PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

B2

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]

JUL 18 2007

File: [redacted] (LIN-093-52241) 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: SELF-REPRESENTED

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 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 Bureau 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 chemist. 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 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.

The petitioner submitted evidence of membership in the American Chemical Society (ACS). The director concluded that the petitioner had not established that ACS requires outstanding achievements of its members. On appeal, the petitioner submits evidence that he has since joined the Society of Tribologists and Lubricant Engineers (STLE).

The petitioner failed to submit evidence of the membership requirements for ACS[1] or STLE, although the letter from the STLE suggests that members need only "a common interest in tribology and lubricant engineering." An "interest" in a subject is not an outstanding achievement in the field. Moreover, the petitioner does not appear to have been a member of STLE at the time of filing. As such, his membership in STLE cannot be considered evidence of his eligibility at that time.

In light of the above, the record does not reflect that the petitioner was a member of an association that requires outstanding achievements of their general 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 support of this criterion, the petitioner submitted evidence that his articles have been cited four times, three times by independent researchers. The director noted that the petitioner's article was one of hundreds cited in one of the citing articles. The petitioner does not respond to this concern on appeal other than to assert "my works have been frequently cited by fellow leaders in the field."

Articles which cite the petitioner's work are primarily about the author's own work, not the petitioner. Even review articles focus on several developments in the field and are not primarily about the petitioner or his work in the field. As such, the articles citing the petitioner's work cannot be considered published material about the petitioner and do not meet the plain language of this criterion. Nevertheless, they will be considered below in evaluating the petitioner's publication history and contributions to the field.

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 record reflects that the petitioner has refereed an article for publication in *Applied Catalyst A: General*. The petitioner was requested to review this article by [redacted] Dr. [redacted] was the

---

[1] The website for the American Chemical Society (ACS), https://center.acs.org/applications/acsmembership/join.cfm reflects that full members need only meet educational requirements. Obtaining a degree and a number of years of experience in the field are not outstanding achievements.

recipient of the original request from the journal itself. The record does not establish the basis for Dr. request to the petitioner.

Moreover, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys sustained national or international acclaim. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot 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.

President of Detrex, asserts that the petitioner works on pyrroles production and research. While Mr asserts that the petitioner is irreplaceable, Mr does not identify any specific breakthrough made by the petitioner.

Technical Director of the Detrex Chemicals Division site of Elco Corporation, asserts that the petitioner developed synthetic routes for organic compounds and aided in the transfer of his synthetic methods from lab scale to full production scale. Most significantly, the petitioner has been instrumental in upgrading Detrex's production to meet the new demand for pyrroles and increasing the purity so that Detrex can compete globally.

Dr the petitioner's postdoctoral supervisor at Indiana University, asserts that the petitioner "showed significant productivity during his studies in Switzerland," "has now interfaced effectively with our current studies in the area of mammalian communication," and co-authored an article. Dr does not identify a specific contribution or explain its significance.

Dr an assistant professor at Indiana University, notes that the petitioner's research is funded by the National Institutes of Health (NIH). Dr. explains that the petitioner studied mammalian pheromones and their role in chemical communications.

a research associate at Ohio State University and fellow student of the petitioner's at Nankai University, asserts that the petitioner's Master's thesis solved a problem "which had perplexed the chemists in the field of organic-phosphorus chemistry for twenty years." Dr further asserts that the petitioner's Ph.D. thesis involved the synthesis of seven compounds whose synthesis is complicated by their sensitivity to light, heat, and air. In addition, Dr states that the petitioner's work on mouse pheromones could lead to economic and environmental methods of controlling the reproduction of the house mouse. Dr concludes that the petitioner's work at Detrex is of the highest quality.

Dr a professor at the University of Berne and the petitioner's postdoctoral supervisor at that institution, asserts that the petitioner "was developing several attractive syntheses of

calicene precursors which are currently investigated by my group and have not yet been published." Dr. [redacted] concludes with general praise of the petitioner's abilities.

