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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: [REDACTED]
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OCT 15 2009

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

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).

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 asserting that the director failed to address specific evidence and even entire criteria claimed by the petitioner. We will discuss all of the evidence and criteria claimed below. For the reasons discussed in the body of this decision, while we find that the petitioner has established the significance of his contributions and published articles, we uphold the director's ultimate conclusion that the petitioner has not established his eligibility for the classification sought. We reach this decision by considering the evidence under the regulatory criteria and in the aggregate.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 synthetic organic chemist. 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).¹

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.

Initially, the petitioner submitted evidence of his membership in Sigma Xi and the American Chemical Society (ACS). The petitioner submitted evidence that Sigma Xi requires a "noteworthy" achievement and boasts 200 Nobel Laureates. The materials also indicate that Sigma Xi accepts 5,000 new members annually. In response to the director's request for additional evidence, counsel conceded that ACS does not have rigorous membership requirements but asserted that Sigma Xi is a qualifying membership. Counsel relied in part on the dictionary definition of "noteworthy." The petitioner also submitted evidence that, according to Sigma Xi materials, a "noteworthy" achievement may be evidenced by publication as a first author on two articles published in a refereed journal, patents, written reports or a thesis or dissertation."

The director concluded that Sigma Xi only requires one "noteworthy" achievement whereas the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires membership based on outstanding achievements in the plural. The director then compared the dictionary definitions of "noteworthy" and "outstanding" and concluded that they were not equivalent.

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

On appeal, counsel asserts that noteworthy achievement references a body of achievement and argues that two first authored articles are required. Counsel further asserts that the dictionary definitions of "noteworthy" and "outstanding" are equivalent.

While the director's analysis is incomplete, counsel is not persuasive that Sigma Xi membership can serve to meet this criterion. We do not find the singular versus plural achievements discussion or the comparison of the dictionary definitions of "noteworthy" and "outstanding" to be useful. At issue is not how Sigma Xi characterizes its requirements but what those requirements actually are. Ultimately, Sigma Xi membership can be earned through two first authored articles, patents, written reports or a thesis or dissertation. The petitioner has not demonstrated that any of these accomplishments are outstanding in his field. It would appear that publication of one's results is inherent within every area of scientific research. Moreover, this office has previously stated that a patent is not necessarily evidence of even a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm'r. 1998). A thesis or dissertation is a graduation requirement for most advanced degrees. Thus, regardless of the word used by Sigma Xi to characterize its membership requirements, we are not persuaded that Sigma Xi requires outstanding achievements.

Our conclusion is consistent with the information provided by the petitioner that Sigma Xi invites 5,000 new members *every year*.² While Sigma Xi may boast Nobel Laureate members, that information is not persuasive. The prestige of the Nobel Prize is not in dispute. It remains, however, that the petitioner is not a recipient of the Nobel Prize. Thus, its significance is irrelevant. That Sigma Xi includes members who have won the Nobel Prize does not impart that distinction to the vast majority of its members who have not been so recognized.

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

In his initial cover letter, counsel stated that he was submitting "Evidence that [the petitioner's] work has been written about and cited in the journal articles of other scientists." This language, however, does not track the regulation at 8 C.F.R. § 204.5(h)(3)(iii), which requires published material about the petitioner relating to his work. The petitioner submitted evidence that his work has been cited in subsequent research articles and in review articles. In addition, the petitioner submitted a February 2005 issue of *Chemical and Engineering News* reporting that a group of chemists led by [REDACTED] the petitioner's supervisor, developed a method to introduce indoles and pyrroles into complex structures using carbonyl compounds, dramatically shortening the route to commercially relevant

² In comparison, the National Academy of Sciences has only approximately 2,100 members *total*. *See* http://www.nasonline.org/site/PageServer?pagename=ABOUT_main_page accessed October 8, 2009 and incorporated into the record of proceeding.

compounds. The article starts by reviewing a 2004 article by [REDACTED] and a graduate student who is not the petitioner. The petitioner is named at the end of the article as the postdoctoral associate with the team that produced an "accompanying paper" in this area. Finally, the petitioner submitted a "highlight" column by [REDACTED] comparing [REDACTED] synthesis methods with those of another research team. The petitioner is the coauthor of one of [REDACTED]'s **articles discussed in the "highlight."**

In the request for additional evidence, the director noted that the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published material about the petitioner and concluded that footnoted references would not suffice. In response, counsel quotes from several of the citing articles, noting that some of the citing articles are review articles. Counsel also reiterated that the petitioner had submitted the "highlight" column and article in *Chemical and Engineering News*. Finally, counsel noted that the petitioner's work was summarized in *Synfacts*, a monthly publication providing summaries of "the current most significant results from the primary literature in whole or in part."

