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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

JUL 08 2003

File: EAC-01-108-53232 Office: Vermont 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]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 Bureau regulation at 8 C.F.R. § 204.5(h)(3) as follows.

> (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
>
> (ii) 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;
>
> (iii) Published material 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;

(iv) 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 specialization for which classification is sought;

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

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a neurobiological researcher. 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, quoted above, 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.

Initially, the petitioner submitted her curriculum vitae, degrees, employment verification from Harvard Medical School, recommendation letters from her immediate circle of colleagues, grant and fellowship awards, evidence that the petitioner has published articles in such journals as *Science*, the *Journal of Neuroscience*, the *Proceedings of the National Academy of Sciences*, and *Molecular and General Genetics* and evidence that those articles have been cited between two and 42 times.

On August 27, 2001, the director sent the petitioner a detailed request for additional documentation. The director specified the following concerns: the petitioner had not demonstrated the significance of her grant and fellowship awards, citations do not constitute published material about the petitioner, and that the record lacked letters from independent experts in the field attesting to the significance of the petitioner's alleged contributions, publications, and role at distinguished organizations.

In response, the petitioner submitted an independent reference letter, an announcement regarding the petitioner's grant award, the petitioner's membership in American Society for Cell Biology, additional published articles and citations thereof.

The director's entire substantive discussion of the merits of the petition in his final decision is as follows:

> [O]n August 27, 2001, you were requested to submit examples of the aforementioned evidence to meet the criteria for the alien with extraordinary ability category, which includes sustained national or international acclaim. In response, you submitted letters from peers, as well as evidence of your published work which, while noteworthy, does not indicate your work was done alone, but rather as a part of teams of researchers, which does not appear to meet the high standard one would expect if one was a researcher of national or international renown. Having been a member of research teams doing work of note, and having been published is not sufficient to meet the burden of proof in these proceedings. If a researcher truly was a person of extraordinary ability it would seem they would have won an award along the lines of a Nobel Prize, clear and convincing evidence that would indicate one has risen to the very top of the field in which you seek classification.

On appeal, counsel asserts that working on a team does not adversely reflect on the ability of the members of the team, noting that the Nobel prizes in medicine are often shared. Counsel further asserts that the final statement quoted above is a misstatement of law as the regulations specifically state that a petitioner may establish her eligibility either through a major award such as a Nobel Prize or through meeting three of the ten regulatory criteria.

We concur with counsel. We find nothing about the nature of working with a team that diminishes the ability of the members of that team. The Bureau does not disregard Olympic team medals. We see no reason to discount contributions and publications simply because they represent the work of a research team. In addition, counsel is correct regarding the plain language of the law and regulations. If a petitioner has not received a major award on the level of the Nobel prizes, the petitioner may establish her eligibility through meeting three of the ten regulatory criteria quoted above. Only one of the ten criteria relates to awards and the regulations never specify that a petitioner must meet certain criteria instead of others. Thus, the director erred in implying that a petitioner could not establish eligibility without a major award such as a Nobel prize.

Counsel then states that the director only found that the petitioner did not meet the publication of scholarly articles and lesser awards criteria. We read the director's decision differently. Rather, the director states that working as a team member and publishing articles is insufficient. While technically true, the petitioner is not claiming eligibility based on her ability to perform team research and author published articles. Rather, the petitioner is claiming that while performing research that resulted in published articles, she attained national or international acclaim based on the significance of her research.

Therefore, this matter will be remanded for consideration of the evidence in light of the concerns raised by the director in his request for additional documentation, none of which are addressed in the director's final decision. Specifically, the director must consider the following. The award claimed by the petitioner was issued in 2000 to fund research conducted between 2000 and 2003. The director must determine whether this award, ultimately a research grant, constitutes an award recognizing past excellence in the field. In addition, the director must determine whether the petitioner overcame the director's concerns regarding published materials about the petitioner. We concur with the director's statement in the request for additional documentation that citations are not published work about the petitioner. Rather, evidence that the petitioner's work is widely cited can be objective evidence relating to the significance of the petitioner's contributions and whether the petitioner's publication history sets her apart from others in her field.

Finally, the director must determine whether the letters satisfactorily establish that the petitioner was hired to fill a leading or critical role for a distinguished organization as a whole. When considering this final issue, the director should not look at contributions made by the petitioner in a generally non-critical position. Rather, the director should look at the nature of the position itself. In addition, the director must consider whether the petitioner played a leading or critical role for merely a division of a larger organization with a distinguished national reputation or for the organization as a whole.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.