

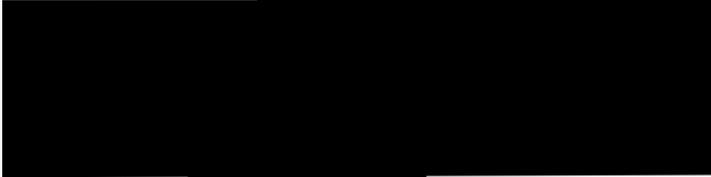
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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date:

JAN 16 2009

IN RE:

Petitioner:

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:



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 in the sciences. 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.

On appeal, counsel argues that the petitioner 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 November 24, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. At the time of filing, the petitioner was working as a

Visiting Postdoctoral Fellow in the laboratory of [REDACTED], Chief, Signal Transduction Section, Metabolic Diseases Branch, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Institutes of Health (NIH). In January 2008, the petitioner was notified of his appointment as a Research Fellow in the NIH Visiting Program under the sponsorship of Dr. [REDACTED]

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.¹

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

The petitioner submitted a Certificate of Award for second place issued to him in March 1993 by the Sichuan Province Government in recognition of his "significant contributions to the scientific and technical progress." This award reflects provincial recognition rather than national or international recognition.

The petitioner submitted a November 8, 2002 letter from [REDACTED], Scientific Director, NIDDK, NIH, informing the petitioner of his selection for a Visiting Fellow (VF) Award. letter states:

The sponsor for your VF award will be [REDACTED] Metabolic Diseases Branch, DIR, NDDK. The initial fellowship commitment is for two years, beginning on or about April 01, 2003 and ending March 31, 2005. Fellowship awards may be renewed beyond the initial commitment in increments of up to one year, for a maximum duration of five years NIH postdoctoral service.

The petitioner's selection for a VF award represents his receipt of financial support for a temporary advanced research training program rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor. Such postdoctoral support funding is presented not to established researchers with active professional careers, but rather to recent Ph.D. graduates in

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

pursuit of further research training and experience. We cannot ignore that the petitioner's postdoctoral fellowship was under the guidance of [REDACTED]

The petitioner submitted evidence showing that he received a research grant for his proposal entitled "Gene Mapping of Human Azoospermia Factor" from January 1991 to December 1992. With regard to this research grants for which the petitioner applied and received funding, it is noted that research grants simply fund a scientist's work. 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, a research grant is principally designed to fund future scientific research, and is not a national or international award to honor or recognize excellent achievement in the field. Further, we note that a substantial amount of scientific research is funded by research grants from a variety of public and private sources. Therefore, we cannot conclude that obtaining a research grant constitutes receipt of a nationally or internationally recognized prize or award for excellence in the field of endeavor.

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.

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.

The petitioner submitted a June 28, 2005 certificate as evidence of his "Associate" membership in the Endocrine Society and a general overview of the Society printed from its internet site. There is no evidence (such as membership bylaws or official admission requirements) showing that the Society requires outstanding achievements of its members as judged by recognized national or international experts in the petitioner's field or an allied one.²

According to the Endocrine Society's internet site, "Associate" membership is the lowest level of membership and does not require outstanding achievements. The Society has the following membership categories and requirements:

Active Members: an eligible individual is a professional who has a commitment to endocrine research, practice or education; hold a doctoral degree in a related field; and meet at least one of the following four criteria: published author; board certified physician; educator; or you hold a doctorate degree and have interests, involvement and contributions made in the field of endocrinology.

In light of the above, 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 regulations, 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.³

The petitioner submitted a three-sentence evaluation comment posted on the Faculty of 1000 Biology internet site on July 20, 2005 for an article co-authored by him and five others. In response to the director's request for evidence, the petitioner submitted another three-sentence evaluation comment posted on this internet site on January 25, 2008 for a different article he co-authored. The latter evaluation comment was posted subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *see Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider the January 25, 2008 evaluation comment in this proceeding. Nevertheless, these brief internet comments are not published material about the petitioner. As the plain language of this regulatory criterion requires that the published material be "about the alien" including "the title, date, and author of the material," we cannot conclude that the preceding evidence meets this requirement. Further, there is no evidence showing that the Faculty of 1000 Biology internet site qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted citation indices from ISI Web of Science demonstrating scores of cites to his published articles. Regarding the scientific articles that merely reference the petitioner's

Doctoral-level Trainee Member: an eligible individual is one who is currently enrolled in an endocrine-related training program as a clinical fellow or postdoctoral fellow.

