U.S. Department of Justice

Immigration and Naturalization Service

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

File: WAC 01 298 51233 Office: CALIFORNIA SERVICE CENTER Date: FEB 27 2003

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.

Elizabeth Heyward
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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 he filed the petition, the petitioner was a postdoctoral researcher at the Scripps Research Institute. The petitioner subsequently accepted a position as an assistant professor at the Burnham Institute. 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 states that he satisfies this criterion because he received a master's thesis fellowship from Spain's Ministry of Education and Science in 1992-93, a doctoral fellowship from the European Molecular Biology Laboratory in 1993-97, and a postdoctoral fellowship from the European Molecular Biology Organization in 1998-99.

All of the above represent stipends to facilitate ongoing training, much of it at the student level. Thus, the fellowships are not available to researchers who have already completed their training and established permanent careers. Without evidence to show that the top researchers in his field are postdoctoral fellows, rather than professors or other long-established figures, we cannot find that the above stipends qualify as significant recognized prizes or awards. Furthermore, the fellowships are contingent upon continued performance, and thus they are more akin to remuneration than to awards for excellence in the field; they fund the recipient's present work, rather than recognize and reward the recipient's past efforts.

> *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 his research has been cited in publications by other scientists. Citation of the petitioner's work, however, does not establish that the articles containing the citations are "about" the petitioner or his work. Rather, the citations demonstrate that the petitioner's work served as a resource for another article that addressed the same general area of interest. Citations of this kind are most useful when measuring the impact of the petitioner's own work, covered by a separate criterion further below.

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

The petitioner has on three occasions deposited data into the Protein Data Bank, which the petitioner calls "the single worldwide repository for the processing and distribution of three dimensional biological macromolecular structure data." The petitioner submits no independent evidence to show that deposits into the Protein Data Bank are rare events, considered major contributions in the petitioner's field.

The petitioner submits letters from six witnesses, discussing the petitioner's work. Professor Peter E. Wright, chairman of the Department of Molecular Biology at the Scripps Research Institute and supervisor of the petitioner's postdoctoral work there, states:

> I am enormously impressed by [the petitioner's] research ability and his potential. . . . When he first came to my laboratory, he initiated a new project on the structural basis of Wnt signal transduction. The Wnt pathway regulates many key developmental processes in the cell and defects in Wnt signaling have been linked to cancer. [The petitioner] established a collaboration with Dr. [Juan Carlos Izpisúa] Belmonte at the Salk Institute and expressed several important domains from proteins involved in the Wnt cascade. . . . His work has important implications for cancer research.
>
> [The petitioner] has also completed an analysis of the structure and function of the PHD motif found in numerous transcriptional regulatory proteins, including the transcriptional adapter protein CBP. CBP mediates many of the signaling processes in the cell and is involved in development of leukemia, cancers, and certain congenital abnormalities; it also represents an important target for the development of future drugs directed against cancer, leukemia and diabetes. [The petitioner] rapidly completed the structure of the PHD motif from the Williams Syndrome Transcription Factor. This structure is extremely important because it reveals unexpected structural homologies with other zinc finger motifs and explains the molecular basis of certain hereditary diseases.

Prof. Wright concludes by stating that the petitioner's "research could make important contributions to the treatment and prevention of several of the nation's most destructive diseases." [redacted] named above, offers a similar description of the petitioner's past work and states "I believe [the petitioner] will make remarkable contributions in the field," citing the petitioner's "capacity for strong leadership." [redacted] of the European Molecular Biology Laboratory states that the petitioner possesses the "capacity for future leadership in the field of biomolecular structure and to contribute to our understanding of the molecular mechanism of human diseases." Other witnesses similarly couch the petitioner's value to the field in terms of his potential rather than any degree of major recognition the petitioner has already earned. Only one witness appears not to have worked with the petitioner. Professor Josep Rizo of the University of Texas Southwestern Medical Center at Dallas states:

> Although I have not worked directly with [the petitioner], I conduct my research in the same area, determination of the atomic structure of biopolymers by nuclear magnetic resonance (NMR) methods, and I have been following his scientific career with interest. In 1992 . . . [the petitioner's] work focused on the determination of the structure of the bacterial protein CheY, which proved to be a decisive step towards the study of its folding mechanism. . . . [At] the European Molecular Biology Laboratory . . . [the petitioner solved] the structure of the human protein spectrin in the laboratory of Professo[redacted] This work proved to be of biomedical importance because it provided a molecular framework to rationalize how mutations in the protein are sufficient to cause hemolytic anemias in humans. . . . During his postdoctoral work, [the petitioner] focused on the structure of the

human cancer relevant protein CBP. This work has provided molecular details of the relationship between the structure and the function of this protein, a key for future development of targeted human cancer therapies.

While the witnesses have described the petitioner's work in detail, description alone does not establish significance. Given that most of the witnesses are the petitioner's professors or collaborators, their statements are not first-hand evidence that the petitioner has earned national or international acclaim as a figure among the small percentage at the very top of his field.

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

The petitioner submits excerpts from eight published articles, along with citation documentation showing that his work has been cited a total of 175 times since 1994. This evidence shows widespread impact and influence, and thus the petitioner has satisfied this criterion. The petitioner also submits evidence of conference presentations, which are similar to publication of scholarly articles in that they involve the dissemination of highly technical material to a specialized audience.

The director instructed the petitioner to submit additional evidence to show that the petitioner has earned sustained national or international acclaim as a top researcher in his field. In response, the petitioner submits documentation of his new position as an assistant professor at the Burnham Institute. The petitioner signed the employment agreement on February 11, 2002 and his position became effective on July 1, 2002. This change in the petitioner's employment cannot retroactively show that the petitioner was already eligible as of the petition's September 2001 filing date. More importantly, the petitioner has not shown that his employment as an assistant professor is a sign of sustained acclaim. A letter from Professor Erkki Ruoslahti of the Burnham Institute indicates that the petitioner "has been recruited . . . because of his outstanding expertise in structural biology," but this does not demonstrate that the petitioner is among the most highly acclaimed figures in that area. Indeed, Prof. Ruoslahti and other witnesses claim achievements for themselves which seem to dwarf the petitioner's own accomplishments. The overall tenor of the letters is that the petitioner is a promising young scientist, rather than an established leader who has already secured lasting acclaim in the field.

The director denied the petition, citing the "conspicuous lack of evidence showing that the self-petitioner's claimed contributions to the field have been widely recognized by others in the field." The director acknowledged the petitioner's talent and productivity, but asserted that the regulatory criteria are "highly restrictive" and require more than evidence that the petitioner has been successful and has impressed his superiors.

On appeal, the petitioner reviews his previous submissions, stating that he has met the required criteria. The petitioner notes that one of his heavily cited articles appeared in the highly prestigious journal *Nature*. As noted above, we have acknowledged the petitioner's satisfaction of 8 C.F.R. § 204.5(h)(3)(vi) pertaining to publication of scholarly articles. The regulations, however, demand a variety of evidence, in keeping with the statutory call for "extensive documentation" of sustained

acclaim at the national or international level. The petitioner's documentation, apart from the aforementioned articles, consists primarily of an assortment of letters solicited expressly for the purpose of supporting this petition. These letters cannot take the place of the many types of objective documentation which, if the petitioner was already widely acclaimed before he filed the petition, ought to have existed and been readily available independently of that petition. At best, the filing of this petition appears to have been premature.

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 researcher in his field 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.