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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: [redacted] Office: Texas Service Center Date: JAN 18 2002

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)

IN BEHALF OF PETITIONER: Self-represented

PUBLIC COPY

INSTRUCTIONS:
This is the decision 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 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 that 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 that 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, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner supervises the beneficiary's work as a postdoctoral fellow at the National Center for Toxicological Research ("NCTR"), administered by the Oak Ridge Institute for Science and Education. He seeks to classify the beneficiary 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 that the beneficiary has earned 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 the beneficiary has sustained national or international acclaim at the very top level.

The beneficiary seeks classification as an alien with extraordinary ability as a microbiologist. 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 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 does not expressly claim to have satisfied this criterion, but he submits documentation of the beneficiary's membership in the American Society for Microbiology ("ASM") and the American Association for the Advancement of Science ("AAAS"). The record contains no evidence regarding the membership requirements for these associations. ASM documents in the record state that ASM "is the oldest and largest single life science membership organization in the world," with "over 40,000 members." ASM's size, and its acceptance of student members, do not suggest that it is an exclusive organization requiring outstanding achievements of its members. The petitioner has submitted no information at all about AAAS except to establish that the beneficiary is a member.

> *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.*

The petitioner submits evidence that other scientists have cited the beneficiary's research in their publications. Citation of the beneficiary's work, however, does not establish that the articles containing the citations are "about" the beneficiary or his work. These citations are better understood as a gauge of the field's reaction to the beneficiary's own writings, covered by a separate criterion further below. The petitioner has not shown that the beneficiary's work is consistently cited more heavily than that of most other researchers in the field. We note that several of the citations of the beneficiary's work appear in articles by the petitioner, or else are self-citations by the beneficiary or his collaborators.

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

The petitioner states:

> In 1995, [the beneficiary] was at Moscow State University and published an important review article on the biotransformation

of heterocyclic compounds. He is internationally known for his work on the fungal metabolism of heterocyclic drugs, including *N*-oxidation and *N*-acetylation, and he has recently succeeded in identifying the previously unknown microbial hydroxyoxovinylcyclopentenyl conjugates of fluoroquinolone drugs.

Anna Williams, research biologist at NCTR, states that the beneficiary "is world renown for his work on the fungal metabolism of heterocyclic compounds." Other NCTR officials offer general impressions regarding the beneficiary but no details except to state that the beneficiary has written a number of published articles and book chapters. Many of these officials state that they came to know the beneficiary when he first arrived at NCTR in 1998; they do not state that they were familiar with the beneficiary's work before he began to work with them.

Several researchers and professors who supervised the beneficiary's work or studied alongside him at Moscow State University describe the beneficiary's research but do not specify what major contributions the beneficiary has made to his field. General assertions regarding the beneficiary's laboratory skills do not establish major achievements or sustained national or international acclaim. Dr. Ludmila V. Modyanova, who as a senior researcher supervised the beneficiary's work at Moscow State University, describes her work with the beneficiary, stating that they "investigated biotransformation of monocyclic compounds . . . as well as fused heterocyclic systems," and that they "revealed a set of reactions which compose the microbial metabolism of investigated substrates," but Dr. Modyanova does not explain how these findings are more significant than those of the vast majority of researchers in the field.

All of the above witnesses have close ties to the beneficiary. While we will take their letters under advisement, we note that their statements are not first-hand evidence that the beneficiary has earned national or international acclaim, extending beyond the universities and laboratories where he has studied and worked.

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

The beneficiary has written or co-written over two dozen articles, book chapters and conference presentations. We take due note of these materials, while also observing the citation indices submitted with the petition. Each index lists between one and three citations of the beneficiary's work, mostly self-citations; other researchers listed on the same page as the beneficiary show up to a hundred or so citations, with over a dozen for a single article. These single pages from citation indices demonstrate that some researchers have considerably greater impact and influence

than others, and that the very act of publication itself does not elevate the published author to national or international acclaim.

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

The petitioner refers to the "display" of the beneficiary's work at scientific conferences. Scientific conferences are not artistic exhibitions or showcases; presentations of this kind are more akin to publication of scholarly articles, in that they represent the dissemination of highly technical research information to a specialized audience.

