U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
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Washington, D.C. 20536

[redacted]

File: WAC 01 109 53910 Office: California Service Center Date: APR 11 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)

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 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.

for Elizabeth Hayward
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 February 6, 2001, seeks to classify the petitioner as an alien with extraordinary ability as a scientific researcher. At the time of filing, the petitioner was working in the Department of Bioinformatics and Biological Complexity at the Burnham Institute in La Jolla, California. The petitioner's research focuses on "protein structure and function prediction, genome analysis, and Bioinformatics software development." 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.

In response to the director's request for evidence, the petitioner submitted evidence of his receipt of funding grants from the Polish State Committee for Scientific Research, the National Institute of General Medical Sciences, the National Science Foundation, and the National Institutes of Health. With the exception of the "Outstanding Young Researcher" grant from the Polish State Committee for Scientific Research, all of the grants appear to be institutional grants awarded to either the Burnham Institute or the Joint Center for Structural Genomics, another institution with which the petitioner is affiliated.

The director's decision stated:

> It is noted that, unlike awards such as the Nobel Prize which recognize demonstrated past achievements, grants and scholarships are often bestowed in response to applications by prospective recipients, who describe the research which they seek to undertake. In other words, grants and scholarships generally support future research rather than recognized prior achievements. Furthermore, a substantial amount of scientific research is funded by research grants from a variety of sources. It cannot be argued that grant funding places a given project at the pinnacle of the field. Also, the evidence indicates that the latter three awards were group awards rather than individual awards making the self-petitioner's level of contribution difficult to ascertain.

We concur with the director's finding that the petitioner's receipt of research funding from various sources is not a national award for excellence in his field, but, rather, financial support for ongoing research. Further, the regulation is quite clear that the award must go to "the alien" rather than to an organization or group of individuals with which the alien is affiliated.

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 associations that evaluate 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 evidence of his membership in the American Chemical Society ("ACS") and the International Society of Computational Biology ("ISCB"). The petitioner also claimed membership in the Protein Society, but he offered no documentation to establish his individual membership.

The petitioner holds regular or "full" membership in the ACS. Information provided by the petitioner describes full membership as follows:

> [I]ndividuals must have a bachelor's degree in a chemical science from an ACS approved program, a bachelor's degree in a chemical science from a non-approved ACS program and three years work experience, an earned doctor's or master's degree in chemical science, or less formal training than indicated above but having significant achievement in chemical science.

Counsel stated that the ACS "is the world's largest scientific organization which has more than 163,000 members." Simply possessing a bachelor's degree from an accredited program would be sufficient to gain admission into the ACS. Therefore, it does not appear that the ACS requires outstanding achievement of its members in the same manner as highly exclusive associations such as (for example) the U.S. National Academy of Sciences.

The petitioner provided information regarding the history of ISCB, but no evidence of its individual membership requirements. An "ISCB Registration Acknowledgement" contained in the record and printed from the internet indicates that the petitioner was able to register on-line and become a member of ISCB simply by paying a nominal fee.

The petitioner provided information regarding the Protein Society that stated: "Protein Society Membership is open to scholars and researchers interested in the analysis, chemistry, folding, structure, function, and regulation of proteins... Full Membership Applicants should have an academic degree." The evidence offered by the petitioner indicates that individuals may register on-line and become full members of the Protein Society simply by paying a nominal fee.

The petitioner in this case has offered no evidence showing that his membership in the above societies required outstanding scientific achievement or that he was evaluated 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 some recent scholarly articles and abstracts citing his work. In a statement accompanying the evidence, counsel argued that

"citations in major international publications" 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, would not qualify as "published materials about the alien." Citations of the petitioner's work will be addressed under a separate criterion. Also provided were internet printouts from the websites of institutions such as the Massachusetts Institute of Technology and the National Defense Medical Center containing links to the Fold & Function Assignment System ("FFAS") Bioinformatics Server. While these web pages show that the FFAS Bioinformatics Server is widely acknowledged as a useful source of information, they do not constitute "published materials about the alien." We further note that the FFAS Bioinformatics Server was listed among several other effective systems rather than being the primary focus of the web information.

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.

In response to the director's request for evidence, the petitioner submitted two e-mails from Ellen Mackay (February 21 and 22, 2002) requesting that the petitioner review a paper for the *Bioinformatics* journal. This evidence came into existence subsequent to the petition's filing. *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.

Also submitted were two letters, dated October 23, 2000 and January 4, 2001, from Stacieann Yuhasz, Managing Editor, *Proteins*, requesting that the petitioner evaluate and complete "within three weeks" a referee's report for two separate papers submitted to that journal for publication.

In addressing the two letters from the managing editor of *Proteins*, the director's decision stated that those letters "serve[d] as invitation letters rather than actual proof of judgeship." We concur with the director's statement; however, on appeal the petitioner provides further corroborative evidence showing that he completed the reviews as claimed. The petitioner submits completed versions of his referee reports for both articles. Also submitted were the corresponding published articles that appeared in *Proteins* in 2001.

