B2

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

U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 02 253 52568 Office: NEBRASKA SERVICE CENTER Date: MAR 01 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]

PUBLIC COPY
Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. A subsequent motion to reopen was also denied by the director. 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 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 in his response to the director's request for evidence (RFE) dated March 19, 2003, 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.

Although he does not raise this issue on appeal, in his response to the RFE, counsel asserted that other experts in the scientific community have repeatedly cited the petitioner's research work. This criterion is not satisfied by citations to a petitioner's work by others in the field. Citations of the petitioner's work are the subject of a separate criterion. The plain language of the regulation requires that the published material be about the alien, relating to his or her work.

It is the nature of research 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 this is not the same thing 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 on work in the field. In his response to the RFE, the petitioner submitted three articles that counsel states "speak favorably about the importance of the petitioner's research arena." A review of the evidence, which consists of the first page of each article, reflects that none of the articles mention the petitioner or make any specific attribution of his research results.

The director found that the petitioner has offered no evidence showing that he has been the subject of published material in satisfaction of this criterion. The petitioner did not pursue this issue further on appeal. We concur with the director.

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

To establish that he meets this criterion, the petitioner relies upon his publication record, citations to his published articles, and the letters of recommendation and reference that he received from various colleagues, acquaintances and experts in the field of organic chemistry.

In his letter submitted with the petition, counsel listed 26 articles, abstracts and "presentations" he states are attributable to the petitioner. He submitted copies of over 20 of these articles, three of which are not translated from Chinese, and two of which have only been accepted for publication but have not actually been published. Additionally, evidence of several of the abstracts consists of a copy of an abstract submission page from the American Chemical Society (ACS) website showing the abstract has been accepted, but does not indicate the forum in which it would be reproduced.

This evidence does not establish that the petitioner has made a major contribution to the field of organic chemistry. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, sets 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 influence or sustained acclaim; we must consider the research community's reaction to those articles.

Counsel asserts that the petitioner's work is "so significant" that he has been cited over 130 times, "a rare feat within the scientific community." With the petition, counsel submitted evidence that the petitioner's publications had been cited over 130 times excluding self-citations. However, that number becomes less impressive upon review as the evidence also indicates that the petitioner's co-authors accounted for approximately half of the references to their published work. In other words, the petitioner and his co-authors cited to their own work at a rate almost equal to the rest of the field combined. Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers. The number of independent citations, while indicating that the petitioner has contributed to the knowledge pool of the field, does not establish that he has made a contribution of major significance as required by this criterion. The petitioner's authorship of scholarly articles is the subject of a separate criterion discussed below.

The petitioner's references speak highly of his research skills, but several speak of his *potential* for making a significant contribution to the field of organic chemistry. In the first of his two letters of support for the petitioner, D[redacted] Assistant Professor of Radiology at Indiana University School of Medicine, states that he served as the petitioner's mentor for his postdoctoral research. He writes:

> [The petitioner] is making outstanding contributions in the research and development of radiopharmaceuticals for medical imaging technique positron emission tomography (PET) to provide diagnostic information on various organs in normal and/or disease states . . . [He has] worked on the development of novel PET cancer imaging agents . . . PET with medical probes will provide significant information for the detection, diagnosis and treatment of cancer . . . [The petitioner] is currently developing one of enzyme-based tumor imaging agents called radiolabeled ganciclovir (GCV) and penciclovir (PCV) analogs labeled with positron emitting radionuclide fluorine-18. Radiolabeled GCV and PCV analogs would be used as gene expression imaging agents for PET to monitor virally delivered herpes simplex virus thymidine kinase (HSV-TK) reporter gene expression in vivo and cancer response to gene transfer technology treatment. HSV-TK gene is implicated in cancer gene therapy, which provides a potential target for cancer imaging. PET gene expression imaging agents will provide unique functional information about the HSV-TK reporter gene expression both for assessing gene transfer and for cancer gene therapy. [The petitioner] has synthesized over several (sic) radio radiolabeled GCV and PCV analogs . . . as new radiopharmaceuticals us[ed] in the PET cancer research within IU PET Facility and IU Cancer Center.