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

The beneficiary worked as a mentor for students working in NCTR's summer science program. The record shows that, in a single summer, over twenty NCTR staffers acted as mentors for high school students and student teachers. The record does not indicate that acting as a mentor in this capacity constitutes a leading or critical role for NCTR, or that supervising research by high school students is comparable in impact or importance to the work normally conducted by professional scientists with advanced degrees. Even then, the documents in the record generally credit mentors for work with specific students, but there is no such listing for the beneficiary, who is simply named as one of several "[o]ther NCTR mentors." Also, the mentor program is limited to students at Arkansas schools; there is no indication that the mentoring program is recognized nationally or internationally.

The petitioner states that the beneficiary "assisted his co-workers . . . at Moscow State University, in reviewing of diploma works and scientific manuscripts. [The beneficiary] also provided his colleagues with constructive advice concerning their research." The petitioner does not establish that these activities are performed only by the top workers in a given field, or that by reviewing manuscripts and providing advice, the beneficiary performed in a leading or critical role for Moscow State University.

The petitioner notes that the beneficiary consulted with Dia-M, a Moscow-based firm "working with production of test-systems." The record does not establish that Dia-M enjoys a distinguished reputation among private manufacturers of testing equipment, or that the beneficiary's occasional consulting work constitutes a leading or critical role.

Documents in the record show that the beneficiary served as chief of the Biology and Ecology section of the Central Research Institute of Paper from November 1993 to July 1994. As with Dia-M, the petitioner has not shown that the Central Research Institute of

Paper has a distinguished reputation, nor has the petitioner established the nature of the chief of section position. The petitioner states that the beneficiary was a "supervisor," but not every supervisor holds a leading or critical role at a corporate level.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner states that the beneficiary "earns a high salary of $3,591 per month" at NCTR. We note that employment documents in the record refer to this sum as a stipend rather than a salary, and stipulate that no "employee/employer relationship" exists between the beneficiary and NCTR. The petitioner documents the amount of the beneficiary's monthly stipend, but there is no evidence to establish that this sum is significantly high in relation to the remuneration earned by others at NCTR, let alone throughout the field. The plain wording of the regulation demands comparison between the beneficiary and others in the field; the petitioner cannot satisfy this criterion simply by quoting the beneficiary's remuneration and declaring it to be high.

The petitioner also asserts that the beneficiary "earned . . . a high salary" at the Central Research Institute of Paper, but the record contains only one document from that entity, and it does not mention the beneficiary's salary at all. Thus, the record does not even tell us what the beneficiary earned there, let alone whether it was significantly high. Without such documentation, it is not clear how the petitioner could have personal knowledge to attest to the beneficiary's salary there. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

On June 29, 2000, the director informed the petitioner that the documentation submitted with the petition was not sufficient to establish the beneficiary as an alien of extraordinary ability. The director instructed the petitioner to explain how the beneficiary is considered to stand above others in his field.

In response to this letter, the petitioner states:

> [The beneficiary] has an international reputation in the microbiological transformation of synthetic antimicrobial drugs and related organic compounds. He is an expert in the selection and isolation of microorganisms that carry out certain types of biochemical transformations of the heterocyclic family of antimicrobial drugs.

The beneficiary does not earn an international reputation by working in two different countries, any more than working in one country confers a national reputation. The evidence submitted with

the petition does not show that the beneficiary is widely (not just by his collaborators and teachers) acclaimed as one of the top figures in his field.

The petitioner states that "the editors of microbiology journals accept less than half the papers that have been submitted to them by qualified scientists." The "less than half" figure does not place the beneficiary at the small percentage at the very top of the field.

The director denied the petition, stating that the petitioner has "failed to establish that [the] beneficiary is one of the few individuals that have risen to the very top of his field of endeavor." On appeal, the petitioner argues that he has submitted sufficient evidence to satisfy several of the regulatory criteria. The petitioner refers to "[t]he large number of scientists who have cited [the beneficiary's] works in prestigious, internationally known scientific journals." Elsewhere on appeal, the petitioner specifies the "large number" of citations, stating that the beneficiary's "works . . . were cited in 10 scientific publications." Five of these publications are, themselves, actually citation indices rather than scholarly publications. In all, the record establishes fewer than twenty citations of the beneficiary's work, and as we have noted above, many of the citations in the record are self-citations by the beneficiary or his collaborators, or citations by the petitioner. The record also shows that some other researchers are cited a hundred times or more in a single year. While citation levels that high are quite rare, that is arguably the point. Extraordinary ability is meant to be an extremely high standard, beyond the reach of all but a small number of top scientists. If the average researcher could readily fulfill the criteria, then the criteria would be meaningless as a means of distinguishing the very top figures in the field from the mass of their colleagues.