As noted by counsel on appeal, the director did not specifically address this criterion in the final decision.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published material about the petitioner relating to his work. Compare 8 C.F.R. § 204.5(i)(3)(i)(C), requiring evidence of published material about the alien's work. The articles citing the petitioner's work are about the authors' own results or, in the case of review articles, about recent trends in the field. They cannot be credibly asserted to be "about" the petitioner or his work. The highlight column and the article in *Chemical and Engineering News* are about the overall research being conducted by [REDACTED] only some of which was in collaboration with the petitioner. Finally, the reprint of the petitioner's abstract in *Synfacts* does not convert that work from an article by the petitioner to an article about the petitioner or his work.

The above discussion in no way implies that the citations and other evidence submitted under this criterion have no evidentiary value. As will be discussed below, this evidence supports the assertions regarding the significance of the petitioner's contributions and scholarly articles. This evidence does not, however, meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

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.

Initially, the petitioner submitted a request to review a manuscript for *Organic Process Research and Development*. In addition, the petitioner submitted the preface of *Laughing Gas, Viagra and Lipitor: the Human Stories Behind the Drugs we Use* thanking [REDACTED] for reading the manuscript and providing countless invaluable comments and suggestions and listing the petitioner as one of the

"friends and colleagues who also proofread portions of the manuscript." Similarly, the same author thanks [REDACTED] and his "students," including the petitioner, for proofreading another manuscript.

The director's request for additional evidence stated that the petitioner was claiming peer review but the record lacked evidence "to substantiate this claim." In response, counsel reiterated the previously submitted evidence. In addition, counsel asserted that the petitioner's co-authorship of a review article also serves to meet this criterion. The petitioner submitted a letter from [REDACTED] Editor-in-Chief of *Organic Process Research and Development*. [REDACTED] explains that the petitioner is an active and expert reviewer for the journal and that, as a reviewer, he has recommended whether or not to publish a manuscript and, thus, significantly contributed to the success of the journal.

The director concluded that peer review is routine in the field and did not set the petitioner apart from others in the field. On appeal, counsel asserts that the director went beyond the plain language of the criterion, set forth at 8 C.F.R. § 204.5(h)(3)(iv). Counsel then reviews the evidence submitted, which counsel asserts that the director ignored.

We are not persuaded that the limited language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) prevents us from evaluating the evidence submitted in the context of the petitioner's field. The evidence submitted to meet this criterion, or any criterion, must be indicative of or consistent with sustained national or international acclaim. *Accord Yasar v. DHS*, 2006 WL 778623 *9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005). 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 and, by itself, 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 manuscripts for a journal that credits a small, elite group of referees, 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.

The petitioner's service as a proofreader for portions of two books is not persuasive evidence of sustained national or international acclaim. It is clear from the acknowledgements that the books' author sought the review of [REDACTED], who delegated some proofreading responsibilities to his subordinates. Such delegated proofreading duties by one's own supervisor are no more indicative of national or international acclaim than internal review of student work, which cannot serve to meet this criterion. See *Kazarian v. USCIS*, ___ F.3d ___, 2009 WL 2836453, *5 (9th Cir. 2009).

Finally, the petitioner has not established that his co-authorship of a review article constitutes judging the work of others. Counsel asserts on appeal that a review author describes the most important contemporary research being done in the field. Describing recent trends, however, does not involve judging the work reported. The record contains no evidence that in selecting the articles to describe the reviewer chooses those articles based on a subjective evaluation of recent work rather than simply utilizing a test of significance such as counting citations.

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 submitted reference letters, published articles, evidence of widespread citation in the aggregate and coverage of his supervisor's efforts, some of which were coauthored by the petitioner. The director concluded that the statements in the petitioner's reference letters are amenable to verification through documentary evidence and that the record did not establish that the petitioner's work has influenced or been recognized by others to such a degree that it could be considered to constitute contributions of major significance. On appeal, counsel asserts that the letters were submitted as expert opinion, which does not lend itself to documentary support. Counsel concludes that expert opinion is, in fact, "the most persuasive and convincing kind of evidence" of the petitioner's contributions to the field. Counsel questions "who else" would have the qualifications to assess the petitioner's credentials. The director's concern, however, was not the qualifications of the references but the reliance on necessarily subjective opinions in lieu of objective evidence. That said, we find that the director did not sufficiently consider the documentary evidence submitted in this matter.

