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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

[redacted]

File: [redacted] Office: Nebraska Service Center Date: SEP 10 2003

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)

ON BEHALF OF PETITIONER:

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

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 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 science. The director determined the petitioner had not established that he qualifies as an alien of extraordinary ability in his field of endeavor.

On appeal, counsel asserts that the director failed to consider the record as a whole. We note that the director has expressed specific concerns which neither counsel nor the petitioner have directly addressed in response to the director's request for additional evidence or on appeal. While many of the director's concerns are valid and the petitioner might have significantly bolstered his case by responding to those concerns, we find that the record sufficiently supports a finding of the petitioner's eligibility for the classification sought.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in the Bureau regulations at 8 C.F.R. § 204.5(h)(3). The

relevant criteria will be discussed 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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a professor of orthopedics.

The regulation at 8 C.F.R. § 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met three of the necessary 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 evidence of the following awards: the Successful Investigator Award from Istanbul University in 2000, the Scientific Achievement Award from the Turkish Orthopedics and Traumatology Association in 2001 "for having scored first rank in Experimental Study Project," the International Achievement and Distinguished Service Award from Istanbul University in 1999 for "participation as an academician in international science forums," and a six-month research fellowship appointment from the University of Maryland in 1997.

In his request for additional documentation, the director requested evidence regarding the significance of the above awards; specifically, whether they were nationally recognized awards. In response, the petitioner resubmitted the above awards, asserting that the International Achievement and Distinguished Service Award recognizes the awardee's volume of scholarly articles published in international journals. Based on the petitioner's failure to submit evidence regarding the significance of his awards, the director concluded that the petitioner had not established that he met this criterion.

On appeal, counsel does not challenge the director's conclusion on this criterion and we concur with the director. All but one of the awards appear to be recognition from the petitioner's employer and a visiting researcher job offer. The petitioner has simply not submitted any evidence regarding the significance of the 2001 award from the Turkish Orthopedics and Traumatology Association. Thus, the petitioner has not established that it is a nationally recognized award for excellence. Nevertheless, we will consider these awards below as some objective evidence of the petitioner's recognition in the 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.

While the petitioner did not claim to meet this criterion, his resume listed several professional memberships. In his request for additional documentation, the director advised that in order to meet this criterion, the organizations must require outstanding achievements of their members. On appeal,

counsel asserts that the American Academy of Orthopedic Surgeons requires good standing in the field.

The record does not contain the petitioner's membership cards or other evidence of his claimed memberships. Regardless, good standing in the field is not an outstanding achievement.

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.

As evidence to meet this criterion, the petitioner submitted evidence of numerous seminars for which he was the instructor and conferences at which he spoke. The petitioner also served as "conference conductor" for a 1998 Turkish conference and on a "scientific panel" for the German Society of Orthopedics and Traumatology congress in 1993. In his request for additional evidence, the director requested evidence that the petitioner had judged the work of other orthopedic surgeons or researchers. In response, counsel references editing positions held by the petitioner in addition to the above claims. The director concluded that the petitioner had not established his membership on the editorial staff of any journals.

On appeal, the petitioner submits an October 1, 2001, letter from the *Journal of Orthopaedic Surgery* expressing appreciation for the petitioner's "membership in the Science Editorial Board of Orthopedics Journal."

Speaking at a conference or conducting a seminar does not constitute judging the work of others. Nevertheless, the record includes some evidence of the petitioner's editing positions relating to scientific journals and books, beyond the typical peer-review activities common to the field. While additional evidence of the significance of the books and publications edited by the petitioner would have significantly bolstered his case, in light of the record as a whole, we conclude that the petitioner meets this criterion.

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

The petitioner submitted evidence that he had 13 poster presentations displayed at conferences in the United States, Germany, and Italy. The petitioner has also conducted numerous seminars and presented his work at several conferences. The director requested evidence that the petitioner's work with the Ilizarov approach to orthopedic surgery was acclaimed by the medical community as significant. In response, the petitioner resubmitted previously submitted documentation. The director concluded that the petitioner had not demonstrated that the petitioner originated the Ilizarov approach or that the medical community viewed his contributions to the approach as significant.

On appeal, the petitioner submitted a joint letter from Attila and Mert Evren, the President and Vice President of Evrenler, "the oldest and biggest orthopaedic and traumatologic implant manufacturer in Turkey." The letter indicates that the company exports their products to several

countries, including the United States. The letter continues that the company relies on collaborations with orthopedic experts, and that the petitioner has been one of the company's most valuable consultants.

The petitioner also submits a letter from Dr. Mustafa Yucel, an orthopedic surgeon and professor at Hannover Medical School in Germany. Dr. Yucel states:

> [The petitioner's] record of achievement as an orthopedic surgeon is simply outstanding. As a spokesman and practitioner of the world revolutionary techniques of Ilizarov application, he has restored the locomotion balance of hundreds of patients burdened with congenitally or accidentally deformed limbs. Turkish communities fell immensely indebted to this national hero who was the first to introduce and bring the blessings of the Ilizarov technique to the increasing hosts of Turkish patients.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. In this case, the petitioner has submitted objective evidence of recognition for his contributions, including but not limited to, an award issued by a professional organization for the nation of Turkey, the Turkish Orthopedics and Traumatology Association. In light of the record as a whole, the petitioner meets 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 claims to have authored a case report, nine articles (most of which were clinical studies) and 16 abstracts presented at international conferences. The petitioner also claims to have authored eight chapters in three books. The petitioner submitted evidence supporting some of these claims. Despite the director's request for evidence of all of the petitioner's articles and book chapters, the petitioner has failed to submit such evidence. The record contains evidence that independent experts have cited the petitioner's case report, four of his articles, and two of his presentations.[1] The director determined that the petitioner had "marginally" met this criterion. We will not disturb the director's conclusion.

In review, while the petitioner's submissions have not been particularly responsive to the director's concerns, 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 established that he seeks to continue working in the same field in the

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[1] The petitioner also submitted evidence that a researcher had cited a book chapter edited by the petitioner; however, this citation is not evidence that the petitioner's own work has been influential.

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.