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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

SEP 26 2003

File: [redacted] (LIN-02-282-52045) Office: Nebraska Service Center Date:

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 Citizenship and Immigration Services (CIS) 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 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 CIS 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 seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. 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 that, 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 relies on his receipt of the 2000 Young Investigator Travel Award from the Federation of American Society for Experimental Biology (FASEB). In addition, the petitioner received third prize at the 2000 Medical Scientist Student Forum.

In his request for additional documentation, the director requested evidence regarding the prestige of the organizations issuing the awards and the selection criteria. In response, the petitioner submitted a letter from the Conference Coordinator for FASEB Summer Research Conferences, [redacted] Ms. [redacted] asserts that the petitioner participated in the 2000 FASEB summer conference based on his research subsequently published in the *Proceedings of the National Academy of Sciences* and that he was awarded a "Young Investigator Award in recognition of his research. Finally, she asserts that FASEB presents five or six such awards to "young investigators" for each conference.

The director concluded that the letter from Ms. [redacted] did not sufficiently establish that the travel award was a nationally recognized award for excellence. On appeal, the petitioner submits a new letter from Ms. [redacted] She states that 136 abstracts were submitted for presentation at the 2000 FASEB conference and that seven were selected for the Young Investigator Award in recognition of outstanding research.

Given the name of the travel award, it appears that only students and those at the beginning of their careers compete for this award. The petitioner has not established that these travel awards are nationally recognized as prestigious and that the most experienced experts in the field aspire to win these awards. As the petitioner did not compete with national or international experienced experts in the field, the awards cannot be considered evidence of the petitioner's national or international acclaim.

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 November 2000, the *Proceedings of the National Academy of Sciences* published three studies regarding proteasomes and HIV. One of those studies is an article co-authored by the petitioner. The National Institutes of Health (NIH) issued a press release on these studies, which was picked up by several major media outlets, including CNN, ABC News.com, Africast.com, the *Times of India* Online, and Indiainfo.com as part of the "Indians Abroad" section.

Although the NIH press release lists the authors of all three studies, only Africast.com and the Indian media mentioned the petitioner by name. CNN and ABC News.com provide quotes from Dr. [redacted] Schubert and Dr. [redacted] of the National Institute of Allergy and Infection Diseases (NIAID), but devote only a single line to the petitioner's study. Even the story in Africast.com, while naming the petitioner as the author of one of the studies, devotes only a single sentence to his findings. The studies were also announced in the following science publications and Internet sites: *Science,*

Urology Forum, Biomednet, the American Medical Association's website, *Infection Disease News*, and *The Scientist*.

The director concluded that the above media coverage was not indicative of the petitioner's claimed extraordinary ability. The director noted a statement in *The Scientist* questioning whether the petitioner's findings could lead to treatment for HIV. On appeal, counsel asserts that references in the major media to the petitioner as a stepping-stone to other research is rare and indicative of extraordinary ability.

As stated above, the articles on CNN's website and ABC News.com do not mention the petitioner's name. By definition, national acclaim requires some name recognition. We cannot conclude that articles that do not mention the petitioner by name are indicative of or consistent with national acclaim. The articles quote Dr. [redacted] and Dr. [redacted] clearly deferring to them as the experts on the subject. The NIH News Release reflects that Dr. [redacted] article was actually a NIAID "report" and that the relevant issue of the *Proceedings of the National Academy of Science* contains two complementary studies by other laboratories. While the other articles outside the Indian media name the petitioner as the author of his work, they are primarily about the group of articles published in the *Proceedings of the National Academy of Science*, and focus on the results of Dr. [redacted]

The record contains no evidence regarding the significance of appearing in the "India Abroad" section of Indiainfo.com. While we acknowledge that *The Times of India* is not an insignificant publication, we cannot conclude that this one article, although admittedly primarily about the petitioner's work, is sufficient. As stated above, the remainder of the record suggests that the petitioner's work gained media attention based on its inclusion in a group of articles published in the same journal issue as the NIAID report. Moreover, a single article about a single finding cannot establish a pattern of sustained acclaim.

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

Initially, the petitioner submitted a single letter from a member of his thesis committee at Pennsylvania State University. Dr. [redacted] a professor at Pennsylvania State, asserts that the petitioner "made crucially important discoveries during the course of his doctoral studies" regarding how retroviruses move from cell to cell. Specifically, the petitioner "reported, for the first time, that retroviral budding from the host cell is mediated by a protein modification – ubiquitin." Dr. [redacted] explains that while it was previously known that ubiquitin was involved in the uptake of proteins by cells, it was not previously known that ubiquitin played a role in the export of proteins or viruses. Dr. [redacted] notes that the petitioner's findings were published in the *Proceedings of the National Academy of Sciences*. Finally, Dr. [redacted] praises the petitioner's ability to work independently, comparing him favorably with other doctoral students.

