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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: APR 30 2008

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IN RE: Petitioner: [redacted]
Beneficiary:

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.

Laura Deadrick
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel submits a brief and a new reference letter. While we concur with counsel that citations carry more weight than the director suggests, it remains that the petitioner did not submit any evidence in support of the self-serving list of citations included in the record. Even if we accept that the petitioner has been cited as claimed, we uphold the director's ultimate decision that the petitioner falls far short of meeting the required *three* regulatory criteria.

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.

Citizenship and Immigration Services (CIS) 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 postdoctoral fellow. While the regulations do not preclude those at the beginning of their post-academic career from eligibility, we will not narrow the alien's field to those at the same stage of his career. Rather, the alien must be compared to all in his field, including the most experienced and renowned members of the field.

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.

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

Initially, counsel asserted that the petitioner's current job as a postdoctoral fellow at Harvard is an "award." Counsel asserts that it was widely advertised and that 150 applicants sought the position. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980). The petitioner also submitted published material reporting on a research grant awarded to the petitioner's supervisor.

In the request for additional evidence, the director stated that competitive postdoctoral appointments cannot be considered prizes or awards. Counsel's response did not address this criterion. In fact, counsel listed three different criteria the petitioner is alleged to meet. Although, the petitioner did submit evidence of a travel award covering registration and hotel lodging for the AIDS Vaccine 2007 conference, this travel award postdates the filing of the petition.

The director reiterated the conclusion stated in the request for additional evidence, which counsel did not attempt to rebut in response, that a postdoctoral appointment cannot be considered a prize or award. The director further concluded that the petitioner, who is not the principal investigator for the research grant, was not the recipient of that grant.

On appeal, counsel asserts: "Many scholarships, fellowships and competitive appointments are precisely what [CIS] claims is not true, i.e. recognition of acclaim in the petitioner's field." Counsel notes that the petitioner's postdoctoral fellowship is at Harvard and asserts that Harvard offered the position based on the petitioner's "international reputation." Counsel further asserts that the petitioner is a "key person" on his research team.

Whether or not the petitioner plays a "key" or, as required by regulation, a leading or critical role for his employer is more relevant to the criterion set forth at 8 C.F.R. § 204.5(h)(3)(viii), discussed below. At issue for this criterion is whether a job offer, even at a prestigious research institution, can be considered a prize or award. We concur with the director that it cannot.

Unlike prizes and awards, job offers and research grants primarily support future work. Every successful scientist engaged in research, of which there are hundreds of thousands, is employed (many at prestigious universities) and receives funding from somewhere. Obviously, a prospective employee's past accomplishments are a factor in an employer's hiring decision. Similarly, the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, job offers and research grants are principally designed to support future research, and not to honor or recognize past achievement.

While we would not consider a job offer at any level to be a prize or award, we note that the petitioner was offered a postdoctoral fellowship. In response to the director's request for additional evidence, the petitioner submitted information from the National Institutes of Health (NIH) regarding "stipends" for postdoctoral fellows. The materials refer to "postdoctoral research training" and recommend that such training not extend past five or six years. We are not persuaded that the fact that the postdoctoral fellowship is at Harvard, an undeniably prestigious institution, converts what is otherwise an entry-level job offer into a nationally or internationally recognized prize or award.

As stated above, the petitioner's travel grant postdates the filing of the petition, the date as of which the petitioner must establish eligibility. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Regardless, the petitioner has not established that he competed for this travel award with the most experienced and renowned members of his field rather than simply with other recent graduates who might have difficulty affording the travel costs.

In light of the above, we concur with the director that the petitioner has not established that he meets this criterion with evidence that directly relates to the criterion, predates the filing of the petition and sets the petitioner apart from others in his field, including the most experienced and renowned members of his field.

> *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 the American Society for Microbiology (ASM). Counsel asserted that ASM is the world's largest scientific society of individuals interested in the microbiological sciences but the petitioner did not submit any evidence of ASM's membership requirements. In the request for additional evidence, the director noted the lack of

evidence regarding ASM's membership requirements. Counsel's response did not address this criterion. The director concluded that the petitioner had not established that ASM requires outstanding achievements of its members. Counsel does not attempt to rebut this conclusion on appeal. We concur with the director that the record lacks evidence that ASM requires outstanding achievements of its members. While the unsupported assertions of counsel do not constitute evidence, *Matter of Obaigbena,* 19 I&N Dec. at 534 n.2; *Matter of Laureano,* 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez,* 17 I&N Dec. at 506, even if we accepted the assertion that ASM is the world's largest scientific society relating to microbiology, the large membership is not indicative of an exclusive association that requires outstanding achievements for membership.

