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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: [redacted] Office: Nebraska Service Center Date: 07 JAN 2002

IN RE: Petitioner:
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:

[redacted]

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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 scientist. 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 was awarded a National Merit Scholarship at Guntur Medical College, one of 50 high school graduates in his state to receive the scholarship. Academic study is not a field of endeavor, but rather, training for a future endeavor. Scholarships based on academic achievements cannot be considered awards for excellence in the field of endeavor. As counsel implies the award was based on his high school performance, it would be absurd to consider this scholarship evidence of national acclaim as a physician. Upon completing his fourth year of medical school, he was awarded the Merit Certificate in Forensic Medicine, an award given to the top student completing his fourth year. Counsel argues that since the petitioner attended one of the top medical schools in India, this award should be considered national. We do not agree. An award based on class rank at a single school is not evidence that the petitioner is one of the very few physicians at the top of his field. The petitioner did not compete against experienced expert physicians from around India for this award. Rather, his grades exceeded those of his fellow classmates.

In 1998, the petitioner received the Mid-west Trainee Investigator Award by the Central Society for Clinical Research. The record includes a letter from the Central Society for Clinical research advising him of the award which consists of funds to attend an upcoming meeting in Chicago. There is no evidence that the candidate pool was open to all practitioners in his field nationwide, including experienced experts. The word, "trainee" in the title of the award suggests that the candidate pool was limited to novices while the word "Mid-west" suggests that the award was not national. Thus, the award is not evidence that the petitioner ranks at the top of his field, including when compared to the most experienced and renowned experts.

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 Heart Association Scientific Council for Clinical Cardiology and the International Society for Interferon and Cytokine Research (ISICR). The petitioner provided information on Council fellows, who must demonstrate certain professional requirements and be recommended by two current fellows. Recommendation letters must cite specific activities and accomplishments. The petitioner's membership letter, however, welcomes him as a member, not a fellow. Review of the website from which the fellowship information originated reveals that membership is different from fellowship and that members need only pay their dues. Counsel asserts that ISICR requires certain educational and professional requirements in addition to a nomination by a current member. The petitioner provided no evidence to support this assertion and the ISICR membership application on their web site, isicr.org, makes no reference to any membership requirements. Regardless, educational and professional requirements are not outstanding achievements; nor is obtaining a recommendation letter from a peer.

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

Dr. Aseem Kumar, an Assistant Professor at Rush University, who describes the petitioner as "very capable," asserts that the petitioner "conducted research on mechanisms involved in mediating clinically relevant septic-shock and the ensuing multi-organ failure," which is "a major cause of mortality in the intensive care units across America and around the globe." Dr. Kumar continues:

> [The petitioner's] projects are designed to elucidate the cellular and molecular mechanisms that are involved in mediating the disease process of sepsis. Hence, I can very confidently mention that the results of [the petitioner's] projects could immensely benefit the critically ill patients in America. . . .
>
> . . . His current set of experiments involved the delicate procedures of harvesting neonatal rat myocytes and assaying for myocardial depression. He has played an instrumental role in determining that bacterial DNA and RNA may contribute to myocardial depression during sepsis. This is an exceptionally noteworthy finding as it set a new direction in investigating the causes of myocardial depression in sepsis at [the] cellular level. . . .
>
> . . . [The petitioner] also played a major role in other clinically applied research projects such as the analysis of E. Coli peritonitis and development unique mouse septic shock models. These studies were highly significant. . . .

Dr. Anand Kumar, another assistant professor at Rush University, writes:

> While at Rush, [the petitioner] was engaged in several vital research endeavors. In fact, his first research project involved the study of the physiological and molecular mechanisms involved in sepsis. [The petitioner] developed an animal model that mimicked sepsis in humans for the purpose of the study. The study involved highly skilled surgical procedures including peritoneal implants and carotid artery catheterization in small animals such as mice. The results that were obtained from the initial study trials were extremely encouraging and were published in the 'Journal of Investigative Medicine.' . . .
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> Because I was extremely expressed [sic] with [the petitioner's] performance, I entrusted the job of studying the hemodynamic patterns in these septic small animals to him. This involved extremely difficult and skillful application of 2D-echocariography and doppler ultrasonography to mice, a totally novel application worthy of scientific publication in itself. . . .
>
> Another research project in which [the petitioner] made vital original contribution concerned a study of the role of TNF-α and IL-1β in the cardiac depression of human sepsis serum. The project involved cardiac tissue culture. Cardiac cells

> from rats were cultured, grown and then tested with serum obtained from septic patients. [The petitioner] demonstrated that the cardiac depression in septic patients was caused by a synergistic stimulation of a constitutive nitric oxide synthase by TNF-α and IL-1β. . . . Later he showed that the cytokine TGFβ inhibits human septic serum-induced depression of cardiac myocyte contractility. These findings are significant. They could bring revolutionary changes in the treatment of septic patients across the globe.

Dr. Roy Goldfarb, a professor at Rush University reiterates much of the information quoted above, asserting that the petitioner's work has "great potential."

Finally, Dr. Sudhakar Chennareddy, a cardiology fellow[1] at Wayne State University, asserts that he became aware of the petitioner's work through his publications. Dr. Chennareddy briefly discusses three of the petitioner's publications, asserting that each article either has contributed to an understanding of sepsis, or will contribute to our understanding of sepsis.

All but one of the letters are from the petitioner's colleagues. Dr. Aseem Kumar and Dr. Anand Kumar are both associate professors. While Dr. Goldfarb is a full professor, he does not indicate that he supervised the petitioner's work. The only letter from an independent medical professional is from a cardiology fellow. The petitioner has not provided any letters from renowned experts in the field confirming that the petitioner's contributions to the study and treatment of sepsis are significant and have influenced other researchers. The record is absent any evidence that even suggests that the petitioner has attained national acclaim based on his research on sepsis. Rather, the record reflects that the petitioner is a competent medical researcher who is involved with a project viewed by his collaborators and a single cardiology fellow at another institution as significant. Counsel's claim that such a track record places the petitioner at the "pinnacle" of his field, which includes Nobel Prize winners and other renowned expert physicians, borders on the absurd.

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

In her index of exhibits, counsel lists nine "publications," three "abstracts," and one "short report." The nine "publications" consist of four abstracts for symposium presentations (published in a total of two publications), one abstract for a poster session, three abstracts published in the same publication, and two one-page articles. The "short report" is merely a symposium program reflecting a presentation by the petitioner and his collaborators.

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 were the

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[1] While Dr. Chennareddy fails to provide his job title, the stationery on which he wrote his letter lists him as one of the cardiology fellows at Wayne State University.

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." This report reinforces the Service'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 record contains no evidence that the medical community has responded positively to the petitioner's presentations, abstracts, and short articles. The record contains no letters from renowned experts who witnessed the petitioner's presentations attesting to whether the petitioner's results have influenced their own research or evidence that any of the petitioner's publications have been cited at all, let alone by independent researchers.

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

Review of the record, however, does not establish that the petitioner has distinguished himself as a physician to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows potential as a doctor, 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.