Dr. [redacted] Associate Professor of Medicinal Chemistry, Rutgers University, collaborated with the petitioner on his research at the University of Chicago. He states:

> [The petitioner] was conducting significant investigations of Polycyclic Aromatic Hydrocarbons (PAHs) and would send his samples to me for animal testing . . . By applying his work to animal models, I found that, when fed coal tar in their diet, female

> mice demonstrated high incidents of lung tumors. [The petitioner] studied the mechanism by which the PAHs bind to DNA in the mice lungs. He has proposed and synthesized four metabolites that may be responsible. This research should prove to be highly applicable in the medical field, since coal tar is a relatively widespread environmental contaminate which may be responsible for many cases of lung disease in humans. If the mechanism that causes contaminates to bind and modify genetic material in lungs can be determined, it is possible that a cure may be developed.

Dr[redacted] Professor of Chemistry at the University of Chicago, states that the petitioner worked in his group on an "industry-supported project dealing with the development of new cocatalysts for metallocene-catalyzed olefin polymerization."

> [R]esearchers in both academic and industrial research laboratories are searching for new non-aluminum cocatalysts to substitute for [methyl aluminoxane]. [The petitioner] targeted three candidate compounds that contain three or more boron atoms . . . Through extensive synthetic studies, he found that one of the three molecules, which contains three boron atoms held together by a silyl group is very promising.

While his colleagues hold the petitioner in high esteem, they do not show in their letters that he has already made a significant original contribution. This criterion requires the alien to have made a contribution of major significance to the field as of the date of his petition. He cannot establish eligibility based on achievements on some date in the future. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). The petitioner is described as having a rare research talent, but the evidence falls short of indicating that his work has had a significant impact on the field.

Some of the petitioner's references speak in general terms of his contribution to the field. Dr.[redacted] Professor of Chemistry at Southern Methodist University, in discussing the petitioner's work at Indiana University, states that the petitioner's research is making "incredible impact on cancer research, and his approaches are being recognized and used by researchers worldwide."

Dr.[redacted] Associate Professor of Chemistry, Technion-Israel Institute of Technology, states he invited the petitioner to join his laboratory in 1997, where the petitioner investigated the synthesis of organoactinides and their catalytic activities in several organic processes. He describes the petitioner as "highly skilled" and "proficient in techniques known to very few, giving him a distinct advantage over most other researchers in his field. [He] has made and will continue to make enormous contributions to the chemistry community."

Neither of the authors of these letters gives details or explains the nature of the "incredible impact" the petitioner has had or the "enormous contributions" he has made on the field. It does not suffice to describe the petitioner's work as significant without illustrating the specifics underlying such conclusions.

Other colleagues assert that the petitioner has made particular contributions to the field. Dr.[redacted] Presidential Research Professor at Northern Illinois University, states the petitioner joined his research group in 1998, and his:

> enthusiasm, superb experimental skill and outstanding creativity in research has resulted in unusual alkylations and halogenations of the small cage carboranes that gave us insights into the mechanistic details of cage opening, cage closures and cage fusion processes. Thus, he not only made my main group chemistry research alive, but also demonstrated the role of these B-substituted main group compounds in the production of cationic species of group 3, lanthanide and group r elements. Indeed, this would have been impossible without [the petitioner's] expertise in synthetic chemistry that has been instrumental for our success.

The petitioner worked with Dr. [redacted] as a postdoctoral associate for two years. In a separate letter, Dr. [redacted] writes:

> The project that [the petitioner] was assigned to involved the sequential reactions of a class of boron containing compounds called carboranes . . . [His] problem turned out to be quite a difficult one that was the key to our research in the syntheses and characterizations of constrained geometry metallacorborane catalysts. [He] solved the main problems and established the general procedures that allow for the syntheses of this class of potentially useful compounds.

