national or international acclaim and, thus, cannot serve to meet this criterion. *Kazarian v. USCIS*, 2009 WL 2836453, \*5 (9<sup>th</sup> Cir. 2009). As such, the petitioner's review of student work at UIC cannot serve to meet this criterion. The record contains no first-hand evidence documenting the petitioner's exact role at Mahatma Gandhi University or even when it occurred. We cannot ignore that the petitioner is a graduate of this institution and was a long time resident of Kerala State. Thus, any role as a reviewer at this institution is not indicative of or consistent with recognition outside of his alma mater or, at best, Kerala State. Finally, while the petitioner did serve on the editorial committee for several annual reports and edited a course laboratory manual, we cannot ignore

---

<sup>2</sup> *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).

that he was an employee of the Rubber Research Institute of India, the institute issuing the reports and sponsoring the course, during this time. Thus, these duties do not establish his recognition beyond his own employer.

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 petitioner has submitted evidence of his publications, a small number of citations of a single article for which he is listed as the sixth author and letters primarily from his colleagues and other scientists in the State of Kerala in India.

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 regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). We will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. *See also Kazarian v. USCIS*, 2009 WL 2836453 at \*6 (publications and presentations are insufficient absent evidence that they constitute contributions of major significance).

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 (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. Vague, solicited letters from local colleagues or letters that do not specifically identify contributions or how those contributions have influenced the field are insufficient. *Kazarian v. USCIS*, 2009 WL 2836453 at \*5.

The petitioner received his Master of Science in Plant Breeding from Kerala Agricultural University, India, in 1988. The petitioner was employed as an agricultural officer at the Department of Agriculture, State of Kerala, from January 1989 through May 1990. From May 1990 to April 2006, the petitioner was a scientist in the Germplasm Division of the Rubber Research Institute of India, located in Kerala State. During this time, he obtained his Ph.D. in Botany from Mahatma Gandhi University in Kerala, India in 2001. He also spent two months as a Visiting Scientist at Cornell University in 2003. As of August 2006, the petitioner has been working as a visiting research specialist, postdoctoral associate at UIC.

Initially, [REDACTED], in whose laboratory the petitioner works at UIC, asserts that at UIC, the petitioner focused on the molecular population genetics of oaks, including a project “with profound significance.” [REDACTED] concedes, however, that this work had only been submitted for publication. As this work has yet to be disseminated or applied in the field beyond the petitioner’s own institution, the petitioner cannot establish that this work constitutes a recognized contribution of major significance.

In her second letter, [REDACTED] asserts that projects in the petitioner’s field are long-term, often spanning decades and requiring a sizable team to complete the project. Thus, according to [REDACTED], researchers in this field should be judged “in large part through their performance as is indicated in such public forums as publications, conferences, influence, mentoring, reputation and other.” [REDACTED] reaffirms that the petitioner contributed significantly to her project. While [REDACTED] notes that one of the petitioner’s conference presentations is to be published as a book, it had yet to be published in this format as of the date of filing. While we do not contest that some projects may be long term projects, it remains that it is the petitioner’s burden to demonstrate that his work has impacted the field if it is his position that he meets this criterion.

[REDACTED] of the Institute for Genomic Diversity (IGD) at Cornell University, explains that the petitioner worked at the institute in 2003. During this time, according to [REDACTED] the petitioner worked on a genetic mapping project that allowed publication of a reconciled map of grain sorghum. [REDACTED] concludes that the petitioner “made significant contributions” to the work being formed in that laboratory but does not explain how this work has impacted the field beyond Cornell University.

a former researcher at IGD, asserts that she met the petitioner in 2003 at IGD where she served as his supervisor. She explains that his work at IGD “led to the publication of a key research paper that allowed, for the first time, to link two maps (a combination of different genetic maps) of sorghum.” [REDACTED] does not explain, however, the petitioner’s specific contributions to this research, which was carried out by several researchers, or how it has impacted the field. While this article, which lists the petitioner as the sixth author, has been cited, it has only been minimally cited. [REDACTED] also speculates as to the future applications of the petitioner’s work with island oak, but does not provide examples of how it had already impacted the field.

The petitioner also submitted two letters from colleagues at the Rubber Institute of India, [REDACTED] and [REDACTED]. [REDACTED] provides general praise but does not identify any specific contribution or explain its impact. [REDACTED] does single out the petitioner’s book on rubber germplasm, *Descriptors of Rubber*, as “impressive” and “prepared according to international guidelines” as well as his edit of a “very useful ‘Laboratory Manual’ on the application of molecular markers, both of which were published by the institute.” The record does not resolve why it is unique for the book to be prepared according to international guidelines and does not establish the book’s impact in the field.

[REDACTED] asserts that the “wide range of research problems handled by [the petitioner] has led to practical and original contributions that have been published in leading science journals.” More specifically, [REDACTED] asserts that the petitioner promoted several unique concepts in rubber tree germplasm, “including the evaluation of genetic divergence; morphological characterization using prescribed descriptors; screening for biotic and abiotic tresses in the tree population; [and] application of molecular markers to supplement conventional evaluation procedures.” [REDACTED] also mentions the petitioner’s book and laboratory manual but does not explain how any of the petitioner’s work has impacted the field.

The petitioner also submitted letters from a colleague at Tamil Nadu Agricultural University who met him at Cornell and subsequently attended his workshop in India and another researcher at that university as well as other colleagues within the State of Kerala who attended his workshop. In general, these letters provide general praise of the petitioner, his publications and his workshop. While several references confirm that the petitioner has advanced the general pool of knowledge in the field, not every original finding that contributes to the general pool of knowledge is a contribution of *major significance*. These letters do not explain the petitioner’s impact in the field. For example, while [REDACTED], a professor at Kerala Agricultural University, asserts that he has found several of the petitioner’s publications very useful, he does not provide specific examples of the petitioner’s impact in the field. Some of the references assert that they do not know the petitioner personally and then describe interactions with the petitioner at his workshop and in other situations.

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. As stated above, 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. While the evidence demonstrates that the petitioner is a talented researcher with potential, it falls short of establishing that the petitioner had already made contributions of major significance. 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 petitioner has published numerous articles and several book chapters and has presented his work at several conferences. While the director noted on two occasions that the petitioner's publication record alone could not serve to establish that his contributions were of major significance, the director did not specifically address this criterion. On appeal, counsel submits more information detailing the libraries that carry the books containing chapters by the petitioner. Given the petitioner's publication record in the context of the remaining record of proceeding, including but not limited to the reach of his books, we are satisfied that he meets this criterion.

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

Counsel has asserted and continues to assert that the petitioner has performed a leading or critical role on various research projects. We have considered the petitioner's contributions above. At issue for this criterion are the role the petitioner was selected to fill and the reputation of the entity that selected him for that role. In other words, the nature of the role should be such that selection for the role, in and of itself, is indicative of or consistent with national or international acclaim. The petitioner has worked as a scientist and is currently a postdoctoral research association. The petitioner has not demonstrated that either of these roles is leading or critical for the institutions employing him other than the obvious need to employ competent scientists and postdoctoral research associates.

Without organizational charts or other evidence demonstrating how the petitioner's role fits within the hierarchy of his employers, we cannot conclude that he meets this criterion.

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 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 demonstrates experience and talent as a researcher, 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.