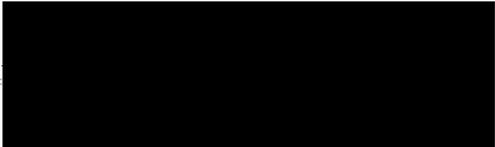




U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



B 2

File: EAC 99 059 53191 Office: Vermont Service Center Date:

AUG 9 2000

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)

IN BEHALF OF PETITIONER:



Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations 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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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 to the United States will substantially benefit prospectively the United States.

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 Service 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.

Counsel asserts that the petitioner "is one of the world's best researchers in the field of veterinary science," specifically parasitology. 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 which, 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.

The petitioner won first prize at the Creative Youth Competition in November 1989, nearly six years before the petitioner completed his doctorate. From its name and timing, the award appears to recognize student work rather than excellence in the field of endeavor. University study is not a field of endeavor.

In 1996, the petitioner won an Egis Award "in recognition of his competition work in the field of pharmaceutical technology sciences." The petitioner's current field of endeavor is parasitology rather than pharmaceutical sciences, and the record offers no explanation as to the significance or scope of the Egis Award.

In 1996, the Hungarian Academy of Sciences awarded the petitioner a research scholarship. While this scholarship is from a national entity, there is no indication of how many students receive these or comparable scholarships each year. Furthermore, a scholarship funds ongoing training rather than recognizing past contributions to the field of endeavor. The award compares the petitioner to other advanced students rather than to the most experienced and accomplished researchers in the field.

For the above reasons, the petitioner's awards do not established national or international acclaim.

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 is a member of the American Society of Parasitologists, the New Jersey Society for Parasitology, and the American Association of Veterinary Parasitologists. The record suggests that the petitioner joined these associations in May 1999, shortly after the director's April 1999 request for evidence of the petitioner's membership in associations. (Letters in the record, dated May 1999, welcome the petitioner to the above associations.) Memberships which the petitioner obtained after the fact, apparently in an effort to satisfy this criterion, cannot be

considered. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Memberships obtained after the petition's filing date cannot satisfy this criterion.

A letter from the American Society of Parasitologists states "welcome . . . back to membership," indicating that the petitioner had been a member in the past, but had allowed that membership to lapse before renewing it in May 1999. This membership, thus, appears to predate the petition's filing date. Even then, the petitioner has not shown that this association, or any of the above-named associations, require outstanding achievements as a condition of membership.

Published materials 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 asserts that the petitioner satisfies this criterion, but the record contains no published material about the petitioner or his work. The record reflects some citation of the petitioner's work, but an article is not about the petitioner simply because the petitioner is one of dozens of authors cited in bibliographic footnotes. These citations are more properly considered as a demonstration of the impact of the petitioner's own published work.

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

In a letter accompanying the initial petition, Professor G.A. Schad of the University of Pennsylvania School of Veterinary Medicine states:

I employed [the petitioner] in 1991 for a 3 year period. As a Research Specialist he held a position that required him to participate in the planning of research and with the help of assistants, carrying it out. He did superb work and his valuable contributions to my research program were recognized by his inclusion among the authors of our published work. He was certainly invaluable in developing animal models for an important parasitic infection of both humans and animals.

Others who have worked with the petitioner at the [redacted] offer similar testimony, stating that the petitioner's training allowed him to successfully complete complex tasks. Witnesses from the University of Veterinary Science, Budapest,

Hungary, assert in similarly-worded letters that the petitioner was "competent and diligent" and learned valuable laboratory techniques during his training at that institution.

The petitioner does not qualify for this highly restrictive visa classification simply by virtue of being very well qualified in his field. However high his co-workers opinions may be of him, if those opinions are not widely shared throughout the field then the petitioner has not achieved national or international acclaim.

In response to a request for further information, the petitioner has submitted further witness letters. [redacted] of [redacted] University, Philadelphia, Pennsylvania, states:

I came to know [the petitioner] during the years 1991-1994 when he was a Research Specialist at the University of [redacted]. He accomplished research during those years that was ground breaking and continues to drive the field. The animal models that he developed for parasitic infections of humans and domestic animals are now being used widely.

Other witnesses are high officials of important research institutions, but examination of their statements shows that they have collaborated directly with the petitioner or [redacted] and thus their knowledge of the petitioner's work appears to derive from this association rather than from the petitioner's general acclaim as a researcher. For instance, [redacted] research leader of the Parasite Biology and Epidemiology Laboratory at the [redacted] Maryland, states that the petitioner "has distinguished himself both academically and as a researcher," and that he is most familiar with the petitioner's work at the University of [redacted] because he has collaborated with researchers there.

Of this group of witnesses, only one claims no affiliation with the University of [redacted]. Professor [redacted] of the [redacted] Frederiksberg, Denmark, director of the World Association for the Advancement of Veterinary Parasitology, states that the petitioner "is a recognized veterinary researcher" who has "contributed [to] outstanding scientific publications." Even so, [redacted] does not credit the petitioner with specific accomplishments of major significance, nor do any of the witnesses cite objective evidence to show that discoveries and methods pioneered by the petitioner (rather than by [redacted]) have had a significant national or international influence.

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

The petitioner has co-written published articles and abstracts, which have been cited by other researchers. (Some of the citations are self-citations by the petitioner or his collaborators). Thus, the petitioner appears to have satisfied this criterion.

The petitioner has also submitted copies of numerous articles written by his collaborators and mentors, without the petitioner's involvement. The significance of these documents is not clear.

The director denied the petition, stating that while the witnesses of record assert that the petitioner is a talented and diligent researcher, there is no clear indication that the petitioner is widely considered to be among the best-known researchers nationally or internationally.

On appeal, the petitioner submits two further witness letters. These letters are dated July 1999, before the denial of the petition, and appear to have been solicited as responses to the director's April 1999 notice. [redacted] associate professor at [redacted] states that the petitioner's "work has led to new insight about human and veterinary parasitic infections . . . [and] may lead to new approaches for the management and treatment of these serious infections."

[redacted] President of the [redacted] and member of the [redacted] of the United Kingdom, was previously a professor and chair of Parasitology at the University of [redacted]. [redacted] bestows his highest praise on [redacted] and then asserts that the petitioner played a significant role in [redacted] projects and possesses hard-to-find expertise in certain laboratory techniques.

Because the witness letters predate the notice of decision, they offer no response to the stated grounds for denial. Counsel, on appeal, offers only a one-sentence assertion that the evidence of record supports approval of the petition.

The credentials of many witnesses of record are undeniably impressive; some of these individuals hold positions of national importance. Those very qualifications, however, indicate that it is they, rather than the petitioner, who stand at the top of the field of veterinary parasitology. While the witnesses hold positions of national or international significance, the petitioner's most recent clearly documented employment was as an assistant in a university laboratory from 1991 to 1994. The high reputation of that laboratory appears to owe far more to [redacted] than to the petitioner. Many witnesses assert, basically, that the petitioner possesses rare skills which are of benefit to the United States. While this may be true, it does not follow that the petitioner is among the best-known or most highly acclaimed figures in his field, nationally or internationally. The

petitioner's accomplishments do not assume major significance merely because they have practical applications; the petitioner must establish that his overall impact in the field has exceeded that of almost all others in that field. In this case, the petitioner has shown that he is a productive and skilled researcher who has earned a good reputation primarily among researchers with some connection to the university where he works. He has not, however, demonstrated that he is among the most important and acclaimed figures in the field of veterinary parasitology.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as a researcher 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 veterinary parasitologist, and that he has earned the respect of some of his peers, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.