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*, ___ F. 3d ___, 2009 WL 2836453, *6 (9th Cir. 2009) (publications and presentations are insufficient absent evidence that they constitute contributions of *major* significance).

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*, ___ F. 3d ___, 2009 WL 2836453, *5 (9th Cir. 2009). In this matter, however, the record contains specific letters, including letters from a Nobel Laureate and a member of the National Academy of Sciences, supported by documentary evidence.

In 2003, the petitioner received his Ph.D. in Organic Chemistry from Emory University in Atlanta, Georgia under the direction of [REDACTED]. The petitioner then worked as a postdoctoral associate in [REDACTED] laboratory at the Scripps Research Institute (TSRI) in La Jolla, California through 2006. As of the date of filing, the petitioner was working as a Scientist I at Vertex Pharmaceuticals, Inc. in San Diego, California.

[REDACTED] asserts that, at Emory University, the petitioner developed a novel reaction to produce beta-amino acid derivatives such as Taxol, expanding the scope of these reactions and "dramatically" improving the efficiency of these processes. [REDACTED] asserts that this work was published and we note that this work has been moderately cited.

In addition, [REDACTED] explains that he asked the petitioner to assess the viability of enolizable imines with C-N double bond systems. According to [REDACTED] the petitioner discovered a reaction proven to be general and work well, using this phenomenon to invent "a practical yet unprecedented solution for converting the resulting aminoazetines to their corresponding beta-amino acids." [REDACTED] continues that the petitioner then ruled out several "reasonable looking mechanisms," one of which was favored by [REDACTED] and was "homing in on an unequivocal demonstration of the operative process prior to his departure."

[REDACTED] asserts that while at TSRI, he and the petitioner "completed outstanding work resulting in the pioneering total synthesis of the stephacidins A, B and avrainvillamide," classified as prenylated indole alkaloids. Such alkaloids have been targeted by chemists for 50 years and have a strong potential for use as a novel cancer therapy. The synthesis method relies on the petitioner's method for synthesizing substituted tryptophans. [REDACTED] notes that this body of work has been covered in the trade media and asserts that the administration at TSRI included the team's research in the educational curriculum.

[REDACTED], the Sheldon Emery Research Professor at Harvard University and a Nobel Laureate, asserts that he has not met the petitioner but characterizes the petitioner as one who has gained international recognition for outstanding work. While [REDACTED] letter provides no specifics as to how the petitioner has impacted the field, we take note of the support of a Nobel Laureate.

[REDACTED], Chairman of the Chemistry Department at TSRI and a member of the National Academy of Sciences, notes that the petitioner's work was featured on the cover of *Angewandte Chemie International Edition*, highlighted in *Chemical and Engineering News* and cited by the editors of the *Journal of American Chemical Society* as one of the most accessed papers of 2006. [REDACTED] who authored the highlight column, confirms that the selection of the petitioner's work to feature in a highlight demonstrates its quality and significance. We concur that this attention, in addition to the widespread citation of the petitioner's work adequately supports the letters in the record.

In light of the above, we are satisfied that the petitioner 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 did not explicitly address this criterion. The petitioner has authored several articles and documented that his work is widely cited in the aggregate, with some of his work having accrued a number of citations individually. Thus, we are persuaded that the petitioner meets this second, somewhat related criterion. For the reasons discussed above, however, the evidence falls far short of meeting a third criterion.

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 Scientist I at a private pharmaceutical company, relies on his membership in an honor society that accepts approximately 5,000 new members every year, his volunteer services as a manuscript reviewer, his publication and citation record, and the praise of his immediate circle of peers. While this may distinguish him from other recent postdoctoral associates, we will not narrow his field to others with his level of training and experience. [REDACTED] is a fellow of the Alfred P. Sloan Foundation and has served on the Scientific Advisory Boards of several prominent biopharmaceutical companies. [REDACTED] is a fellow of the American Academy of Arts and Sciences and a member of the National Academy of Sciences. [REDACTED] is a Nobel Laureate and, according to another reference, is "the most cited author in the history of chemistry." Thus, it appears that the highest level of the petitioner's field is far above the level he has attained.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a synthetic organic chemist 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, 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.