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U.S. Citizenship and Immigration Services

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[redacted]

FEB 02 2004

FILE: LIN 02 124 51717 Office: NEBRASKA 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.

Mari Johnson
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The petitioner appealed the denial, but the director, determining the appeal was untimely, treated it as a motion to reopen. After granting the motion, the director reaffirmed his prior decision. The petition is now before the Administrative Appeals Office (AAO) 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 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 pediatric 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, 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.

In his initial submission, the petitioner did not specify which particular criteria he believed he met. However, on motion and on appeal the petitioner claims to have submitted evidence that meets the following criteria.

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 order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution. Citations of the petitioner's work are the subject of a separate criterion.

On appeal, counsel referenced evidence of published articles by the petitioner and citations to his published work. This material is not about the alien as required by he regulation and do not satisfy this criterion. Publications and citations are the subject of a separate criterion and will be discussed *infra*.

Counsel also submitted articles that she says is from the *Hurriyet*, a leading Turkish newspaper. It is first noted that the articles appear to be accompanied by uncertified summary translations and not by complete certified translations as required by the regulation. 8 C.F.R. § 103.2(b)(3). Further, there is no masthead or other evidence other than an apparent notation from the translator, that these articles actually appeared in the *Hurriyet* and on the dates alleged. Even if we accepted the evidence as presented, however, it still does not establish that the petitioner meets this criterion. The three articles make very brief references to the petitioner. Translation of the first article, which also indicates it was published in February 1994, simply states that the petitioner "makes his statement attributing short stature and obesity to malnutrition." The second article, apparently published in December 1992, appears as a caption under a photograph, is translated to state "Well-equipped laboratories administered under the direction of by [sic] [the petitioner] and his wife [] render services to help prevent mental retardation in children." The third article, apparently published in March 1991, states, "Addressing parents [the petitioner] urges them to have their new borns [sic] tested for intelligence thereby preventing subsequent problems in children."

Three brief references over a career spanning more than 20 years are not indicative of sustained national or international acclaim.

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 petitioner submitted no evidence with his original petition to establish that he met this criterion. With the appeal treated by the service center as a motion to reopen and with the current appeal, counsel submitted evidence that the petitioner was a member of the Advisory Council of the EGE University Medical Faculty's Pediatrics Bulletin, but submitted no evidence of the petitioner's active role on that publication or that the petitioner reviewed or judged any work submitted for publication. Counsel also submitted no evidence that the petitioner accepted Osmangazi University's invitation to participate on the advisory board of a medical bulletin it was "considering" for publication, that the bulletin was actually published, or if the work done by the petitioner for the bulletin was indeed published.

Counsel included a copy of a letter to the petitioner inviting him to serve on an advisory board for Merck Biopharmaceuticals to explore the potential for marketing a growth hormone. Counsel provides evidence that the petitioner accepted an invitation to attend a meeting to further discuss the proposal but provided no other evidence of how the agreement to attend a preliminary meeting resulted in the petitioner's judging the work of

others. Counsel also provided evidence that the petitioner participated as a member of the organizing committee for an "endocrinology congress" but again failed to submit evidence proving that this position resulted in his judging the work of others.

Counsel submits an apparent photocopy of the cover described as the presentations of pediatric endocrinology at the Second National Pediatric Endocrinology Congress. The petitioner is listed as an editor; however, there is no supporting information to establish the scope and importance of the petitioner's role in this capacity.

Finally, counsel submits a page from the website mdnet.co.il. The page contains what counsel states are articles reviewed for publication and edited by the petitioner for Pediatric Endocrinology Reviews. First, counsel's assertions are not evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Second, these articles appear to be scheduled for publication in December 2003, and there is no evidence in the record as to when the petitioner actually edited the articles. The petitioner must possess the necessary qualifications as of the filing date of the visa petition. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971). Circumstances that did not exist as of the filing date cannot establish eligibility retroactively.

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

The petitioner submitted no evidence claiming that he met this criterion in his original submissions. On appeal, counsel states that the petitioner met this criterion based on his establishing neonatal test at various Izmir hospitals to prevent mental retardation in children. As evidence, counsel cites the article that purportedly appeared in the *Hurriyet* which, according to the limited translation provided, stated that laboratories under the direction of the petitioner and his wife "render services to help prevent mental retardation in children." There is no evidence to establish that the petitioner "established" these tests or how these tests are original contributions of major significance. There is no indication that the petitioner provided any services to the hospitals beyond laboratory services. The evidence does not establish that the petitioner has contributed significantly to his field of endeavor.

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

The director determined that the petitioner had met this criterion. In his curriculum vitae, the petitioner states he has authored 88 articles, with 22 appearing in international journals. The petitioner, however, submitted copies of fewer than 15 of these articles (with one duplicate and one that does not appear to be written by the petitioner), and a statement from the Scientific and Technical Research Council of Turkey (TUBITAK) indicating that it had published seven of the petitioner's articles which had generated 18 citations. This falls far short of the extensive documentation necessary to establish that the petitioner meets this criterion, and we withdraw the director's finding.

It is axiomatic that reputable scientific researchers must publish the results of their research. However, publication alone is insufficient to establish the petitioner has extraordinary ability in his chosen field. The research community's reaction to those articles must also be considered. The frequency of citation to the articles by independent researchers would tend to demonstrate the interest in and reliance on the published research. The record does not establish that the petitioner's work has been frequently cited by other researchers, and fails to establish that he has met this criterion.

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

The petitioner's curriculum vitae states that under the auspices of Hacettepe University Child Health Institute, the United Nations International Children Education Fund (UNICEF) and the World Health Organization (WHO), he established the first Turkish Center for Diarrhea Liquid Oral Treatment Education and Research Center [sic] of the Ministry of Health. However, there is no other supporting evidence in the record, and the record in unclear as to the petitioner's role in the organization or establishment facilitating the center's establishment. A project is generally not considered to be an organization or establishment. The record does contain a certificate from WHO presenting the petitioner with a "High Performance Award" for "Successful Accomplishment of Supervisory Skills Research Project." The certificate appears to cover a six-day period in March 1987, and is apparently unrelated to the petitioner's claim of establishing the research center.

Counsel submits evidence that the petitioner was one of four recipients of an international awarded by the European Society for Pediatric Endocrinology. However, the petitioner does not submit evidence that he was a member of the society, and, as with research projects, research fellowships are not organizations or establishments within the meaning of the regulation.

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 his field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a pediatric researcher 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.