



U.S. Department of Justice

Immigration and Naturalization Service

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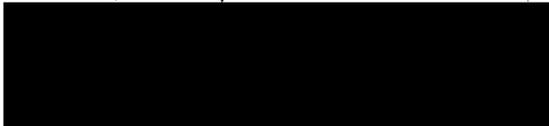
File: WAC 98 243 50539 Office: California Service Center Date:

SEP 12 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

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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 she 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 biochemist. 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, she 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.

Counsel observes that the [REDACTED] Ministry of Health awarded the petitioner a "Certificate on the Proposal of Improvement." There is no evidence that this certificate represents an award. The translated certificate reads, in part:

[T]he present certificate is issued to [the petitioner and two others] for a proposal recognized as a Proposal of Improvement and on 02/20/90 is accepted as such at Leningrad Pediatric Medical Institute awarded with the Order of Labor Red Banner, for implementation into practical usage under the title: "Method of early diagnostics of alcohol-induced nervous system damage of newborn children."

It appears that the petitioner and her colleagues had suggested a new testing method, which was implemented at [REDACTED]. There is no indication that the method was instituted beyond that one institution. The certificate acknowledges the adoption of the new method, but does not indicate that any honors or prize accrued to the petitioner for her role in developing the method.

Furthermore, the Russian S.F.S.R. was not an independent country in 1990; it was a subdivision of the U.S.S.R. until December 1991. Counsel observes that the certificate was awarded pursuant to national-level regulations, but this argument is not persuasive. The seal on the certificate is from the R.S.F.S.R. Ministry of Health Services, rather than any national-level entity. Thus, the evidence indicates that the certificate is neither an award nor national.

In December 1988, the petitioner received a certificate granting her "the rank of high achiever communist worker." It is not clear what entity awarded the petitioner this certificate; the translated certificate states only "Leader of Labor Union," "Leader of enterprise" and "Official Round Seal." The translator attested that her translation was complete, but the translator did not translate the text incorporated into the "Official Round Seal." The Russian-language original is only partly legible. Counsel asserts that the [REDACTED]

[REDACTED] (the petitioner's employer in 1988) awarded the certificate. If this is the case, then the award is not national or international in scope; it is an award from the petitioner's local employer. Counsel asserts "[t]his award is national in scope because issuance requires government approval," but there is no evidence that the award was approved at a

centralized, national level rather than by a local branch of the national government. There is no evidence that this certificate represents a significant national award.

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 was, from 1985 to 1993, a member of the Federal Scientific Society of Immunologists. The petitioner submits a copy of her membership card, but no documentation to show that the society requires outstanding achievements of its members, as judged by recognized experts.

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 observes that citations of the petitioner's work have appeared in articles by other researchers. The articles containing the citations, however, are not "about" the petitioner any more than they are about the dozens of other researchers whose work is cited in bibliographic footnotes.

Counsel contends:

The use of [the petitioner's] work product differs from ordinary citations in academic works; for example, an author may cite a work to illustrate a point he is trying to make or to provide the rationale behind a statement of fact. When [the petitioner's] methods are employed and referenced, the researcher incorporates the work into his own research and relies on its accuracy to support his own conclusions. He makes a broad statement as to the reliability and the utility of the methodology.

Counsel fails to demonstrate that the citations of the petitioner's work have consistently differed in substance and intent from most other citations.

Several of the articles containing the citations are by the petitioner's collaborators. For example, the four citations which counsel singles out for special mention appear in articles written or co-written by [REDACTED] V.A. [REDACTED] and F.I. Shelduchenko, all of whom have co-written articles with the petitioner. Citation (and in some cases self-citation) by collaborators does not demonstrate that the petitioner's work has had any influence or impact outside of that circle of collaborators.

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

Counsel states that the petitioner "is a biochemist whose task it is to decipher the chemical code in brain fluids to study neurological disorders such as **epilepsy, narcolepsy, fetal alcohol syndrome** and some **eating disorders**." Counsel asserts that the petitioner's two greatest contributions are "measurement methods for serotonin and its metabolites" and a "method of diagnosing fetal alcohol syndrome."

A letter from [REDACTED] who previously collaborated with the petitioner, indicates that the petitioner's "methods are currently being employed by the State Medicine Pediatrics Academy of [REDACTED] but this does not establish national acclaim. It demonstrates adoption of the petitioner's methods by one institution.

Counsel cites a 1993 report from [REDACTED] "the Leading Scientific Worker of the Biochemical Laboratory of the State Scientific Centre of Pulmonology of the Ministry of Health of the [REDACTED] who states that the petitioner "was the first one in our country who invented and implemented into practice the complex fluorometric method which allows to measure in one biological fluid sample the levels of serotonin, melatonin and 5-oxyindolacetic acid separately." This assertion, and others like it, attests to the originality of the petitioner's work but not its significance. Every original contribution is, virtually by definition, a "first" of some kind. It remains to be proved that the petitioner's original contributions are more significant than the original contributions of most other scientists in her country.

Furthermore, attestations from the petitioner's professors and employers do not necessarily represent a national or international consensus within the field. The petitioner must show that her work is seen as significant not only by her employers and collaborators, but by experts throughout the field.

