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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 21 2004

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, 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 CIS 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 structural biologist. 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 receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submits evidence that he was nominated and accepted for a Japanese fellowship for supporting his graduate research at the Nagaoka University of Technology. The petitioner asserts that a maximum of six international students receive this fellowship in each of three fields. The petitioner further asserts that the

selection process involves an assessment of academic or work-related achievements and an interview to determine the applicant's knowledge of English and his or her field. The petitioner did not submit documentation from the entity that issues the fellowship, Monbusho, confirming his assertions.

In response to the director's request for additional documentation, counsel did not assert that the petitioner meets this criterion. The director briefly concluded at the end of his decision that the petitioner's scholarship was not sufficient to meet this criterion. On appeal, counsel asserts that the petitioner was not claiming to meet this criterion.

As the petitioner initially claimed to meet this criterion, we simply note that academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships and student awards cannot be considered prizes or awards in the petitioner's field of endeavor. Moreover, competition for scholarships is limited to other students. Experienced experts in the field are not seeking scholarships. Similarly, experienced experts do not compete for fellowships and competitive postdoctoral appointments. Thus, they cannot establish that a petitioner is one of the very few at the top of his field.

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 following associations: the American Crystallographic Association (ACA) and the American Society of Virology (ASV). The letter from ACA provides: "ACA is open to any person who is actively interested in the purposes of the Association and whose application is sponsored by two regular members." The letter from ASV provides: "To be nominated for election to ASV, one must submit a curriculum vitae and bibliography, a letter of nomination from a current full member of ASV, and payment of the annual membership dues."

In response to the director's request for additional documentation, counsel did not assert that the petitioner meets this criterion. The director briefly concluded at the end of his decision that these memberships could not meet this criterion. On appeal, counsel asserts that the petitioner does not claim to meet this criterion. As the petitioner originally claimed to meet this criterion, we simply note that the record does not reflect that these organizations require 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.

Initially, the petitioner submitted a list of three articles that allegedly cite his work. In response to the director's request for additional documentation, counsel did not assert that the petitioner meets this criterion. Articles which cite the petitioner's work are primarily about the author's own work, not the petitioner. As such, they cannot be considered published material about the petitioner.

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

The petitioner submitted several letters from his professors, collaborators and immediate circle of colleagues. According to letters from Dr. Masao Fukuda and Dr. Toshiya Senda of the Nagaoka University of Technology in Japan, the petitioner solved the crystal structure of the BphD enzyme, an important protein in the microbial degradation of PCBs. The petitioner also contributed to the success of a project analyzing the crystal structure of the antiviral interferon-r and the proteinacieaous inhibitor SDF-1α. Only one of the research papers to which the petitioner contributed while at the university had been published as of the date of filing.

After obtaining his Ph.D., the petitioner worked at the National Cancer Institute (NCI) under the supervision of Dr. Alexander Wlodawer. Dr. Wlodawer asserts that at the institute, the petitioner made "breakthrough research contributions" that are "important to the development of future advances in the field." Specifically, the petitioner studied an RNA terminal phosphate cyclase and expressed enzymes, kinases, and proteins. Finally, the petitioner "refined the crystal structures of phosphoglucose isomerase from two different sources." According to Dr. C. J. Michejda, Director of the Program in Interdisciplinary Training in Chemistry at NCI, the expression systems developed by the petitioner was an "outstanding effort." Dr. Michejda concludes that "many researchers that follow [the petitioner] at the NCI will benefit from this work." The remaining letters from researchers and officials at NCI provide similar information. At the time of filing, the petitioner had yet to publish the results of this work at NCI.

At the time of filing, the petitioner was working as a postdoctoral fellow at Purdue University in the laboratory of Dr. Michael G. Rossman, a member of the National Academy of Sciences. Dr. Rossman, however, merely states that the petitioner is hard working and versatile. Of the petitioner's work at Purdue University, Dr. Rossmann says only that the petitioner has made a "vigorous start on the production of samples that are likely to yield information on the way Rous sarcoma virus is assembled from its component parts." Dr. Rossmann concludes that this information "will be useful in the design of assembly inhibitors of retroviruses, including HIV." Dr. Amy McGough, an assistant professor at Purdue, asserts that the petitioner's work at that university is especially challenging as it involves studying the lipid membranes of viruses. Dr. McGough notes that in 1988, the Nobel Prize in Chemistry was awarded to scientists studying the proteins in bacteria membranes.

The above letters are all from the petitioner's collaborators and immediate 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.

In response to the director's request for additional documentation, the petitioner submitted letters from more collaborators who provide similar information to that discussed above and express general opinions as to the petitioner's superior abilities in his field. The only letter from an independent researcher is the one from Dr. Lindsay Eltis, an associate professor at the University of British Columbia. Dr. Eltis asserts that she learned of the petitioner through his publications. She states that the petitioner's student work was an important contribution to understanding enzyme function and evolutionary history. Dr. Eltis does not, however, explain how the field had been impacted by the petitioner's work as of the date of filing or indicate that she personally has been influenced by the petitioner.