Associate: any person not eligible for active, emeritus, or doctoral-level trainee membership may become an associate member of the Society, in one of four categories: research associate; affiliate associate; healthcare associate; or fellow-student associate.

See <http://www.endo-society.org/membership/Membership-Benefits-and-Categories.cfm>, accessed on December 30, 2008.

³ 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.

published work, we note that the plain language of this regulatory criterion requires that the published material be “about the alien.” In this case, the articles citing the petitioner’s work are primarily about the authors’ work, not the footnoted material identifying the petitioner. With regard to this criterion, a footnoted reference to the alien’s work without evaluation is of minimal probative value. Further, we note that the articles citing the petitioner’s work similarly referenced numerous other authors. The submitted citations to the petitioner’s work do not discuss the merits of his work, his standing in the field, any significant impact that his work has had on the field, or any other aspects of his work consistent with sustained national or international acclaim. The numerous citations of the petitioner’s work are more relevant to the criteria at 8 C.F.R. § 204.5(h)(3)(v) and (vi) and will be further addressed later in this decision.

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 several letters of support. We cite representative examples here.

[REDACTED], Professor of Medicine, College of Physicians and Surgeons, Columbia University, states:

The following are two major scientific progresses that [the petitioner] achieved at the NIH:

- 1) Discovered the fact that XLas (an alternative form of Gsa) is in control of body energy and glucose metabolism and is a negative regulator of sympathetic nerve activity.
- 2) Generated and studied pancreas beta cell specific Gsa knockout mouse model.

[REDACTED] Associate Professor, Department of Neurobiology and Anatomy, Wake Forest University Health Sciences, states:

[The petitioner’s] task was to generate a mouse model with the Gsa eliminated only in pancreatic β -cells (the cells that produce insulin). [The petitioner] has discovered that the mouse without Gsa in pancreatic β -cells develops diabetes at a young age relative to its normal counterparts and has abnormal insulin secretion. The mouse generated by [the petitioner] will be an excellent model system to study diabetes and develop therapy.

[REDACTED] Associate Professor of Pediatrics, Division of Pediatric Endocrinology, Johns Hopkins University School of Medicine, states:

To understand the molecular mechanisms of insulin production and secretion regulation, he has successfully generated a new mouse model in which the Gsa gene is deleted from islet β -cells. This unique mouse model is extremely useful in studying how pancreatic β -cell performs its functions in reaction to stimuli, such as hormones. . . . [The petitioner] identified that XLas is a critical regulator in controlling energy and glucose regulation and

that Xl̄as negatively controls the sympathetic nerve activity by studying the Xl̄as knockout mouse. This is an important discovery. It opens up a new target molecule to explore how the human body controls its overt energy balance and body weight.

In support of the preceding experts' statements, the petitioner submitted documentation showing scores of independent cites to his published findings. These citation indices are solid evidence that other researchers have been influenced by the petitioner's work and are familiar with it. This unusually large number of citations corroborates the experts' statements that the petitioner has made contributions of major significance in her field. The record reflects that the petitioner's original scientific contributions are important not only to the research institution where he has worked, but throughout the greater field as well. Leading scientists in the field have acknowledged the value of the petitioner's work and its major significance to the field of gene therapy. As such, we concur with the director's finding that the petitioner meets this regulatory 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 of articles appearing in publications such as *Journal of Biological Chemistry*, *Endocrinology*, and *Proceedings of the National Academy of Sciences*. The petitioner also submitted evidence of scores of articles that cite to his work. These citations demonstrate the significance of the petitioner's articles to his field. As such, we concur with the director's finding that the petitioner meets this second regulatory criterion.

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

The petitioner argues that presentation of his work at scientific meetings and symposia (such as the Mid-Atlantic Diabetes Research Symposium and the American Endocrine Society annual meetings) meets this regulatory criterion. The petitioner's field, however, is not in the arts. The plain language of this regulatory criterion indicates that it is intended for visual artists (such as sculptors and painters) rather than for researchers such as the petitioner. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner's conference presentations are more relevant to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi), a criterion that we find the evidence in this case already satisfies. Nevertheless, in the fields of science and medicine, acclaim is generally not established by the mere act of presenting one's work at a conference or symposium along with dozens of other participants. Nothing in the record indicates that the presentation of one's work is unusual in the petitioner's field or that invitation to present at the venues where the petitioner spoke was a privilege extended to only a few top researchers. Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the petitioner above almost all others in his field at the national or international level.

