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

[redacted]

File: WAC 02 070 52665 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:

[redacted]

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 Hayward
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 sustained and the petition will be approved.

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.

This petition, filed on December 19, 2001, seeks to classify the petitioner as an alien with extraordinary ability as a biophysicist. At the time of filing, the petitioner was employed by the Ernest Orlando Lawrence Berkeley National Laboratory ("LBNL") in Berkeley, California. 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 sustained acclaim necessary to

qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, counsel 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 submitted a certificate reflecting his receipt of an Erwin-Stephan Prize from the Technical University of Berlin (1993). The wording on the certificate states: "For excellent academic performance and short study period the Erwin-Stephan Prize to promote the international exchange of young scientists." We note that the Technical University of Berlin also awarded the petitioner his M.S. in Physics in 1993. It has not been shown that the Erwin-Stephan Prize enjoys significant recognition beyond the university where it was presented.

University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. Awards or degrees based on educational achievement at a given university are institutional or local in nature and do not constitute nationally or internationally recognized "awards for excellence in the field of endeavor." An academic award may indicate that the petitioner has excelled in his studies at a given university, but it offers no meaningful comparison between the petitioner and more experienced professionals in the field of biophysics who have long since completed their educational training. Awards limited to students, therefore, do not reflect achievement at the very top of the biophysics field.

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, test scores and recommendations do not constitute outstanding achievements. In addition, memberships in an association that evaluates membership applications at the local chapter level do not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association would not satisfy this criterion, because the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted his membership card for the American Association for the Advancement of Science ("AAAS") reflecting "postdoctoral" status. According to the web site of the AAAS at *www.aaas.org*, their organization has over 134,000 members and membership is "open to all." All that is required to join this association is the payment of a nominal fee. We further note that the petitioner carries "postdoctoral" membership rather than "professional"

membership. The petitioner also submitted his membership card for the American Physical Society ("APS"). The petitioner in this case has offered no evidence showing that his membership in the APS or AAAS required outstanding achievement in biophysics or that he was judged by national or international experts in consideration of his membership.

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.

In response to the director's request for evidence, the petitioner submitted several recent scholarly articles citing his work and a statement from counsel. Counsel argued that the numerous citations (over one hundred) of the petitioner's work would satisfy this criterion. We note here that the articles citing the petitioner's work similarly referenced many other individuals. Citations, which simply reference an individual's work, do not qualify as "published materials about the alien." Citations of the petitioner's work will be addressed under a separate criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner submitted a letter from the Editorial Director of the American Physical Society indicating that the petitioner served as a referee for *Physical Review Letters*. Also submitted was direct evidence of a manuscript referral from an editor of *Physical Review Letters* and the petitioner's corresponding evaluation report. The petitioner provided additional letters from the editor of *Nuclear Instruments and Methods* and the publisher of *Journal of Physics B: Atomic, Molecular and Optical Physics* confirming that the petitioner reviewed scientific manuscripts to determine their suitability for publication.

The director's denial stated that the petitioner did not submit corroborative evidence of his "actual participation" as a reviewer. We disagree with the director's determination based on the evidence described in the preceding paragraph.

On appeal, the petitioner provides additional evidence in the form of his comments to various manuscript evaluations. We find that the petitioner's evidence is sufficient to satisfy this criterion.

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

Dr. Thomas Earnest, Senior Staff Scientist and Head of the Berkeley Center for Structural Biology, states:

> We are responsible for the development and operations of several experimental stations ('beamlines'), which are used by researchers from all over the United States to determine the structure of biological complexes using x-ray diffraction. The x-rays are generated by the

> Advanced Light Source synchrotron radiation facility of Lawrence Berkeley National Laboratory.
>
> [The petitioner] has spent a decade in physics research with synchrotron radiation, performing experiments at leading European and Japanese institutes before coming to the United States. His outstanding contributions in the areas of advanced instrumentation and gas phase spectroscopy earned him a name as an international leader in the field…
>
> At the Berkeley Center of Structural Biology, [the petitioner] has commissioned the world's most advanced protein crystallography beamline in a very short time. The petitioner is now responsible for the operation of this state-of-the-art experimental station, which is geared toward high-throughput data collection. Its robotic systems enable it to significantly speed up the structure determination process. [The petitioner] helps cultivate a community of leading scientific users of the facility from all over the United States, supporting and training scientists, as well as participating in the development of novel methods for macromolecular crystallography.
>
> In summary, the petitioner is one of the leading experts in synchrotron radiation instrumentation.