In response to the director's request for additional documentation, the petitioner submitted additional letters of support. Dr. [redacted] a professor at Pennsylvania State University and the petitioner's co-author on the article published in the *Proceedings of the National Academy of*

Science, asserts that the petitioner was inspired to research ubiquitin, a protein responsive to proteasome inhibitors, when he heard Dr. [redacted] report that HIV budding is inhibited by proteasome inhibitors. Dr. [redacted] asserts that the meaning of Dr. Schubert's results was unknown prior to the petitioner's findings and that Dr. [redacted] was not "poised" to discover the role of ubiquitin in retroviral budding. Dr. [redacted] further asserts that he served only as an advisor for the research and that Dr. [redacted] at Pennsylvania State University provided the petitioner with "expertise" on ubiquitin.

Dr. [redacted] a professor at the University of Pittsburgh, asserts that he became familiar with the petitioner from his article in the *Proceedings of the National Academy of Science* and subsequently collaborated with the petitioner. Dr. [redacted] states:

> [The petitioner's] publication for the first time revealed that retroviruses can somehow adapt cellular trafficking proteins that normally transport proteins from the outside to inside of the cell to transporting viral proteins from inside to the outside of the cell. These pioneering studies completely revolutionized our concept of the cellular machinery that might be involved in retrovirus budding and has led to a major focus of numerous labs worldwide.

The above letters are all from the petitioner's collaborators and immediate colleagues. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's national or international acclaim.

In a joint letter, [redacted] Professor of Medicine at the Mayo Graduate School of Medicine and [redacted] Staff Administrator of the Clinician Investigator Training Program at the Mayo Graduate School of Medicine, assert that the petitioner's findings regarding retroviral budding and the cellular machinery known as the ubiquitin pathway for the virus to escape an infected cell is "widely and clearly recognized at a national and international level." The letter goes on to express how favorably the petitioner is being considered for the Clinician Training Program, a program open only to residency applicants nationally and residents and fellows at the Mayo Clinic.

On appeal, the petitioner provides evidence that the petitioner was offered a position in the program. Counsel cites this job offer as "comparable evidence" of national acclaim pursuant to 8 C.F.R. § 204.5(h)(4) since the classification does not require a job offer. While the program may be competitive for the applicants, residents and fellows are by definition at the very beginning of their careers. Regardless of whether similar programs at other institutions omit the term "training" as claimed in the joint letter, competing for an entry-level position, even at a prestigious institution, does not suggest that the petitioner is one of the very few at the top of his field, including when compared to the most experienced experts in the field.

Dr. [redacted] an associate professor of medicine at the Mayo Clinic, asserts that the petitioner's research on retrovirus budding "is considered the most significant discovery in the last three years," and that the petitioner has accomplished as a graduate student what even many highly successful scientists do not accomplish in their entire careers. Dr. [redacted] further states

that the petitioner can be considered to have made a major discovery because he "came up with the idea and designed the crucial experiments." Dr. [redacted] concludes that "few scientists ever make such a discovery in their entire career." This conclusion is not persuasive. Any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Not every article published in a prestigious journal can be considered a contribution of major significance.

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.

As stated above, the petitioner's article in the *Proceedings of the National Academy of Science* gained the attention of the general media. Considered as a whole, the articles suggest that Dr. [redacted] report in the same publication was the basis for the media coverage and that the petitioner's work, while not insignificant, was noted in the media as part of a group of articles related to Dr. [redacted] report. As stated above, the NIH press release focuses on Dr. [redacted] report and cites the petitioner's article as being "consistent" with Dr. [redacted] report. In addition, the article in Africast contradicts Dr. [redacted] implication that Dr. [redacted] would not have pursued ubiquitin on his own. Rather, Dr. [redacted] report announced the results of blocking the proteasome system and preventing ubiquitin formation. In addition, Dr. [redacted] at the Dana-Farber Cancer Institute found that an HIV protein fuses ubiquitin. According to Africast, the petitioner's study "showed that ubiquitin is also used for budding of a cancer-causing bird virus – Rous sarcoma virus – suggesting that ubiquitin may be a critical element in the life cycle of a broad range of viruses." While the petitioner's research is no doubt of value, the record does not establish that the petitioner's work represented the type of groundbreaking advance in virology suggested by counsel.[1]

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 that he has authored published articles in the *Proceedings of the National Academy of Sciences* and the *Journal of Virology*. As stated above, the record amply demonstrates the impact of the former article. In addition, the second article has been cited by independent researchers in review articles. We find that the petitioner meets this criterion.

Ultimately, the petitioner's claim to eligibility is based on a single accomplishment, research that resulted in a published article in a prestigious journal that drew some media coverage based on its consistency with a NIAID report on the same subject. The regulations are clear that the only single accomplishment sufficient to establish eligibility is a major national or international award. The petitioner does not claim to have won such an award and we cannot conclude that the attention

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[1] On appeal, counsel compares the petitioner's work to that of Copernicus, who challenged the view that sun travels around the Earth, and Francis Crick, who first described the shape of DNA.

generated by the petitioner's published article is sufficient to meet at least three of the regulatory criteria such that the petitioner can be said to have sustained national or international acclaim or to be one of the very few at the top of 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 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 research scientist 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 indicates that the petitioner shows talent as a research scientist, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. 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.