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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  
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Services

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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: [Redacted]  
SRC 07 216 50304

SEP 28 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:  
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The 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 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. Specifically, the director concluded that the petitioner meets only two of the regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3), of which an alien must meet at least three.

On appeal, counsel's sole argument is that the petitioner also submitted evidence of published material about him sufficient to meet the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii). For the reasons discussed below, the evidence submitted to meet that criterion does not comply with the plain language requirements of that criterion because it is not "about" the petitioner relating to his work. Thus, we uphold the director's decision. We conclude that the petitioner has not established his eligibility for the classification sought based on a review of the evidence under the individual criteria as well as in the aggregate.

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 research associate. 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. The regulatory criteria at 8 C.F.R. § 204.5(h)(3) follow.

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

Counsel's response to the director's request for additional evidence states that the petitioner does not claim to meet this criterion and the record contains no evidence pertinent to 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.*

Counsel's response to the director's request for additional evidence states that the petitioner does not claim to meet this criterion and counsel does not challenge the director's failure to address this criterion on appeal. We note that the petitioner initially submitted evidence of his membership in Sigma Xi, which requires a "noteworthy" achievement. According to the material submitted initially, however, a "noteworthy" achievement is defined as a publication, patent, written report, thesis or dissertation. As a thesis or dissertation is required for an advanced degree and publication of one's results is inherent to the field of research, we are not persuaded that Sigma Xi requires outstanding achievements as judged by recognized national or international experts. Thus, 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.*

Throughout the proceeding, the petitioner has relied on the citations of his published articles to meet this criterion. The director concluded that the record did not contain evidence of published material in professional or major trade publications or other major media "about the petitioner." On appeal, counsel notes that the petitioner did submit evidence of "substantial peer citations" of the petitioner's

published work as well as sample citing articles, including the title, date and author of the material. Counsel further states that the director "did not indicate either any deficiency of the submitted evidence or indicate that the published materials meant something else in immigration law other than peer citations for a researcher-applicant like the petitioner." The petitioner submits additional evidence of citations.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) clearly and unambiguously requires the submission of published material "about the alien" relating to his work. We consider the full article to constitute the "published material" referenced in the regulation rather than each individual sentence or footnote. To hold otherwise would render this criterion meaningless. Thus, the full article must be about the petitioner relating to his work in order to meet this criterion. The articles that cite the petitioner's work are "about" the authors' own work or, in the case of review articles, recent trends in the field. It cannot be credibly asserted that these articles are "about" the petitioner relating to his work or even that they are "about" his work.<sup>1</sup> Significantly, if we applied counsel's reasoning to the petitioner's own articles they could not be considered evidence of his own achievements because we would conclude that they are about every researcher he cites in his own footnotes rather than reporting his personal results. As the citing articles submitted do not meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii), we uphold the director's conclusion that 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.*

On appeal, counsel does not challenge the director's conclusion that the petitioner's participation in the widespread peer-review process does not meet this criterion. 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 concur with the director that the petitioner does not meet this criterion.

While not raised on appeal, the petitioner also submitted an electronic mail (e-mail) message from Dr. [REDACTED] Director of the Auburn University Detection and Food Safety Center and one of the petitioner's references, responding to a request for the reference letter. [REDACTED] response asks if the

<sup>1</sup> Even if we were to look at the individual sentences and citations, and we reiterate that they cannot by themselves constitute the entirety of a published material, they may reference the petitioner's work but they are not "about" the petitioner. Compare 8 C.F.R. § 204.5(i)(3)(i)(C), relating to outstanding professors or researchers pursuant to section 203(b)(1)(B) of the Act, requiring published material "about" the alien's work.

petitioner would be able to review grant proposals from professors at Auburn University. The petitioner also submitted his ranking of the 15 proposals. Without additional information, we cannot conclude that this single e-mail request, issued in response to the petitioner's own request for a reference letter, is indicative of national or international acclaim such that the petitioner can be said to meet this criterion. It is not even clear whether [REDACTED] was aware of the petitioner or his work prior to receiving the petitioner's request for a reference letter.

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 detailed reference letters, including letters from independent researchers who have been following the petitioner's work, supported by a record of consistent and widespread citation of the petitioner's published articles. The director concluded that the petitioner meets this criterion and we will not withdraw that finding.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The director concluded that the petitioner's publication record serves to meet this criterion and we concur with the director.

*Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*

On appeal, counsel does not contest the director's conclusion that this criterion does not pertain to the petitioner's field and we concur with the director that this criterion is primarily designed for visual artists.

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

On appeal, counsel does not contest the director's conclusion that the petitioner did not establish that he meets this criterion. While counsel previously asserted that the petitioner's leading role on various projects served to meet this criterion, we concur with the director. At issue for this criterion, set forth at 8 C.F.R. § 204.5(h)(3)(viii), are the nature of the role the petitioner was selected to fill and the reputation of the organization or establishment that selected him for that role. In other words, the nature of the role must be such that the petitioner's selection for the role is indicative of or consistent with national or international acclaim. The petitioner has worked as a professor and is currently a research associate. We are not persuaded that every professor and research associate performs a leading or critical role for the university where he works beyond the obvious need of a university to employ competent professors and research associates.

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

Counsel's response to the director's request for additional evidence states that the petitioner does not claim to meet this criterion and the record contains no evidence pertinent to this criterion.

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

On appeal, counsel does not contest the director's conclusion that this criterion does not pertain to the petitioner's field and we concur with the director.

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 research associate, relies on his volunteer services as a manuscript reviewer, his publication record, and the praise of his peers. While this may distinguish him from other research associates, we will not narrow his field to others with his level of training and experience. For example, the petitioner's references demonstrate far higher accomplishments. Specifically, Dr. [REDACTED] is a fellow of the Optical Society of America and the American Physical Society. [REDACTED] is Chair of the Physics Department at the University of Arkansas. Dr. [REDACTED], a research group leader at the Oak Ridge National Laboratory, is a fellow of the American Ceramic Society and the Editor-in-Chief of the *International Journal of Applied Ceramic Technology*.<sup>2</sup> 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 research associate 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 as a research associate, but is not persuasive that the

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<sup>2</sup> While the petitioner relies exclusively on his citation record on appeal, the record contains evidence of authors with far more citations. Specifically, [REDACTED] indicates that he has over 2,000 citations, far more than the petitioner has documented. The list of articles citing the petitioner's work includes articles that have been cited individually more than the most cited article by the petitioner, including articles published more recently that have had less time to accumulate citations. We acknowledge that citations are not the sole measure of where a researcher stands in his field, but raise the issue due to the petitioner's heavy reliance on this factor on appeal.

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.