The petitioner submits an article appearing in the April 13, 2001 issue of *Science*. The article, entitled "Robots Enter the Race to Analyze Proteins," states:

> BERKELEY, CALIFORNIA – Structural Biologists are about to get a helping hand in their effort to map the three-dimensional arrangement of atoms in proteins. Earlier this week, researchers at the Advanced Light Source (ALS) here were scheduled to begin using a new robot to automate the laborious process of mounting protein crystals in a synchrotron's x-ray beamline and then collecting and analyzing the data. Once fully operational, the robot could boost the number of protein structures that can be solved at a beamline nearly 10-fold to about 1000 per year.
>
> * * *
>
> Eventually, Earnest says, the ALS team plans to incorporate additional software packages that then automatically process and analyze the data…

The petitioner also submits a patent application dated December 12, 2001 listing the petitioner as one of three LBNL co-inventors of the "Integrated Crystal Mounting and Alignment System for High-Throughput Biological Crystallography." While the *Science* article does not specifically mention the petitioner, it bolsters the witnesses' claims that the petitioner's work in the development of the protein crystallography beamline system was of major significance to his field.

We note that the petitioner's witnesses are not limited to his immediate colleagues. For example, [redacted] Program Director for the Cell Biology and Biophysics Division, National

Institutes of Health, states:

> [The petitioner] has been instrumental in a pioneering effort to realize automation for enhanced efficiency of operation at a synchrotron experimental station. [The petitioner's] substantial technical expertise and initiative has contributed significantly to this project. The robotic system for automatic mounting of crystals for diffraction enables highly accelerated structure determination by this technical approach. This will have a direct impact on many areas of biophysical and biochemical research critically important to the understanding of normal biological and disease processes.

Additional witness letters offer further evidence that the petitioner's work has attracted attention beyond his colleagues at LBNL. The letters establish that the petitioner's work has garnered the attention of experts throughout the field.

Several witnesses state that the petitioner's publication record indicates that he has significantly impacted his field. Publication, by itself, is not a strong indication of impact, because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the petitioner's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.)* attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner himself has cited dozens of sources in his own articles. Numerous independent citations provide firm evidence that other researchers have been influenced by the petitioner's work and are familiar with it.

In this case, the evidence indicates that the petitioner's contributions are important not only to his research institutions, but throughout the biophysics field. The petitioner has shown that independent experts have acknowledged the value of his work and that his contributions have garnered international acclaim. Thus, we find that the petitioner's evidence is sufficient to satisfy this criterion.

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

The petitioner submitted evidence of his authorship of articles appearing in *Physical Review Letters*; *Biochemistry*, *Journal of Physics B: Atomic, Molecular and Optical Physics*; *Physical Review A*; and *Review of Scientific Instruments*. Also submitted was a citation index showing that the petitioner's published articles were cited 111 times. When judging the influence and impact that the petitioner's published work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. In this case, the substantial number of citations of the petitioner's articles demonstrates widespread interest in, and reliance on, the petitioner's work. While some of the 111 citations are self-citations by the

petitioner or his collaborators, the overwhelming majority of the citations demonstrate the favorable response of independent researchers. These citations show that many other scientists have acknowledged the petitioner's influence and found his work to be significant.

In this case, the petitioner has satisfied three of the lesser regulatory criteria required for classification as an alien of extraordinary ability. Pursuant to the statute and regulations as they are currently constituted, the petitioner qualifies for the classification sought.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the totality of the evidence establishes an overall pattern of sustained acclaim and extraordinary ability. The petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has also established that he seeks to continue working in the same field in the United States and that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.