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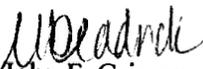
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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).


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 (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification 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. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of 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).

On appeal, the petitioner argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that the director applied incorrect standards in denying the petition.

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, 60898-99 (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, filed on December 26, 2007, seeks to classify the petitioner as an alien with extraordinary ability in bioinformatics, plant genetics and plant molecular biology.

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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).

As aforementioned, each petition must be adjudicated on its own merits under the statutory provisions and regulations which apply. Thus, the petitioner's eligibility will be evaluated under the regulatory criteria at 8 C.F.R. § 204.5(h)(3) relating to the immigrant classification as claimed by the petitioner.

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

The petitioner provided the following evidence to satisfy this criterion:

1. An award certificate for 2nd Prize (10 of 12 ranking) for Achievements of Sciences and Technology for the petitioner's research project, while affiliated with Nanjing Agricultural University, "Development of high-yield, high-quality soybean cultivar Nanong 88-31 and creation of super high-yield record in Southern China" in 2004 awarded by the Ministry of Education, accompanied by a brief description (with no identified source) of the petitioner's research;
2. A certificate for a 3rd Prize for Achievements of Sciences and Technology, wherein the petitioner ranked fifth out of eleven (5 of 11) for his research project, while affiliated with Nanjing Agricultural University, "Mating system and selection experiment methodology in soybean breeding" in 1998 awarded by the Ministry of Agriculture, accompanied by a brief description (with no identified source) of the petitioner's research;
3. A certificate for 3rd Prize for Achievements of Sciences and Technology, wherein the petitioner ranked thirteenth out of fifteen (13 of 15) for his research, while affiliated with the Nanjing Agricultural University, "Utilization of Nannong and Nannong as elite parents in soybean breeding" in 1997 awarded by the Ministry of Agriculture, accompanied by a brief description (with no identified source) of the petitioner's research;
4. A certificate for 2nd Prize for Achievements of Sciences and Technology, wherein the petitioner ranked sixth out of thirty-four (6 of 34) for research, while affiliated with Nanjing Agricultural University, "Characteristics of soybean landrace populations in Southern China and exploring, genetics, and development of elite gene resources" in 1995 awarded by the

- State Sciences and Technology Commission, accompanied by a brief description (with no identified source) of the petitioner's research;
5. A certificate for 1st Prize for Achievements of Sciences and Technology for the petitioner's research, while affiliated with the Nanjing Agricultural University, "Technology and methodology of broadening and improvement of soybean gene resources" in 1995 awarded by Nanjing Agricultural University, accompanied by a brief description (with no identified source) of the petitioner's research;
 6. A certificate 2nd Prize for excellent teaching achievements in colleges and universities, wherein the petitioner ranked second for research, while affiliated with the Nanjing Agricultural University, "Development of Biometrics course, its item bank and its computer management system" in 1993 awarded by the Education Commission of Jiangsu Province, accompanied by a brief description (with no identified source) of the petitioner's research;
 7. A 1st Prize for Advancement of Science and Technology, wherein the petitioner ranked sixth out of thirty-four (6 of 34) for research, while affiliated with Nanjing Agricultural University, "Characteristics of soybean landrace populations in South China and exploring, genetics, and development of elite gene resources" in 1992 awarded by the Ministry of Agriculture, accompanied by a brief description (with no identified source) of the petitioner's research;
 8. A 1st Prize for excellent teaching achievements, while affiliated with Nanjing Agricultural University, for a project entitled, "Development of item bank of miostatistics course and its computer management system," in 1992 awarded by Nanjing Agricultural University; and
 9. The 2nd Prize for an excellent paper, written while affiliated with Nanjing Agricultural University, "Development and application of the BASIC general purpose program package of multivariate data analysis" at the Young Teachers Symposium in 1991 awarded by Nanjing Agricultural University.

The director's Request For Evidence ("RFE") requested evidence to establish the nature and purpose of the petitioner's awards, their significance and the requirements necessary to compete and be selected for the award. In response to the RFE, the petitioner provided additional information for only two of the nine claimed awards, items 1 and 7. With regard to item 7, the petitioner provided a newsletter entitled, "The Ministry of Agriculture Science and Technology Progress Award Incentives," with an unknown source. There is nothing in the newsletter that specifically identifies the information regarding the award as applicable to the award detailed in item 7. Further, on the last page of the newsletter, there is a date of 1996, which would be inconsistent with the petitioner's receipt of the award in 1992. As such, this evidence is not reliable. To provide further information regarding the award in item 1, the petitioner submitted a chart from the National Science and Technology Awards website indicating the factors that are evaluated when picking a recipient of an award. However, again, the information provided on the website is not dated, other than being dated on the day the page was printed (2008), and therefore it is unclear whether these factors for evaluation were utilized in 2004 for the prize detailed in item 1. On appeal, no additional evidence was provided.

