U.S. Department of Homeland Security

Citizenship and Immigration Services

B2

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536

[redacted]

FILE: LIN 03 015 52632 [redacted] Office: Nebraska Service Center Date: JAN 22 2004

IN RE: Petitioner: [redacted]
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]

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 Citizenship and Immigration Services (CIS) 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.

for Marc Pearson

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 (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 biomedical research scientist. 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 relies upon his receipt of two research fellowships during his doctoral studies to meet this criterion. Counsel submitted evidence only of the petitioner's receipt of a Junior Research Fellowship at the National Institute of Nutrition, Hyderabad, India, which will be considered. The other fellowship will not be considered as assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Although the documentation submitted by counsel reflects the program as it existed in 2001, we will assume, for purposes of this appeal, that the program standards and requirements were the same in 1996 when the petitioner was awarded his fellowship. The petitioner would have been one of 100 fellows selected for research funding. According to the guidelines, fellows are selected based on their performance on a written test. The program also has a maximum age limitation. Thus this fellowship was more of a competition than an award recognizing excellence achieved in the profession. The evidence does not establish that the petitioner has met this criterion.

> *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.*

To demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion, as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner submits evidence of his membership in the Oxygen Society, described as an international organization of approximately "1300 scientists, researchers, and clinicians with

an interest in the field of free radical chemistry, biology and medicine."[1] The petitioner submits no evidence of the membership requirements of the Oxygen Society. The organization's website lists three categories of membership, none of which is based on achievement. The petitioner has not met this criterion.

> *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.*

Counsel submits that the petitioner has had material published about him in major peer-reviewed journals and has had his work cited more than 30 times. Counsel asserts that "an indication of the importance and impact that a scientific researcher's work has in the furtherance of scientific knowledge is the number of times that author's findings have been used by other researchers to further hypothesize and investigate subjects of scientific and medical interest. Thus these citations to [the petitioner's] work are not 'mere reference to his work.'"

Nonetheless, 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.

As counsel noted, it is the nature of research work to build upon work that has gone before. In some instances, prior work is expanded upon or supported. In others, prior work is superseded by the findings of current research. In either case, the current researcher normally cites the work of prior researchers. Clearly, citations to another's work do not qualify as published material written *about* an individual's work in the field. This type of material does not discuss the merits of an individual's work, the individual's standing in the field, or any significant impact that his or her work has had in the field.

The only evidence submitted which might satisfy this criterion is an article in the Medical College of Wisconsin's newsletter to the faculty and staff announcing a research grant received by the college. The petitioner is simply listed as one of the staff who would be working on the project. This article is not primarily about the alien and his work. The petitioner has offered no evidence showing that he has been the subject of professional major media coverage within the meaning of the regulation.

---

[1] The Oxygen Society homepage at www.oxygensociety.org.

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.

Counsel states that the petitioner "has routinely been requested to review scientific papers submitted to the journal *Free Radical Biology & Medicine (FRBM)* for publication." The *FRBM* is the journal of the Oxygen Society and is described on its website as the highest impact factor journal in its field. With the petition, counsel submitted evidence that the petitioner has been requested to review articles four times over a two-year period. This does not establish that the petitioner is "routinely" requested to review articles. While peer review of manuscripts is a routine element of the process by which articles are selected for publication in scholarly articles, it does not follow that all scientific peer reviewers are at the top of their field. In order for the alien to demonstrate extraordinary ability under this criterion, he must show that he was selected to serve on a panel as a result of his national or international standing as an expert among his peers. Occasional participation in the peer review process does not substantiate that the petitioner has earned such sustained national or international acclaim that his opinions and insight are regularly sought as a valued element of that process. Furthermore, all of these requests were directed to the petitioner by the head of the laboratory in which he works. While such selection indicates that he is a respected member of his research team, it falls short of establishing the petitioner enjoys national or international acclaim under this criterion.

