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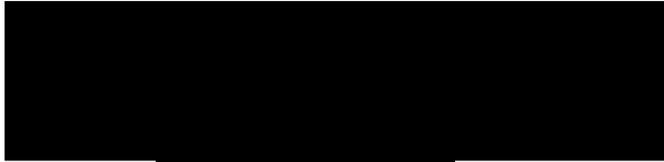
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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FILE: [Redacted] SRC 09 007 51986

Office: TEXAS SERVICE CENTER

Date: MAR 05 2010

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:

SELF-REPRESENTED

INSTRUCTIONS:

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

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 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. Beadndi*  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on May 28, 2009, and is now before the Administrative Appeals Office 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 in the sciences. The director determined that the petitioner did not demonstrate 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 the 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).

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 October 9, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a physician.

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). The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).

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

On appeal, the petitioner stated that even though he submitted evidence of his receipt of the Luis Razetti 1985 Award, the director failed to consider his award for this criterion. A review of the record reflects that the petitioner did submit a copy of the award at the time the petition was filed, and the director failed to evaluate the evidence in his decision. On appeal, we will consider the petitioner's eligibility for this criterion based on the petitioner's receipt of the Luis Razetti 1985 Award.

A review of the award reflects that the petitioner, along with other doctors, received the Luis Razetti 1985 Award from the Federal District Medical Doctor Board for the titled work, *Clinical and biochemical bases of the resistance to the insulin in uremia, chronic hemo-dialysis and continue ambulatory peritoneal dialysis*. On appeal, the petitioner claimed that this award "is the highest honor afforded a doctor [in] Venezuela." However, the petitioner failed to submit any documentary evidence supporting this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor, and it is his burden to establish every element of this criterion. In this case, there is no evidence showing that the petitioner's award commanded a significant level of recognition beyond the context of the event where it was presented. For example, there is no evidence showing that the petitioner's award was announced in major media or in some other manner consistent with national or international acclaim. Accordingly, the petitioner has not established his award resulted in his receipt of a nationally or internationally recognized prize or award.

Notwithstanding the above, the regulation at 8 C.F.R. § 204.5(h)(3) provides that “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s nationally or internationally recognized prizes or awards must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(i), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. 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). Even if we were to find that the petitioner’s award is a nationally or internationally recognized award, which we clearly do not, the petitioner’s award was in 1985, a period of 23 years prior to the filing of the petition. The petitioner failed to establish the requisite sustained national or international acclaim. In addition, we do not find evidence that the petitioner’s single award is sufficient to establish the level of acclaim required for this highly restrictive classification.

Further, while the petitioner did not claim eligibility for this specific criterion, the petitioner submitted a certificate from Stanford University Medical Center certifying that the petitioner served as fellow in medicine/nephrology from May 1, 1989, to December 31, 1990. On appeal, the petitioner stated:

Being at the top of the list, is studying at Stanford University, which is extraordinary and exceptional (see annex title Stanford University). There are a very small percentage of Venezuelan doctors who have studied at a university as prestigious as recognized and [sic] Stanford University. This evidence was not considered when I was denied my request.

Academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships, student awards, and fellowships cannot be considered prizes or awards in the petitioner’s field of endeavor. Moreover, competition for fellowships is limited to other students. Experienced experts in the field are not seeking scholarships. Similarly, experienced experts do not compete for fellowships and competitive postdoctoral appointments. Thus, they cannot establish that a petitioner is one of the very few at the top of his field.

Significantly, this office has held, in a precedent decision involving a lesser classification than the one sought in this matter, that academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes the alien’s ability to benefit the national interest. *Matter of New York State Dep’t. of Transp.*, 22 I&N Dec. 215, 219, n.6 (Comm’r. 1998). Thus, academic performance is certainly not comparable to the awards criterion set forth at 8 C.F.R. § 204.5(h)(3)(i), designed to demonstrate an alien’s eligibility for this more exclusive classification. Therefore, the petitioner’s selection for a fellowship at Stanford University is not sufficient to meet the regulatory requirements for this criterion.

Accordingly, 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 claims eligibility for this criterion based on his membership with the Venezuelan Society of Nephrology (VSN) and the American Society of Nephrology (ASN). The petitioner submitted evidence establishing that the petitioner has been an associate member of VSN since 1991 and has been a corresponding member with ASN since 1991.

