U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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[redacted]

APR 14 2004

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

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 of the Administrative Appeals Office 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.

Elizabeth O'Brien
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 to classify the beneficiary 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 that the beneficiary qualifies as an alien of extraordinary ability in his field of endeavor. Specifically, the director concluded that the beneficiary only meets two of the regulatory criteria; a beneficiary must meet at least three to be eligible for the classification sought.

On appeal, attorney William May[1] asserts that the beneficiary meets an additional two criteria.

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.[2]

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[1] The petitioner's attorney of record filed the appeal, requesting an additional 30 days to submit a brief and/or additional evidence. Subsequently, [redacted] submitted a brief. The record does not include a Form G-28 executed by the petitioner consenting to Mr. [redacted] appearance as its attorney. Thus, while we will consider Mr. [redacted] statements, the decision will be sent to the petitioner's attorney of record.

[2] Counsel acknowledges on appeal that the petitioner no longer employs the beneficiary. Nevertheless, by filing the appeal, the petitioner appears to still support the petition. As this classification does not require a job offer or a petition from an employer, the fact that the petitioner no longer employs the beneficiary does not invalidate the petition.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth 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 beneficiary as an alien with extraordinary ability as a biotechnology manager. At the time of filing, the beneficiary was the Vice President, Development Sciences, for the petitioner.

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. The director concluded that the beneficiary meets two of the regulatory criteria: authorship of scholarly articles in the field and a high salary or other significantly high remuneration for services. *See* 8 C.F.R. § 204.5(h)(3)(vi) and (ix). As we uphold those conclusions, we need only conclude that the beneficiary meets a third criterion to sustain the appeal.

Regarding the petitioner's claim that the beneficiary has played a leading or critical role for an organization with a distinguished reputation pursuant to 8 C.F.R. § 204.5(h)(3)(viii), the director stated:

> The record contains letters from employers, collaborators, colleagues and educators who have worked closely with the beneficiary. These individuals clearly hold a high opinion of the beneficiary and of his abilities in the biotechnology field. However, the opinions of "experts" in the industry, 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.

While we agree with this principle, we cannot conclude that it applies to the evidence submitted to meet the leading or critical role criterion in this case. We agree that the reference letters in the record by themselves are insufficient, especially as many of them contain nearly identical wording. Moreover, reference letters attesting to alleged accomplishments while serving in a position are more relevant to the contributions criterion set forth at 8 C.F.R. § 204.5(h)(3)(v). The two elements to consider when evaluating the leading or critical role criterion are the nature of the position the beneficiary was hired to fill and the reputation of the organization that hired him.

The evidence submitted by the petitioner as evidence of the beneficiary's leading or critical role for an organization with a distinguished reputation does not rely on the reference letters submitted. Rather, the petitioner submitted Internet materials from its own website demonstrating that it hired the beneficiary as its Vice President of Medical Affairs and later appointed him as Vice President for Development Sciences. The petitioner also submitted several news articles in the field quoting the beneficiary as a vice president at the petitioning organization. The petitioner also submitted evidence regarding its national reputation. In addition to the somewhat self-serving information on its own website, the petitioner also submitted evidence that it has been rated highly by *Forbes, Fortune* and *Science*. It employs 5,000 workers and is the developer of the well-known breast cancer drug Herceptin.®

Serving as an officer of a corporation is certainly a leading or critical role. In addition, we find that the record contains sufficient information regarding the petitioner's national distinguished reputation despite a controversial

decision to stop trials of a promising drug, later reversed. As we find that the beneficiary meets 8 C.F.R. § 204.5(h)(viii) we need not consider the petitioner's far less persuasive arguments regarding other criteria.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel and Mr. May, the petitioner has established that the beneficiary 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 United States. Therefore, the petitioner has established the beneficiary's 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.