The director noted the limited nature of the petitioner's publication history, lack of media attention for the petitioner's work, and the lack of evidence that the petitioner has been cited "to an unusually high degree." On appeal, counsel asserts that the petitioner has "performed significant original research." Counsel reviews

all of the projects discussed above, asserting that the testimony of "the most renowned persons in the field of Bioengineering" establishes the importance of the petitioner's work, which was published in a journal that only publishes original scientific research. Counsel further asserts that citations of the petitioner's work have "only just begun." Finally, counsel asserts that the implication from the reference letters that the petitioner's skills are considered irreplaceable to his projects is evidence relating to this criterion.

Counsel is not persuasive. All but one of the reference letters are from the petitioner's collaborators. Most, if not all, scientific journals publish only original research. We cannot conclude that mere publication in a peer-reviewed journal establishes that the work is not only original, but also a contribution of major significance. The petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12). *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Thus, we cannot consider the potential for future citations.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation or publication, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who obtains a Ph.D. or is published has made a contribution of major significance. The record does not establish that the petitioner's work represented a groundbreaking advance. Moreover, a majority of the petitioner's work had not been published as of the date of filing. The record does not demonstrate how this work, which had yet to be made available for independent peer review, can serve as a basis for national or international acclaim in 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 submitted a list of eight published articles, including one "in press." Of the seven published articles on the list, the petitioner submitted copies of the first page for five of them. Two are published in Volume 14 of the Photon Factory Activity Report. These two articles have no page numbers and the record contains no evidence that this report is a professional or major trade publication or other major media. While expressing concern that the petitioner's publication history did not appear remarkable, especially in light of the publication histories of his references, the director concluded that the petitioner had met this criterion.

We cannot concur with the director. Simply submitting evidence relating to a criterion is insufficient. The evidence must be evaluated as to whether it is indicative of or at least consistent with national or international acclaim. Otherwise, a criterion such as this one, that involves achievements inherent to every successful member of the field involved in this petition, would be meaningless. 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 are 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 CIS'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. This number of citations is not evidence that the petitioner's work is widely cited. The record contains no other evidence setting the petitioner's publication history apart from others in his field.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner submits a list of five conference presentations and submits evidence of those presentations. The petitioner was also invited to speak at a conference organized by the Japanese Society for Bioscience, Biotechnology and Agrochemistry. The petitioner asserted that the invited speakers are selected from those who are "challenging the new frontiers of Bioscience, Biotechnology and Agrochemistry." In response to the director's request for additional documentation, counsel did not claim that the petitioner meets this criterion. The director did not specifically address this criterion. We simply note that the petitioner has not demonstrated how presenting his work at a professional scientific conference is comparable to displaying one's art at an exclusive artistic exhibit or showcase.

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

In response to the director's request for additional documentation, counsel asserts that the petitioner played a critical role for NCI and is now playing a critical role in Dr. Rossmann's laboratory. Counsel asserted that "being chosen to work in these distinguished laboratories reflects that [the petitioner] is among the small percentage that has reached the top of the field.

Dr. Rossmann did not initially discuss the petitioner's role in the laboratory other than to explain the potential of project on which the petitioner is working and characterize the petitioner as a "productive scientist working on an important project." In a second letter, Dr. Rossmann adds that the petitioner's work is critical to his project and that it is unlikely that the petitioner's expertise could be replaced. The only other reference made to the petitioner's role in Dr. Rossmann's laboratory by anyone with any connection to that laboratory is from Dr. Volker Vogt, a professor at Cornell University who is collaborating with Dr. Rossmann. Dr. Vogt asserts that the petitioner is the member of the laboratory most directly involved in the collaboration. Dr. Vogt further indicates that the problem on which the petitioner is working is very difficult and "it is quite unlikely that anyone in the Rossmann lab could replace him."

Dr. Wlodawer, Chief of the laboratory at NCI where the petitioner worked, does not assert that the petitioner played a leading or critical role for NCI during his postdoctoral fellowship there. Dr. Michejda asserts that at NCI, the petitioner "perfected his skills" and developed "efficient expression systems for the large preparation of large amounts of several proteins that are normally found in only vanishingly small amounts in their national state," systems likely to be used by future postdoctoral fellows.

The director concluded that the record lacked evidence "that the petitioner holds a senior office within the organizations or is otherwise responsible for the organizations' success or standing to a degree reasonably consistent with the meaning of 'leading or critical role.'" On appeal, counsel asserts that the petitioner is "performing a critical role for a very distinguished research organization within Purdue University."

We have already considered the petitioner's alleged contributions to the field while working at NCI and Purdue University. What is relevant to this criterion is the nature of the position the petitioner was hired to fill.

Clearly, NCI has a distinguished reputation nationally. The petitioner has not established, however, that the role of postdoctoral fellow is a critical or leading role for that institute beyond the obvious necessity that a research institution employ researchers. We note that postdoctoral positions are generally temporary training positions.

While Dr. Rossmann's laboratory may have a distinguished reputation, that reputation appears based on the acclaim of Dr. Rossman. The petitioner has not established that if Dr. Rossmann left the university, the laboratory in which he worked would retain the same reputation. While Purdue University may have a distinguished reputation nationally, we cannot conclude that every postdoctoral researcher who plays an important role in a distinguished university's laboratory plays a leading or critical role for the university as a whole.

Finally, we note that the only evidence purporting to distinguish the petitioner from other successful Ph.D. recipients who have published their findings consists of letters. 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. As of the date of filing, the petitioner had not generated any media attention, received non-academic recognition from a national or international entity in his field, or even been offered a permanent job.

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 him as a structural biologist 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 structural biologist, 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.