In order to demonstrate that membership in an association meets this criterion, a 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, standardized test scores, grade point average, 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.

On appeal, regarding VSN, the petitioner stated that "[t]he condition for belonging is to be a doctor specializing in nephrology." However, the petitioner failed to submit any documentary evidence supporting this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Notwithstanding, the petitioner failed to establish that membership with VSN requires outstanding achievement by its members, as judged by recognized national or international experts. We are not persuaded by the petitioner's claim that being a doctor specializing in nephrology is sufficient alone to establish eligibility for this criterion. In addition, there is no evidence establishing that nationally or internationally recognized experts judge the applicants for membership with VSN. Instead, based on the petitioner's own unsupported assertion, only being a doctor specializing in nephrology is a prerequisite for membership with VSN. Thus, membership with VSN is based on occupational status and not based on outstanding achievements in nephrology, as judged by nationally or internationally recognized experts.

Regarding ASN, the petitioner failed to submit any documentary evidence regarding membership requirements. However, according to ASN's website<sup>1</sup>, obtained from the letter submitted by the petitioner from the ASN membership department, the requirements for membership are as follows:

1. Active Member (\$275 membership fee) – An individual who holds an MD, PhD, or the equivalent, resides in North or Central America, and fulfills at least one of the following criteria:
  - Completion of research or clinical training in nephrology;

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<sup>1</sup> See <http://www.asn-online.org/membership/member-benefits.pdf>, accessed on January 12, 2010, and incorporated into the record of proceeding.

- Specialized training in nephrology during residency or other relevant postgraduate education;
  - Publication of at least one peer-reviewed paper in nephrology; or
  - Experience as a specialist in kidney disease and related conditions; or
2. Corresponding Member (\$275 membership fee) – An individual who meets the criteria for active membership but resides outside North or Central America.

As cited above, the petitioner is a corresponding member with ASN. While ASN's membership requirements provide standards and narrow membership to those who achieve a level of training and experience, those standards fail to reflect that outstanding achievement is an essential condition for membership. As indicated above, we are not persuaded that completing research, specializing in training, publishing at least one peer-reviewed paper, and occupational experience are commensurate with the requirements necessary to establish eligibility for this highly restrictive classification. Further, the petitioner failed to establish that membership with ASN requires outstanding achievement as judged by recognized national or international experts.

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.*

The petitioner submitted a list of books and medical magazines and journals where the petitioner's research was cited. However, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about" the petitioner relating to his work. Compare 8 C.F.R. § 204.5(i)(3)(i)(C) relating to outstanding researchers or professors pursuant to section 203(b)(1)(B) of the Act, which only requires published material about the alien's work. Articles authored by the petitioner, or articles and books which cite the petitioner's work, but not the petitioner himself, are not published material about the petitioner relating to his work. Thus, while his publications and citations therein are not relevant to this criterion, they will be considered below as they relate to the significance of the petitioner's contributions and scholarly articles.

Accordingly, 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.*

On appeal, the petitioner claims eligibility for this criterion by stating:

I have developed a working hypothesis that needs to be proven or denied, based on the presumption that it is scientifically possible to build a small device, placed it in permanently under the skin of the patient-specific in the inguinal region, which is undergoing dialysis because of end-stage renal disease carrier, and this device will be

able to produce an ultrafiltered containing the major uremic toxins that damage and suffering to the patient, and liquids must be removed as usual, all of which will drain into the bladder of the patient. This device would be connected inside the patient to the original renal artery and vein of the patient and the patient's own ureter, the latter draining into the bladder of the patient. The internal structure of the device that I called High Efficiency glomerulus (HEG), consists of a single glomerulus artificial (remember that the normal person there are roughly three million in each kidney glomeruli), made from biocompatible materials, long high efficiency and capable of fulfilling the mission of removing uremic toxins and fluids, which would be achieved as a result and thanks to the design of a unique and complex internal architecture which would be equipped with this device, which emulated the glomerular tangle of human beings, but with high capacity to multiply these functions. If it device work and give gods results – it which has to be designed and is waiting to be deeply researched and developed by this humble physician – would release the current type of dialysis is more than three thousand patients living with this therapy in the United States, and millions around the world. I want to establish that this is the job I want to develop and implement enhanced with an immigrant visa which I aspire.