The petitioner, on appeal, claims to have satisfied an additional criterion which he had not originally claimed to have satisfied:

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

The petitioner observes that the beneficiary received a grant from the Russian Fund for Fundamental Investigations. A research grant is not a prize or award for excellence in the field; rather, it provides funding for research that has not happened yet at the time of the award. While the grant application process can be rigorous, producing more rejections than approvals, an approved grant application does not equate to a national or international prize for excellence in the field of endeavor.

The petitioner states that the beneficiary holds six inventor's certificates (analogous to patents), and he received cash prizes

relating to three of those certificates. A patent itself is not a prize or award, but rather the predictable result of a properly-filed patent application; it recognizes originality rather than excellence or major significance. The record contains so little evidence about the accompanying cash awards that we cannot determine their significance. Also, the prizes came from the institutions that employed the beneficiary at the time he conducted the research that led to the patents. Awards that are limited to employees of a single entity are not national or international in scope.

Other claimed prizes or awards are actually nothing of the sort by any reasonable definition of the terms "prize" and "award." For instance, the petitioner asserts that the beneficiary's postdoctoral researcher position at NCTR is, itself, a sort of award because the application process for the position is very competitive. There are many coveted jobs, at NCTR and elsewhere; obtaining one of these jobs may be a significant career achievement at the individual level but there is no evidence that the petitioner earned, or added to, a national or international reputation as a result of securing his postdoctoral position.

The petitioner lists the beneficiary's work as a mentor at NCTR among the beneficiary's purported prizes and awards, but he offers no explanation at all as to how devoting part of one's time to assisting high school students constitutes a prize or award. Also, this particular mentor program is conducted exclusively by researchers at NCTR, rather than nationwide.

The petitioner observes that the beneficiary's "presence at the 1999 Annual Meeting of the American Society for Microbiology . . . was mentioned in the National Center for Toxicological Research newspaper 'Center Wide.'" It is not clear whether the claimed "prize" is the beneficiary's attendance at the meeting, or the mention of that attendance in NCTR's own in-house newsletter; in either case, neither the beneficiary's attendance nor the article about it represents a nationally recognized prize for excellence in the field of endeavor.[1]

The petitioner repeats various arguments which we have already addressed, such as the assertion that a conference presentation amounts to display at an artistic exhibition. The petitioner

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[1]We note that, according to the Center Wide article, "[a]pproximately 14,000 microbiologists attended the meeting." Given this huge attendance figure for a very significant (100th anniversary) conference, we cannot conclude that only the top figures in microbiology were in attendance. Also, the article identifies all eleven NCTR researchers who gave poster presentations at the conference; it does not single out the beneficiary for special attention apart from the other ten presenters.

contends that "[s]cientific meetings can be regarded as showcases for professional scientists, because they offer a special time and place for the display of posters containing scientific data." This argument fails because what distinguishes an artistic showcase is not that it "offer[s] a special time and place," but rather it is intended to celebrate and call attention to the work of a given artist or group of artists. An exhibition of Andrew Wyeth paintings at the Guggenheim Museum would satisfy this criterion; it is not comparable in any significant way to the beneficiary participating as one of hundreds or thousands of scientists submitting posters for presentation at a conference.

The bulk of the appeal submission consists of scholarly articles written by the beneficiary or citing the beneficiary's work among dozens of other bibliographic citations. Most of this evidence duplicates submissions already offered with the initial filing, and thus already addressed above.

The record shows that the beneficiary is an experienced and accomplished scientist who has won the respect of his colleagues both at Moscow State University and at NCTR, as well as other facilities where he has worked. Even the researchers at these institutions, however, have not shown that the beneficiary has received more recognition in his field, or that he has been responsible for substantially more important findings, than the vast majority of others in his field.

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 beneficiary has distinguished himself as a microbiologist 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 beneficiary'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.