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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

File: [redacted] Office: Nebraska 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, 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 he has sustained national or international acclaim at the very top level.

At the time of filing, the petitioner was a research associate in the Department of Cell Biology and Physiology at Washington University School of Medicine ("WUSM"), St. Louis, Missouri. 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, in his statements to the Service, refers to only two of the criteria.

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

WUSM Professor Robert D. Mercer describes the petitioner's work in Prof. Mercer's laboratory:

> [The petitioner] joined my laboratory to study the expression, activity and distribution of the Na,K-ATPase during *in vitro* neuronal induction. [The petitioner's] work is concerned with understanding the role of the Na,K-ATPase in directing nerve development. While in my laboratory, [the petitioner] has distinguished himself as an outstanding cell physiologist. After only a few months in the laboratory, he obtained enough data for a publication in a well respected journal. . . . [The petitioner's] work has been fundamental to understanding how the Na,K-ATPase regulates neuronal development.

Prof. Mercer discusses the goals of the petitioner's "overall research plan," and states that the petitioner's "work will . . . have important implications" and "will serve as a foundation to several other important studies," but these assertions clearly refer to work which has not yet taken place. Any statements regarding the impact or influence that this future work will have are necessarily speculative and conjectural, rather than evidence of existing achievements.

In a subsequent letter, Prof. Mercer states that the petitioner "initiated all these studies and has been the primary contributor," and that the petitioner's "work has received national recognition for its importance in elucidating neuronal differentiation and development." Prof. Mercer does not cite any evidence to establish this claimed national recognition, and as the petitioner's supervisor and collaborator, his assessment of the importance of the research cannot be considered an independent opinion. Prof. Mercer again describes studies that "will" take place at some undefined future point, and states that the petitioner "will make significant contributions to biomedical research."

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

The record indicates that the petitioner gave a presentation at a professional conference in Boston shortly before the petition's filing date, but the record does not indicate that this presentation has attracted greater attention than what is usually accorded to such presentations.

The petitioner submits evidence to show that Brain Research has accepted an article by the petitioner, and that Molecular Genetics and Metabolism had inquired into publishing the petitioner's above-mentioned presentation. These materials had not yet been published at the time the petitioner filed the petition, and therefore they evidently had not yet influenced the field or contributed to the petitioner's acclaim.

The director denied the petition, stating that while the petitioner "appears to be at the beginning of a successful and productive career," his authorship of two papers does not establish him as one of the most important and highly acclaimed figures in his field, nationally or internationally. On appeal, the petitioner states:

> [T]he vast majority of researchers come to the United States to participate in *ongoing research*, and contribute to *existing* research plans. In contrast, my work is a product of my own insight. . . . My studies are not simply a continuation of pre-existing research efforts, but actually open up a new field of endeavor, that of ((Embryonic Stem Cells as a model to study Na,K-ATPase isoforms during development)). Therefore, this is a pioneering effort. As I am certain you would agree, only **an exceedingly small percentage** of investigators are endowed with the insight and breadth of perspective that would make this possible.

The petitioner's attempt to place himself in the small percentage at the top of the field fails because it relies on factors that lie entirely outside the statutory guidelines and regulatory criteria. The unsubstantiated assertion that only a small percentage of researchers are able to conceive of a new research program does not imply that those researchers are inherently at the top of the field.

The petitioner states "the word 'Acclaim' is a relative term" and contends "the intended meaning is MERIT rather than PUBLICITY per se." Certainly an alien need not be "famous" to qualify as an alien of extraordinary ability (except in a field such as athletics or the performing arts where publicity is virtually inseparable from success in the field), but the statute and regulations demand "sustained national and international acclaim." The words "national or international" demonstrate that the alien seeking this classification must be nationally or internationally known in the field. The petitioner cannot simply offer the personal assurance that his work is much more important than that of others in the

field; he must show that this opinion is shared not only by his supervisor, but throughout the field at a national or international level. Because, as the petitioner notes, the term "acclaim" can be ambiguous, the regulations offer objective criteria by which such acclaim can be at least approximately measured. These regulations are binding and the petitioner cannot, at his discretion, substitute a different, more favorable definition of "acclaim."[1]

The petitioner asserts that the Service should give greater weight to Prof. Mercer's letter, because as the petitioner's supervisor, he is in the best position to judge the petitioner's work and the significance of the petitioner's contribution to the research. At issue, however, is not whether Prof. Mercer is capable of commenting on the petitioner's research; his competence is not in question. Rather, the issue is that the petitioner cannot establish national or international acclaim simply by showing that his own supervisor admires his work. Prof. Mercer's letter does not directly establish that the petitioner has earned a reputation, national, international or otherwise, outside of Prof. Mercer's own laboratory where the petitioner has worked. Prof. Mercer cannot establish a wider reputation simply by claiming, without elaboration, that the petitioner is nationally known for his work.

Section 203(b)(1)(A)(i) of the Act, cited above in full, states that the petition cannot be approved unless the alien's "achievements have been recognized in the field through extensive documentation." A recommendation letter from a supervisor, one conference presentation, and two not-yet-published articles do not constitute "extensive documentation."

The petitioner submits, on appeal, a letter from another WUSM faculty member. Dr. James E. Huettner, an associate professor, states that the petitioner "is doing highly innovative work that will have a significant positive impact on future research in this country." Dr. Huettner's letter still does not establish, directly, that the petitioner has already earned acclaim nationally or internationally; a reputation that is limited to a single university does not constitute qualifying acclaim, regardless of that university's reputation. The assertion that the petitioner's work will have a major impact necessarily implies, by omission, that it has not yet had such an impact.

The petitioner's only other submission on appeal is what appears to be a manuscript for a third unpublished article. While a petitioner can support an extraordinary ability claim through

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[1]We note that Webster's Ninth New Collegiate Dictionary defines "acclaim" as being synonymous with "praise" and "applause." The petitioner offers no source for his proposed definition of "acclaim" as being synonymous with "merit."

published articles, it is not the very act of writing such articles that establishes sustained acclaim. Rather, a researcher can earn widespread acclaim if such an article is published in a widely-circulated journal, and influences researchers around the country or the world. This influence must already be demonstrable at the time the petition is filed. See Matter of Katigbak, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Even if the petitioner is correct in his belief that he has developed an important new avenue of research that will eventually lead to significant discoveries, the record does not establish that the petitioner, at the time of filing, was already nationally or internationally acclaimed as a top researcher in his field. Thus, the petitioner's filing of this petition appears to have been premature at best.

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 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.