In light of the above, the petitioner has not 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.

In order to establish that he 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.

The petitioner submitted a September 20, 2006 letter from [REDACTED] stating: “[The petitioner] has been a Visiting (postdoctoral) Fellow in my laboratory with the NIDDK Intramural Program since March 2003.”

In response to the director’s request for evidence, the petitioner submitted a November 28, 2007 “Request for Resource Change FY08” form prepared by [REDACTED] requesting that the petitioner receive a “1 year extension of appointment . . . with conversion to Research Fellow.” This document includes approval signatures from [REDACTED] and [REDACTED] of the NIDDK. In the “Justification” section, [REDACTED] states:

[The petitioner] will finish his 5th year as a VF on March 23, 2008. I am requesting a 1 year extension with conversion to Research Fellow [The petitioner] has been extremely productive in the two years with a paper recently published in Proc. Natl. Acad. Sci. describing a major role of Gs-alpha signaling pathways in beta cell proliferation and function, and an initial deciphering of the mechanisms involved. . . . Based upon his productivity and important work he is doing related to one of NIDDK’s major areas of interest, I feel it would be appropriate to allow him more time to develop and complete this project.

On appeal, counsel states that this document bearing the signature of [REDACTED] “was provided as independent evidence of the recognition of [the petitioner’s] critical and important role within the NIDDK.” While this document reflects that the petitioner’s temporary employment with the NIDDK was extended for one year to provide “him more time to develop and complete” a project of interest to the NIDDK, it does not establish that his role as postdoctoral fellow at the Institute was leading or critical. The record does not include a letter of support prepared by [REDACTED] discussing the leading or critical nature of the petitioner’s role. Further, we note that the November 28, 2007 Request for Resource Change FY08 form and the petitioner’s subsequent appointment as a Research Fellow in January 2008 post-date the filing of the petition. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO is not required to consider subsequent developments in the petitioner’s career in this proceeding.

The petitioner also submitted a December 20, 2007 letter from [REDACTED], Chief, Endocrine Signaling and Oncogenesis Section, Metabolic Diseases Branch, NIDDK, NIH, stating:

My knowledge of [the petitioner] is based on more than four years of frequent contact from 2003 to 2007 during the time that he has worked as a VF

* * *

[The petitioner] chose a very challenging set of projects upon his arrival to the Metabolic Diseases Branch, namely the role of genomic imprinting at the *GNAS1* locus . . . on metabolic regulation, the role of the G α isoform XL α s in metabolism, and the role of G α in regulating pancreatic β cell growth and function. As evidence of his scientific skill and productivity, [the petitioner] rose to the challenge of these projects and was first author on two key papers, in 2006 and 2007, on these subjects.

The petitioner's response also included a December 20, 2007 letter from [redacted] Director, Mouse Metabolism Core Laboratory, NIDDK, NIH,⁴ stating:

As a post-doctoral fellow, [the petitioner] has made an outstanding contribution to [Dr. [redacted]] research program focused on the genetic regulation and physiological roles of the G α pathways. . . . He has contributed to 8 papers from [redacted] laboratory, which is a great accomplishment for a fellow.

While the petitioner has performed admirably on his research projects, there is no evidence showing that his role as a postdoctoral fellow was leading or critical for the NIDDK. This subordinate role is designed to provide temporary research training for a future professional career in the field of endeavor. There is no evidence demonstrating how the petitioner's role differentiated him from the other researchers in various branches of the NIDDK, let alone its more senior leadership.⁵ The documentation submitted by the petitioner does not establish that he was responsible for his employer's success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. Further, the record does not include supporting evidence showing that the NIDDK has distinguished reputation.

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

In this case, we concur with the director's finding that the petitioner meets only two of the regulatory criteria, three of which are required to establish eligibility. 8 C.F.R. § 204.5(h)(3). The petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability. The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence

⁴ [redacted]'s letter was not submitted on NIH letterhead and did not identify her position.

⁵ A comparison of the petitioner's position with that of his superiors (such as [redacted] and [redacted]) and of the other individuals offering letters of support indicates that the very top of his field is a level above his present level of achievement.

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. 8 C.F.R. § 204.5(h)(2).

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 a national or international level. 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.