The petitioner submits copies of three letters which she received in the 1970s, from other researchers who had comments or questions pertaining to her work. These letters do not show that the petitioner's work is of major significance. One researcher requested an opportunity to learn a new method which the petitioner had devised. The second letter (co-signed by three researchers) indicates that, after comparing techniques devised by the petitioner and by others, the researchers had better results using the petitioner's technique.

The author of the third letter contacted the petitioner to request a sample of melatonin because "melatonin is not available in Novosibirsk." Such a request for reagent samples appears to be

routine; another of the letters, referenced above, refers to the petitioner's own request for a sample of "o-Phthalaldehyd."

Counsel cites "articles written by **other scientists** who employ [the petitioner's] methods and **cite her work**." This argument would be persuasive if the petitioner were to show that her articles are among the most heavily cited in her field. The petitioner's submission of citations of her work does not establish that her work is cited more frequently than that of other researchers.

Occasional citation of the petitioner's work by others demonstrates that other researchers have found the petitioner's work to be of value in their research. These citations do not, however, establish that the petitioner's work is of major significance compared to that of others in the field. The petitioner submits no evidence to support the implied argument that only scholarly articles of major importance merit citation in scientific journals.

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

The petitioner documents the publication of dozens of articles which she wrote or co-wrote from the 1970s onward, along with conference presentations. The petitioner thus appears to satisfy this criterion, although the record does not show that the petitioner's publications have exceeded most other published articles in terms of impact or significance. The very fact of publication does not inherently establish acclaim.

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

Counsel asserts that the petitioner's presentation of her work at scientific conferences satisfies this criterion. Such conferences, however, are not "artistic exhibitions or showcases." Counsel does not overcome this deficiency by misquoting the regulation, with the word "artistic" omitted. Conference presentations are more akin to publication, because the petitioner places her work before her peers for evaluation and consideration.

Beyond the above evidence, the petitioner has submitted a letter from the University of Chicago, indicating that the petitioner "may be qualified for a position . . . as a researcher," with a starting salary of \$30,000.¹

The director denied the petition, enumerating perceived flaws in the petitioner's documentation. The director contended that "\$30,000 is not the going rate for an extraordinary [researcher]."

¹Apparently an annual amount, but the letter does not specify.

On appeal, counsel maintains that the petitioner has satisfied five of the ten regulatory criteria at 8 C.F.R. 204.5(h)(3). Counsel asserts that the director considered the evidence submitted under only three of the criteria, and refers to several exhibits submitted with the original petition, along with counsel's initial cover letter.

Counsel concedes "membership in the Federal Scientific Society of Immunologists is not limited to those of distinguished reputation and ability," but does not explain why counsel had earlier characterized the membership card from this society as "documentation of the alien's membership in associations which require outstanding achievements of their members." Given that counsel now admits this initial characterization was either false or at least mistaken, we must necessarily inquire as to how counsel's remaining characterizations are any more reliable.

Counsel, on appeal, expands upon earlier arguments but offers no new support for those arguments. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaiqbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

For instance, counsel refers to the petitioner's "High Achiever Communist Worker" certificate as "an award reserved for the elite and outstanding members of the Communist Party, in itself a select group." Counsel offers no evidence that only "the elite and outstanding members of the Communist Party" received the certificate, or that in the [REDACTED] the Communist Party represented "a select group" rather than an organization in which membership was virtually compulsory.

Regarding the petitioner's potential employment at the University of Chicago, counsel correctly notes that the visa classification sought does not require a job offer. That being so, if the petitioner chooses to submit documentation of potential job offers, that documentation is subject to Service consideration. Referring to the \$30,000 salary, counsel asserts that "research scientists . . . are often underpaid." The pertinent regulation regarding salaries calls for "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field" (emphasis added). Therefore, general statements about salaries throughout the field are without consequence. Regardless of whether the average salary is lower than it should be, it is reasonable to expect greater demand (and thus higher salaries) for the best-known and most influential researchers in a given field.

Furthermore, the University of Chicago did not indicate that the petitioner qualifies for a tenured faculty position, such as an assistant professorship; the position of "Researcher (instructor)" appears to be rather low in the employment hierarchy. Furthermore, there is no indication that U.S. institutions have actively sought

to employ the petitioner. Rather, from the content of the letter, it appears that the petitioner initiated contact with the [REDACTED] to inquire about employment opportunities; the letter states that the petitioner "expressed an interest in securing employment." The University's letter does not reflect any prior awareness of the petitioner's work; rather, the letter states "[i]t appears from your curriculum vitae that you may be qualified for a position . . . as a researcher," suggesting that the petitioner's curriculum vitae was the university's sole source of information about the petitioner's qualifications.

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 herself as a biochemist to such an extent that [REDACTED] may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of [REDACTED] field. The evidence indicates that the petitioner is talented and experienced in her field, but it also indicates that her influence is largely limited to the vicinity of St. Petersburg, Russia (formerly Leningrad, U.S.S.R.). The petitioner has not shown that her achievements set her significantly above almost all others in her 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.