The petitioner failed to submit any documentary evidence establishing the existence of his working hypothesis. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. In addition, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.” By the petitioner’s own admission, his working hypothesis has never been proven or denied; therefore, the petitioner failed to establish that his working hypothesis is an original scientific contribution of major significance to medicine. Finally, we can not consider evidence simply based on a working hypothesis or theories that may or may not have the potential of working in the future. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176.

The petitioner also submitted recommendation letters from [REDACTED] of Stanford University Medical Center, and [REDACTED] from the U.S. Department of Veterans Affairs. [REDACTED] stated:

[The petitioner] was a well established nephrologist at that time and utilized his training with [REDACTED] to try and make a difference in the lives of dialysis patients in Venezuela. He had been a leading advocate of better access for patients and set out plans nationally to provide high quality, effective and safe dialysis for patients. He has had a distinguished career as a physician in his home country but the political climate

there has made it impossible to serve his patients and community in the way that he feels is reasonable.

stated:

We found [the petitioner] to be an excellent worker, reliable, and a definite benefit to our medical staff. [The petitioner] performed his volunteer duties assisting in the Nephrology section. In the time [the petitioner] has been with us, we have received nothing but high praises from his supervisors and co-workers for his outstanding work. [The petitioner] is to be commended for all the donated hours of volunteer service and it is only with the support of volunteers like [the petitioner], that we are able to give veteran patients the best possible care.

In this case, the recommendation letters are not sufficient to meet this regulatory criterion. 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. The statutory requirement that an alien have "sustained national or international acclaim" necessitates evidence of recognition beyond the alien's immediate acquaintances. 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). Further, USCIS may, in its discretion, use as advisory opinion statements as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 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 of support from the petitioner's personal contacts 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. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of any immigration petition are of less weight than preexisting, independent evidence or original contributions of major significance that one would expect of an individual who has sustained national or international acclaim at the very top of the field.

In this case, the petitioner failed to submit preexisting, independent evidence of original contributions of major significance. While the letters highly praise the petitioner, they fail to provide any examples of contributions of major significance in his field. In evaluating the reference letters, they do not specifically identify how his contributions have influenced the field; rather, the two letters generally discuss his job skills. We must note here that an individual who has sustained national or international acclaim at the very top of the field should be able to submit a multitude of reference and recommendation letters instead of just two letters. We further note that the letter from [redacted] is dated November 29, 1990, approximately 18 years prior to the filing of the petition. The petitioner only submitted one current recommendation letter.

Letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a

solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. 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*, 580 F.3d 1030, 1036 (9<sup>th</sup> Cir. 2009).

The petitioner also submitted a self-compiled list of books and magazines where the petitioner claims that his "research is mentioned." However, the petitioner failed to submit the actual articles or relevant text of the books establishing that his work was cited and discussed. We find that the submission of a list of books and articles is insufficient to establish that the petitioner's work has been cited, discussed, or debated without the relevant text or articles.

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. In addition, the petitioner's occupation 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.

Moreover, 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*, 580 F.3d at 1036 (publications and presentations are insufficient absent evidence that they constitute contributions of *major* significance).

While the petitioner claims to be working on a hypothesis and submitted two recommendation letters, the record fails to reflect any evidence of the petitioner's original work of major significance to his field. While the evidence demonstrates the petitioner's work with dialysis patients, it falls far short of establishing eligibility for this criterion.

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.*

On appeal, the petitioner states:

The effort I made as a doctor has been combined with my fight against the dictatorship suffered severe Venezuela, as shown in my writings published in national newspapers, which it has cost me not get financing for my medical research projects on dialysis, and have been threatened by those who govern Venezuela for having said these views publicly.

The petitioner also submitted the following articles:

1. *The End Depends on the Principle*, El Universal, July 15, 2004;
2. *Tarquino the Soberbio*, El Universal, April 14, 2006;
3. *The Energy must be a New Human Right*, El Universal, June 3, 2008;
4. *Barrio Adentro Vs. Medicine for Little New to All*, El Universal, July 2, 2008;  
and
5. *Trials Popular Maternity Medial*, El Universal, August 4, 2008.