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

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

Counsel has never challenged the director's conclusion, expressed in the request for additional evidence and in the final decision, that the published material submitted does not mention the petitioner by name and, thus, cannot be considered to be "about" the petitioner. We concur with the director's analysis.

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.

Neither counsel nor the petitioner has ever claimed that the petitioner meets this criterion and the record contains no evidence relating to it.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner is a researcher in virology. He worked as a postdoctoral researcher in the laboratory of [redacted] Chief of the Division of Microbiology and Immunology at Emory University from 2001 through 2004 and then accepted a postdoctoral fellowship with [redacted] at Harvard University.

While [redacted] praises the petitioner's work in his laboratory, that work had yet to be published as of the date of filing. As that work had yet to be disseminated in the field, we cannot conclude that it had already impacted the field.

Regarding the petitioner's earlier work, counsel asserts that the petitioner was a "key researcher in the development" of three HIV vaccines that are currently in phase one clinical trials. We note that, according to [redacted], President and CEO of GeoVax, Inc., the petitioner "was not a member

of the original team" at Emory University that created the vaccine now being pursued by GeoVax. Nevertheless, [redacted] explains that the petitioner "significantly contributed to further development and improvement by showing that the adjuvant, anti-4-1BB antibody, improves the effectiveness of [redacted]s vaccine."

[redacted] explains that the petitioner developed a protocol for evaluating vaccine candidates and contributed to the identification of the strain being used currently in clinical trials. The petitioner also conducted dose response experiments in mice, producing data that "provided major support" toward the Federal Drug Administration's approval to conduct clinical trials. Finally, as explained by Dr. [redacted] the petitioner "contributed to the development of research protocols using fluorescent-activated cell sorting to test for vaccine expression currently under further redevelopment for commercial use at GeoVax." confirms this assertion.

The record also contains favorable assessments from independent experts, such as [redacted] Executive Vice President for Vaccine Research and Development at Wyeth Pharmaceuticals and Dr. [redacted], a professor at the University of Washington and principal investigator for the HIV Vaccine Trials Network. While [redacted] praises the petitioner's technical skills and his "track record of success" in the field, [redacted] concludes only that the petitioner "has been associated with renowned leaders in the field," as opposed to being one of those renowned leaders himself.

As will be discussed in more detail below, the petitioner also submitted evidence of his publication and conference presentation record but submitted only a self-serving list of citations rather than evidence downloaded from an Internet source or copied from a citation index. Nevertheless, at least some of the letters provide specific examples of how the petitioner's work has facilitated HIV vaccine trials.

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. While the record would have been bolstered by the submission of evidence supporting the self-serving list of citations, we are persuaded from the remaining evidence in the aggregate 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.

While counsel initially asserted that the petitioner had authored 10 articles, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. at 534 n.2; *Matter of Laureano,* 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez,* 17 I&N Dec. at 506. The petitioner

submitted evidence that, as of the date of filing, he has authored five published articles and two conference presentations. As stated above, the petitioner must establish his eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49. Thus, we will not consider any articles or presentations that postdate the filing of the petition.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career."

Moreover, for biological scientists, the Department of Labor's Occupational Outlook Handbook 151 (2006-2007 ed.) reflects that a "solid record of published research is essential in obtaining a permanent position involving basic research." The handbook also provides that university faculty spend a significant amount of their time doing research and often publish their findings. *Id.* at 224. In addition, the handbook acknowledges that faculty face "the pressure to do research and publish their findings." *Id.* at 225. This information reinforces CIS's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

The petitioner initially submitted a self-serving list of citations reflecting that three of the petitioner's articles had received twenty-one, eight and one citations, respectively. In response to the director's request for additional evidence, the petitioner submitted a new self-serving list of a total of 73 citations for four articles. The best cited article garnered 30 citations.

The director did not question the self-serving list of citations. Rather, the director concluded that 73 citations in a frequently cited field was not significant. On appeal, counsel asserts that this conclusion is uninformed and submits a new letter from [redacted] asserting that the petitioner's citation record is "phenomenal."

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 petitioner's self-serving list of citations is not supported by a list of citations downloaded from one of the many Internet sources for locating citations or a citation index. It is the petitioner's burden to submit the evidence necessary to support his claims; it is not our burden to attempt to verify his otherwise unsubstantiated claims via the Internet.

Even if we were to accept the self-serving list of citations as evidence, the petitioner would only meet two criteria. For the reasons discussed above and below, the petitioner falls far short of meeting a third criterion.

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

Neither counsel nor the petitioner has ever claimed that the petitioner meets this criterion. We acknowledge the submission of evidence that the petitioner has presented his work at scientific conferences. These are not, however, artistic exhibition or showcases. Rather, we find that the conference presentations are best considered under the authorship of scholarly articles criterion.