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

The petitioner submits several letters attesting to his contributions to the field. Dr. B. Kalyanaraman, Director of the Biophysics Research Institute at the Medical College of Wisconsin, writes that the petitioner generated several important findings from his doctoral work on the toxicological effects of excess iron supplementation during iron deficiency conditions at the site of iron absorption. According to Dr. Kalyanaraman, the petitioner's research resulted in important advances in the treatment of iron deficiency anemia.

Dr. Sampath Parthasarathy, McCord-Cross Professor of Gynecology and Obstetrics at Emory University School of Medicine, and Dr. Murali K. Cherukuri, Chief, Biophysical Spectroscopy Section of the Radiation Biology Branch at the National Cancer Institute, echo Dr. Kalyanaraman's comments. Dr. Parthasarathy states he was familiar with the petitioner's work before the petitioner joined his present laboratory, and that the petitioner's work "will have great implications in studies related to anemia, colon cancer, and lipid/lipoprotein metabolism and cardiovascular diseases." Dr. Cherukuri states he came across the petitioner's research through

the petitioner's publications in reputed journals. He states that the petitioner:

> showed that iron supplementation in cases of iron deficiency must be accompanied by antioxidant supplementation to minimize or even avoid the adverse effects of iron in the intestines. This work has important impact on dietary iron and cancer and strategies for prevention by establishing optimal dosing regimen as well as co administration of antioxidant vitamins such as vitamin C and vitamin E.

Dr. Victor Darley-Usmar, Professor of Pathology and Interim Director of the Division of Molecular and Cellular Pathology at the University of Alabama at Birmingham, writes that the "potential impact of these studies on the widespread problem of anemia is now being realized in the practical application to dosing regimens for iron supplementation," and that the petitioner's research at the Medical College of Wisconsin has produced important findings on the cardiotoxicity of a widely used anticancer drug.

Dr. Debra K. Newman, Associate Investigator with the Blood Research Institute and Assistant Professor in the Department of Microbiology and Molecular Genetics at the Medical College of Wisconsin, writes:

> [The petitioner's] postgraduate work answered important questions on the toxicological effects of excess iron supplementation under iron-deficient conditions, with direct implications for iron supplement dosage for treatment of iron deficiency anemia. With these studies, [the petitioner] has already made significant contributions to scientific understanding in this area.

Dr. Kalyanaraman also states that the petitioner was the "first to demonstrate that the iron-signaling mechanism plays a pivotal role in the myocardial cell death induced by [the anticancer drug] Doxirubincin", and that:

> oxide provides protective effects in oxidized low-density lipoprotein-induced endothelial cell toxicity. These finding are significant because low-density lipoprotein and its oxidation in the vasculature plays a key role in the onset of coronary atherosclerosis.

Dr. Parthasarathy states that the petitioner has shown: "oxidized LDL induced apoptosis or cell death, an important occurrence in cardiovascular disease. These findings would pave way for the discovery of agents that would arrest cell death. "

The petitioner's letters of reference and recommendation represent a cross-spectra of disciplines in medicine recognizing the importance of his work. The authors attest to the importance of

the petitioner's studies in the treatment of iron deficiency anemia but do not indicate that the petitioner's research results have been a part of their own research. The petitioner submits no independent evidence of the use of his studies by practitioners in the medical field. Further, other than his collaborators, the petitioner's references do not indicate how the petitioner's work with the anticancer drug is used in their own research. While the opinions of experts in the field are not without weight, they cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition would carry 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 ample unsolicited materials reflecting that acclaim. While the petitioner has shown that the research community has frequently cited his work, which is an objective measure of acclaim, the publication of scholarly articles is considered under a separate criterion.

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. The petitioner submitted evidence that, during the course of approximately three years, 15 articles that he co-authored have been published in scientific journals of international circulation and prestige. It is axiomatic that reputable scientific researchers must publish the results of their research, and the petitioner has shown he is a prolific publisher. However, publication alone is insufficient to establish the petitioner has sustained acclaim in his chosen field. The research community's reaction to those articles must also be considered. When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's conclusions. 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 contains evidence that the petitioner's work has been cited or referenced frequently. Additionally, abstracts of the petitioner's work have been presented at various symposia and exhibitions. We concur with the director that the petitioner has met this criterion.

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 research scientist 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.