However, English translations accompanying the articles fail to comply with 8 C.F.R. § 103.2(b)(3), which requires that “[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.” The English translations failed to contain the name of the translators, were not certified as complete and accurate, and failed to indicate that the translators were competent to translate from the foreign language into English. Because the petitioner failed to comply with 8 C.F.R. § 103.2(b)(3), the AAO cannot determine whether the evidence supports the petitioner’s claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires “[e]vidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.” The articles submitted by the petitioner appear to be political opinion articles and not scholarly articles relating to the petitioner’s field of science. In addition, the petitioner failed to submit any documentary evidence establishing that El Universal is a professional or major trade publication or other major media.

The petitioner submitted the following scholarly articles:

1. *Relationship Between Glycolytic Activity in Erythrocytes and Glucose Intolerance in Uremia (U), Hemodialysis (HD), and Continuous Ambulatory Peritoneal Dialysis (CAPD)*, Kianey International, January 1985;
2. *Insulin Binding and Glycolytic Activity in erythrocytes from Dialyzed and Nondialyzed Uremic Patients*, Nephron, 1988;
3. *Backfiltration During Dialysis: A Critical Assessment*, Seminars of Dialysis, January – March 1992; and
4. *An In Vivo Analysis of Reverse Ultrafiltration During High-Flux and High-Efficiency Dialysis*, American Journal of Kidney Diseases, May 1992.

The petitioner also submitted abstracts for the following presentations:

1. *Relationship Between Glycolytic Activity in Erythrocytes and Glucose Intolerance in Uremia (U), Hemodialysis (HD), and Continuous Ambulatory Peritoneal Dialysis (CAPD)*, The American Society of Nephrology, December 9-12, 1984;
2. *Erythrocytic Glycolytic Activity and Glucose Intolerance in Dialyzed and Nondialyzed Uremic Patients*, Xth International Congress of Nephrology, July 26-31, 1987;
3. *Erythropoieses and Erythropoietin Blood Levels (EP) in Rats with Moderate Renal Failure (MRF) and Induced Anemia*, The American Society of Nephrology, December 13-16, 1987;
4. *Increased Tumor Necrosis Factor Levels Following Cuprophane Hemodialysis*, American Society of Nephrology, December 3-6, 1989;
5. *High Flux Dialysis Reduces Tumor Necrosis Factor Levels*, American Society for Artificial Internal Organs, April 24-27, 1990; and
6. *Phosphate Clearances During High Flux Hemodialysis with PAN and CT Membranes*, XIth International Congress of Nephrology, July 15-20, 1990.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(vi), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. 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). In this case, the petitioner’s last scholarly article was published in May 1992, a period of over 16 years from the filing of the petition, and the petitioner’s last presentation occurred in July, 1990, a period of over 18 years from the filing of the petition. As such, the petitioner failed to establish the requisite sustained national or international acclaim. In addition, we do not find evidence that the petitioner’s authorship of four scholarly articles is sufficient to establish the level of acclaim required for this highly restrictive classification. While we acknowledge that we must avoid requiring acclaim within a given criterion, it is not a circular approach to require some evidence of the community’s reaction to the petitioner’s published articles in a field where publication is expected of those merely completing training in the field. *Kazarian v. USCIS*, 580 F.3d at 1036. Furthermore, the petitioner failed to submit any documentary evidence establishing that *Kidney International*, *Nephron*, *Seminaries of Dialysis*, and *American Journal of Kidney Diseases* are professional or major trade publications or other major media.

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

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

On appeal, the petitioner states that he has an "income higher than those of [his] peers." The petitioner submitted an undated letter from [REDACTED] of Administration for [REDACTED], who stated:

I note that [the petitioner] serves as Medical Director of this Institution since January 1999, earn a salary of ten thousand seven hundred and fifty bolivars (Bs. 10.750.00) per month, equivalent to five thousand dollars (\$5,000.00) per month, sixty thousand dollars (\$60,000.00) per annum (official exchange equal Bs. 2.15 per 1 dollar).

The plain language of this regulatory criterion requires the petitioner to submit evidence showing that the petitioner "has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." However, the petitioner failed to submit any documentary evidence comparing his salary to others in his field. The petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field. There is no evidence establishing that the petitioner has earned a level of compensation that places him among the highest paid physicians in his field.

Accordingly, the petitioner has not established that he meets this 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 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 physician 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. As stated above, while the documentary evidence failed to establish eligibility under any of the regulatory criteria, the petitioner submitted evidence for events occurring many years prior to the filing of the petition. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field and has sustained the required national or international acclaim. 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.