The plain language of this regulatory criterion requires the petitioner's "receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." The petitioner failed to submit sufficient evidence to demonstrate that the awards given to the petitioner

constitute a nationally or internationally recognized prize or award. Without other documentation of the awards such as evidence regarding its prestige, selection process or candidates that the petitioner was competing against, the petitioner failed to establish the national or international recognition of these awards. While the petitioner provided further information for items 1 and 7, the petitioner still failed to demonstrate that these awards were consistent with national or internationally recognized prizes or awards, or consistent with such acclaim.

Further, the director, in his decision, noted that “there is no indication that these awards were specifically issued to the petitioner in recognition of his own unique talents.” On appeal, the petitioner’s counsel conceded that items 1 and 7 were parts of a “collaborative effort” and argued that “this should not diminish his individual and unique role in the success of these prize winning projects.” While we agree that a collaborative effort should not diminish an individual’s role in winning a prize, we would disagree that this criterion could be satisfied without providing evidence showing the exact role and involvement of the petitioner in such collaborative projects wherein awards were given.

Moreover, most of the awards were given to the petitioner in the early to mid-1990’s, which is over a decade prior to the filing of this application. As such, the sustained acclaim required under 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3) by this highly restrictive classification cannot be demonstrated. The awards received by the petitioner were also all awarded by Chinese entities. The Biographic Information (“Form G-325A”) submitted by the petitioner in conjunction with this petition indicates that he has resided in the United States since 2001. However, the petitioner has not submitted any awards that he has won in the United States in order to demonstrate sustained acclaim. Further, it is unclear how the petitioner received an award in 2004 from the Chinese Ministry of Education, when he was residing in the United States.

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.

This petitioner initially submitted a certificate from Sigma Xi, The Scientific Research Society, which confirmed that the petitioner was an elected member of the organization in 2007. The petitioner also provided his membership card, which indicated that he is a full member. A page from the Sigma Xi website was also submitted, indicating that a full member must have “shown noteworthy achievement as an original investigator in a field of pure or applied science.” Further, the web page explained that a “noteworthy achievement must 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, in his RFE, found that outstanding achievement was not required for membership in Sigma Xi. In his RFE, the director asked for any additional evidence that would demonstrate the petitioner belonged to an organization which required outstanding achievements of its members.

The petitioner did not further claim that he was eligible for this criterion in response to the RFE or on appeal, nor did he provide any additional evidence for this criterion following his initial submission. As such, in his decision, the director found that the petitioner failed to provide evidence to establish Sigma Xi requires outstanding achievements for its members, as judged by recognized national or international experts in their fields. We agree with the director, finding also that the record lacks the evidence necessary to satisfy this criterion.

In order to demonstrate that membership in an association meets this criteria, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The record lacks evidence to establish that outstanding achievements are required for membership in Sigma Xi. For example, full members of Sigma Xi are required to demonstrate a noteworthy achievement, which can include first authoring two articles including a dissertation or thesis. Such a requirement is not an outstanding achievement as many scientists are required to publish articles either in order to attain their academic degrees or as part of their employment. In addition, the publication of articles is also inherent to the field of science, and mere publication is not consistent with national or international acclaim. Moreover, the petitioner failed to show that his membership in Sigma Xi was judged by recognized national or international experts in the field.

Accordingly, 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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulation, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

The petitioner provided an article from a biotechnology company's newsletter, *Innovations*, dated February 2007, and entitled "Streamlining BAC Fingerprinting of Complex Genomes." The author of

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

the article was not included. The article discussed GenoProfiler Software that the petitioner alleged he developed. The article listed the petitioner as a reference and provided a web address for him. In addition, the petitioner submitted an internet printout from a website that appeared to be selling a book entitled, "The Handbook of Plant Genome Mapping: Genetic and Physical Mapping," which was not written by the petitioner and did not reference the petitioner's name. The petitioner also submitted information regarding the Genoprofiler software package that did not contain a source, date, or author, and did not appear to be from a publication. No new evidence was submitted in response to the RFE or on appeal regarding this criterion.

The director found that the petitioner failed to satisfy this criterion, and we concur with his decision. Among other deficiencies noted by the director, the director found that the article submitted from *Innovations* was not primarily about the petitioner and we agree. The plain language of this regulatory criterion requires that the published material be "about the alien." This article discussed the software package that the petitioner allegedly developed, but did not discuss him. Further, the other materials provided were also not about the petitioner.

This criterion also specifically requires that the evidence submitted contains a title, date, author and translation, if necessary. The *Innovations* article did not contain an author, and the other materials failed to contain dates, authors, and source information.

Moreover, the record failed to contain any evidence (such as circulation statistics) to demonstrate that *Innovations*, which appears to be a newsletter from a private company, is a professional or major trade publications or some other form of major media.

For all of the above stated reasons, the petitioner failed to establish 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 information on various computer programs that he purports to have created, although none of the information identified him as the developer. The petitioner also provided more specific information on his GenoProfiler Software, including a printout listing the persons using this software and a graph showing which country each person is from. The petitioner also cited to the above-referenced *Innovations* article which discusses the software. He also referenced a handbook that talks about his GenoProfiler software, although the evidence does not indicate that he created this software. In addition, the petitioner provided various recommendation letters from his colleagues that were considered with regard to this criterion.