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

Counsel concludes that the director found that the petitioner meets this criterion. The director, however, appears to conclude that the most persuasive evidence relating to this criterion postdates the filing of the petition. Regardless, we find that the record does not support a finding that the petitioner meets this criterion.

The petitioner claims to have played a leading or critical role for [redacted]'s laboratory at Harvard. We do not question [redacted]'s assessment of the petitioner's role in his laboratory. The petitioner's contributions while a postdoctoral fellow in [redacted]'s laboratory, however, have been considered above. This criterion, set forth at 8 C.F.R. § 204.5(h)(3)(viii), is a separate criterion from the contributions criterion set forth at 8 C.F.R. § 204.5(h)(3)(v) and has far different considerations. More specifically, at issue now are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the job title/position must be of such significance that the alien's position, in and of itself, is indicative of or consistent with national or international acclaim. In evaluating this criterion, we look to the nature of the position itself, not the alien's performance within that role, which is far more relevant to the contributions criterion at 8 C.F.R. § 204.5(h)(3)(v). Any other interpretation would render the distinction between 8 C.F.R. § 204.5(h)(3)(v) and 8 C.F.R. § 204.5(h)(3)(viii) and the requirement that an alien meet at least three criteria meaningless.

Counsel repeatedly emphasizes that the petitioner works at Harvard, suggesting at least implicitly that Harvard's reputation alone warrants a conclusion that the petitioner must be eligible. We will not presume national or international acclaim by affiliation. While Harvard University may have a distinguished reputation and employ selective hiring practices, we cannot conclude that every postdoctoral researcher who contributes to significant research in a distinguished university's laboratory plays a leading or critical role for that university as a whole. We note that counsel also references another case of his that he claims was wrongly denied, emphasizing that the alien in that case attended Yale University. Under this logic, every postdoctoral researcher at every Ivy League or other highly distinguished university, of which the United States has many, must be considered to meet this criterion. We reject that implication.

In addition, we find that the petitioner's position as a postdoctoral fellow, a "trainee" position according to NIH, is not critical or leading such that it sets the petitioner apart from the vast majority of professional researchers, including those who direct research centers and chair departments.

In light of the above, the petitioner has failed to demonstrate 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.

The director concluded that the petitioner did not claim to meet this criterion. Counsel does not challenge this conclusion on appeal. We note, however, the following evidence.

The petitioner initially submitted evidence that on June 28, 2004, he was offered a postdoctoral fellow position at Harvard at an annual salary of $43,428. The job offer letter indicates that the wage "is in accordance with current NIH guidelines and our department's salary policies" for postdoctoral fellows with three years of experience. In response to the director's request for additional evidence, the petitioner submitted the 2005 "stipend levels" set by NIH reflecting that postdoctoral researchers with five years of experience should be compensated $46,992. The petitioner also submitted weekly pay stubs for July 2007 reflecting weekly gross wages of $962.46, which annualizes to $50,047.92.

We will not narrow the petitioner's field to other postdoctoral researchers receiving "stipends." Rather, in order to meet this criterion, the petitioner must demonstrate that his remuneration compares with the remuneration received by the most experienced and renowned members of the field. Evidence that, in 2007, the petitioner received slightly more than NIH recommended in 2005 for postdoctoral researchers with his amount of experience cannot demonstrate that the petitioner received a significantly high remuneration in the field overall.

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

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

The director concluded that the petitioner had not claimed that this criterion is relevant to his field. Counsel does not challenge this conclusion on appeal 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 postdoctoral fellow, relies on his moderate number of publications and presentations, moderate citation record, the praise of his peers and his affiliation with Harvard University and distinguished virologists. While this may distinguish him from other postdoctoral

researchers, we will not narrow his field to others with his level of training and experience. Dr. [redacted] directs a laboratory, has *led* several HIV/AIDS vaccine development efforts and has served on NIH review panels. [redacted], another professor at Harvard, leads a division that includes over 80 investigators. [redacted] is the Executive Vice President for Vaccine Research and Development at Wyeth Pharmaceuticals and previously served as Executive Vice President of the International AIDS Vaccine Initiative. [redacted] was lead author of a comprehensive American Society of Microbiology Guide to DNA Vaccines. [redacted], as stated above, is the principal investigator for the HIV Vaccine Trials Network and Conference Chair for AIDS Vaccine 2007. While the caliber of these references is a favorable factor and has been taken into account in evaluating the petitioner's contributions, the record reflects that the top of the petitioner's field is far higher than the level he has reached.

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

Review of the record, however, does not establish that the petitioner has distinguished himself as a researcher in virology 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 postdoctoral fellow, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field of virology. 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.