In this case, the petitioner has established that he was selected on the basis of his reputation by a distinguished scientific journal to review scientific manuscripts to determine their suitability for publication, and that he completed the reviews. We find, therefore, that the petitioner's evidence submitted on appeal satisfies this criterion.

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

The petitioner provided several witness letters in support of the petition. Dr. [redacted] President of the International Society of Computational Biology and Professor of Pharmacology at the University of California San Diego, states:

> [The petitioner's] research has laid a foundation for the development of the field of distant homology detection by profile-profile alignment methods. These methods made possible the discovery of several new relationships between proteins...
>
> [The petitioner] co-authored the CD-HIT program, which is currently used in the Protein Data Bank. The program is the best available software in the world for the clustering of large sequence databases.

Dr. [redacted], Director of the Program in Bioinformatics and Biological Complexity at the Burnham Institute, states:

> [The petitioner's] contribution to the successful design and implementation of bioinformatics tools are of immeasurable value and have been widely recognized throughout the international scientific community. GeneFold program developed in great part by [the petitioner] is being sold by Tripos Inc. as part of the well known Sybyl package. The program has great significance for the scientific community, which was proven by many successful applications.
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> * * *
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> [The petitioner's] research in protein structure and function prediction has resulted in the development of several new methods of sequence analysis such as GeneFold, FFAS, and CD-HIT. [The petitioner's] research in the development of a new profile-profile analysis algorithm, FFAS, has brought a new understanding of several distant relationships between proteins involved in cancer and neuro-degenerative diseases.
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> * * *
>
> [The petitioner's] methods have been immediately applied to the analysis of genomes in bacteria causing anthrax and tuberculosis. It is widely accepted that the results of [the petitioner's] work have opened a new stage in the development of distant homology detection. His results have laid a foundation for the development of threading and profile-profile comparison methods, which play an increasingly important role in contemporary genomics and proteomics.

Dr. [redacted], Professor and Group Leader, Research School of Chemistry, Australian National University, states that the petitioner played an important part "in the development of computational biology methods for the prediction of protein 3D structures and their biological functions." Dr. [redacted] further states: "[The petitioner's] research contributed significantly to the threading methods broadly applied for protein structure and function determination. These methods are becoming exceedingly important because of the mass of data provided by whole genome sequencing projects."

Dr. [redacted], Professor of Chemistry and Head of the Biopolymer Theory Group at the University of Warsaw, credits the petitioner with developing "the so-called 'threading' approach to protein-fold recognition and the functional annotation of proteins." Dr. [redacted] states that this approach "enables the functional annotation of a substantial fraction of new proteins identified by

various genome projects, including the human genome project."

Dr. [redacted] Professor of Computer Science, Ben-Gurion University, Israel, states that the petitioner's research "contributed significantly to the development of threading algorithms widely used for protein function assignment and structure determination."

The petitioner's witnesses are not limited to his immediate colleagues, and show that the petitioner's work has garnered the attention of researchers throughout the scientific community.

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 would provide firm evidence that other researchers have been influenced by the petitioner's work and are familiar with it.

The petitioner initially provided a computer generated listing showing that his work was cited over eighty times in various scientific journals. The listing excluded self-citations and included only those articles where the petitioner was the first author. The heavy independent citation of the petitioner's published work bolsters the witnesses' claims that the petitioner's computational biology methods have been of major significance to his field.

On appeal, the petitioner provides further evidence showing that his published work has been heavily cited. For example, an article appearing in *Chemical Physics Letters* was cited 65 times and three separate articles appearing in *Protein Science* were cited 57, 48, and 39 times.

An additional letter from Dr. [redacted] was provided on appeal. Dr. [redacted] states:

> The petitioner's works have been cited in numerous international journals... Three of [the petitioner's] papers have had more than 50 citations, making them classics in their fields. For example, his publication about the threading method FFAS... was referenced 57 times in little more than two years... Just two days ago, another paper based on the petitioner's work was accepted in *Nature*, the leading international life-science journal.

The acceptance of the petitioner's work by *Nature* occurred subsequent the filing of the petition. *See Matter of Katigbak, supra.* Dr. [redacted] claim, however, does carry some evidentiary weight in demonstrating the petitioner's sustained acclaim.

In this case, the evidence indicates that the petitioner's contributions are important not only to the research institution where he works, but also throughout the greater scientific community. 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 satisfies 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 distinguished scientific journals such as *Chemical Physics Letters*, *Protein Science*, and the *Journal of Physical Chemistry*. Also submitted was evidence showing that four of the petitioner's published articles have garnered a combined total of over two hundred citations. 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 published articles demonstrates widespread interest in, and reliance on, the petitioner's work. While some of these 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.