In response to the RFE, the petitioner provided various emails, mainly from students and professors, who were interested in using his GenoProfiler software and requested the username and password for access. The petitioner also submitted two internet printouts to show how many times the GenoProfiler software was downloaded and the total users of BatchPrimer3 User Statistics. He also submitted a few articles relating to the computer programs. The petitioner additionally cited more

than once to the reference letter written by his direct supervisor, in his RFE response brief. No new evidence was submitted on appeal.

While the various computer programs that the petitioner was involved in developing may constitute contributions of major significance, the burden is on the petitioner to establish the significance of his work. The petitioner cannot meet this criterion simply by showing that his work has been created and that others have requested to use it. To satisfy the criterion relating to original contributions of major significance, the petitioner must demonstrate not only that his work is novel and useful, but also that it has attracted sustained attention, had a demonstrable impact on his field at the national or international level or other commensurate evidence. The petitioner has not shown, for instance, how the field has changed as a result of his work, beyond the incremental improvements in knowledge and understanding that are expected from valid original research. Further, the petitioner has not demonstrated that he has earned national or international acclaim as a result of his contributions.

Moreover, although the reference letters provided by the petitioner contain useful information about an alien's qualifications and help in assigning weight to certain evidence, such letters are not a substitute for objective evidence of the alien's achievements and recognition as required by the statute and regulations. Primary evidence of achievements and recognition is of far greater probative value than the opinions of one's professional acquaintances. Further, the petitioner mainly cited to his supervisor's reference letter with respect to this criterion. However, the petitioner's own employer cannot objectively demonstrate that the research community throughout the nation or the world shares the employer's opinions regarding the petitioner's work.

As discussed above, the petitioner has failed to establish how his work has influenced his field and how it is considered to have been a contribution of major significance to his field. Accordingly, 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 submitted evidence of his co-authorship and authorship of several journal articles, limited publications and book chapters. The petitioner provided the first page of each article. For the articles written in Chinese, the petitioner provided a certified translation with only minimal information translated, including the source, title, authors and date. In addition, however, the petitioner also provided a list of the 208 articles that cited to his publications. In response to the RFE, the petitioner submitted a reference letter from [REDACTED] his supervisor at AGS, who stated that the petitioner's "number of publications well exceeds that of comparable researchers in the field." The petitioner also provided an updated list of citations, indicating that his articles have been cited to 227 times. Accordingly, the petitioner has established 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.

The petitioner, in his initial brief, claimed that he performed a critical role for Agricultural Research Services (“AGS”) and the University of California through the research and projects that he conducted. The petitioner cited to reference letters that were submitted which discussed his work. In response to the RFE, the petitioner’s brief argued that the petitioner served in a critical role, as the only Bioinformaticist for AGS. To support this claim, the petitioner provided organization charts indicating that he supervised many postdoctoral candidates, students and other scientist in the NSF Wheat D Genome Physical Mapping Project and the NSF Wheat SNP Discovery Project. In addition, the petitioner provided a list of the project participants. However, it is unclear which project these participants were involved in. On appeal, no new evidence was provided.

The director found that the petitioner failed to satisfy this criterion, and we agree. In order to establish that the petitioner performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment. While the petitioner provided organization charts to show that he played a supervisory function in two research projects, it is unclear whether he played a leading role in the projects overall or if he just led the projects with respect to his specialty, which may have been a minimal part of the entire project. Similarly, there is no evidence demonstrating how the petitioner’s role differentiated him from the others where he worked. We agree with the director that the petitioner has proven that he provided valuable services to his university and AGS. However, this criterion requires the petitioner to not only set himself apart from his peers, but to also demonstrate how his leading or critical role was indicative of national or international acclaim. Further, the petitioner failed to provide any independent evidence from sources outside of AGS or the University of California.

Moreover, the record contains insufficient evidence to demonstrate that AGS or the petitioner’s department, as a self-contained unit, has a distinguished reputation.

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

Counsel argues that the petitioner’s participation and/or presentations at many conferences are comparable evidence of the petitioner’s extraordinary ability as a Bioinformaticist. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of “comparable evidence” only if the ten criteria “do not readily apply to the beneficiary’s occupation.” The regulatory language precludes the consideration of comparable evidence in this case, as there is no evidence that eligibility for visa preference in the petitioner’s occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Moreover, there is no evidence showing that the documentation the petitioner requests evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of his field. The petitioner failed to provide evidence for any of these engagements regarding the type of audience who attended these presentations, the number of attendees, or the selection criteria for the presenters. At best, these presentations are comparable

to the publication of an article in a scholarly journal or original contribution of major significance, as it amounts to the dissemination of technical information to a specialized audience. As such, the evidence does not demonstrate that the petitioner's participation in these conferences conveyed national or international acclaim or that his participation in such events made a contribution of major significance to his field. While the presentations may attest to his originality, the record lacks evidence of the impact his work has had on the field as a whole. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, the classification sought requires "extensive documentation" of sustained national or international acclaim. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

Review of the record does not establish that the petitioner 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 petitioner's achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A)(i) of the Act and the petition may not be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.