Dr [redacted] a professor at the University of Geneva and the petitioner's doctoral supervisor, asserts that the petitioner was "an efficient and dedicate collaborator." Dr. [redacted] discusses the petitioner's Ph.D. thesis, which involved the synthesis of cycloproparenes. Dr. [redacted] asserts that no more than 80 cycloproparenes have been synthesized. Dr [redacted] continues that one of the derivatives synthesized by the petitioner was "of interest as a potential precursor" for an inaccessible cycloproparene. Regarding the processes of synthesis developed by the petitioner, Dr [redacted] states:

> The synthesis of 1,3,4,5-tetrahydrocycloprop[*f*]inden-4-ol was realized by [the petitioner] by two different approaches, involving addition of carbenes to double bonds and Diels-Alder reactions of cyclopropenes.
>
> His introduction and modification of the double Curtius degradation of geminal diesters was not only the key step in the proposed synthesis of 1,3,4,5-tetrahydrocycloprop[*f*]inden-4-ol, but also led to a new approach of indan-2-one. Besides, [the petitioner] synthesized 1,1,5trichloro-5a,6,6a-hexahydro-1*H*-cycloprop[*f*]indene, another precursor for cycloprop[*f*]indene.

Dr [redacted] concludes that the petitioner developed many of his solutions independently.

The above letters are all from the petitioner's collaborators and immediate circle of 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. Moreover, 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. Three independent citations of the petitioner's articles are not indicative of national or international acclaim. The record contains no other objective evidence suggesting that the petitioner has sustained national or international acclaim for his contributions to the field.

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

The petitioner's resume lists 10 published articles. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report

reinforces the Bureau's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

The record contains evidence that three independent experts have cited the petitioner's work. As stated above, this number of citations is not evidence that the petitioner's work is widely cited. Thus, the petitioner's publication history is not indicative of national or international acclaim.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

[redacted] President of the Detrex Chemicals Division of Detrex Corporation, asserts that Detrex is the only U.S. based manufacturer of pyrrole but that it competes with manufacturers in Germany, Japan and China. Mr. [redacted] asserts that the petitioner "is the only Chemist employed by Detrex with specific responsibilities to support its pyrroles production and research." [redacted] Technical Director for the Detrex Chemicals Division of Elco Corporation (a subsidiary of Detrex Corporation), asserts that the petitioner was responsible for upgrading Detrex's production of pyrroles, improving the company's efficiency and the purity of the pyrroles. Mr. [redacted] and Mr. [redacted] do not indicate that Detrex manufactures only pyrroles or that pyrrole production is more significant to Detrex than the other drugs it manufactures. [redacted] Business Manager of the Hydrochloric Acid and Fine Chemicals for the Chemicals Division of Detrex Corporation, reiterates much of the information provided by Mr. [redacted] and Mr. [redacted] and asserts that the petitioner's replacement would be detrimental "to our company as a whole." Ms. [redacted] later states, however, that fine chemicals is a new venture for Detrex.

The Detrex brochure provided by the petitioner provides that the Detrex Chemicals Division is a "business unit" within Elco Corporation, which appears to be a subsidiary of Detrex Corporation. Detrex Corporation has six other divisions/subsidiaries. The brochure asserts that both Elco and the Detrex Chemicals Division "are recognized worldwide as producers of high performance specialty chemicals. The brochure then discusses the company's lubricant additives and electronic grade hydrochloric acid. The brochure makes no mention of pyrroles or their significance to the Detrex Chemicals Division, Elco Corporation, or Detrex Corporation. The petitioner also submitted a brochure for Elco Corporation. The brochure first discusses its lubricant additives and hydrochloric acid. The brochure does indicate that Elco Corporation has begun manufacturing organic chemicals for use by the pharmaceutical industry, but makes no special mention of pyrroles.

The petitioner has not established that the position of "chemist" is in and of itself a leading or critical role for Detrex as a whole above and beyond its other positions.

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 chemist 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 chemist, 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.