Dr. [redacted] Professor Emeritus at the Ben May Institute for Cancer Research, University of Chicago, states he invited the petitioner to join his laboratory on the recommendation of a colleague. He further states:

> [The petitioner's] investigations have led to identification of the molecular structure of an active metabolite of a specific PAH, benzo[c]fluorine, [that] binds to DNA in the lungs thereby inducing mutations that may lead to cancer. This discovery has made it possible for researchers to characterize and identify the active BcF metabolites that bind to DNA. This work is highly significant to numerous areas of cancer research and to studies of human safety and environmental protection.
>
> [The petitioner] also discovered a new type of aryl triflate-arene coupling reaction. This methodology provides a novel, more convenient method of synthesizing various compounds, some of which may have medicinal properties.

Dr. [redacted] Professor of Chemistry, Nankai University, China, states he has known the petitioner since his graduate student days at Nankai University. He states:

> [The petitioner's] main achievement is that he found six unprecedented organometallic cluster structures, and used X-ray diffraction methods to unambiguously confirm their unique crystal structures. These findings provide more examples of cluster compounds for catalysis evaluation, since many cluster compounds have multi-metal centers and have been demonstrated to exhibit superior catalytic activities for many organic transformations. Because of his monumental developments, [the petitioner] was chosen to publish over twelve articles with many internationally circulated and peer-reviewed journals.

While these experts have a very high opinion of the petitioner's work, they have all worked with the petitioner in collaborative research. This will of course be important to them and is likely important to the

research community. However, the opinions of those who work or have worked closely with the petitioner cannot establish that he has attained national or international acclaim.

Dr. [redacted] chair of the Department of Chemistry, Tianjin University, China, provides an "independent expert opinion" on the petitioner's qualifications. He "confirms" that the petitioner is an "extraordinarily talented researcher whose contributions to the fields of organic and organometallic chemistry have firmly established him as an internationally recognized expert." He bases his opinion on the petitioner's publication and citation records, and states the petitioner was the first "to identify the molecular structures of active metabolites of a polycyclic aromatic hydrocarbon (PAH), benzo[c]fluorine, which attaches in the lungs of DNA[, which] makes it possible to stop the effect of PAHs that can lead to cancer. This important discovery was recognized internationally by the scientific community and is being used in studies that focus on eliminating cancers caused from PAH."

Although these scientists aver that the petitioner's work is of major significance to the organic chemistry community, nothing in the record provides supportive evidence of their assertions. While not without weight, the opinions of experts in the field do not generally establish extraordinary ability. 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 unsolicited materials reflecting that acclaim. Counsel opines that under *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich 1994), the examiner's role is limited to evaluating the quality and credibility of the evidence, and that the examiner cannot "substitute" his or her judgment for that of the experts. Nonetheless, expert opinions are advisory, not conclusory, and cannot substitute for other objective evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm., 1988).

The totality of the evidence submitted with this petition, while establishing that the petitioner has made contributions to the field of organic and organometallic chemistry, does not establish that he has made a contribution of major significance. None of the authors of the letters of support, whom counsel asserts are major players in these areas of chemistry, indicate that they have used the petitioner's research other than in their associations with him. His work does not appear to have been cited as used by them in their own research beyond citations to their own prior work. Although the petitioner's research centers on treatment for cancer, no evidence of the commercial development of his research was submitted. While his publications have been frequently cited, this indicates that his research results have been noted but does not establish major contribution 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.

As noted above, the petitioner submitted evidence of having co-authored over 20 articles that were published in scientific journals of international repute and circulation, including *Organometallics* and *Organic Letters*. As stated above, publication of one's findings is an inherent duty of postdoctoral researchers. However, publication alone is insufficient to establish the importance or influence of the published research. The frequency of citation to the articles by independent researchers would tend to demonstrate the interest in and reliance on the published research. Additionally, as noted by counsel, the status of the medium in which the published article is written and cited reflects the importance and influence of the published research. The director determined that the petitioner did not meet this criterion. Although there are many citations to the published work by the petitioner and his co-authors, we find that the evidence of the published work and the

frequent citations by independent researchers sufficiently demonstrates that the petitioner has impacted the field through scholarly citations. We withdraw the director's determination.

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

Several of the petitioner's supporters write of his unique background, which made him well qualified for several of the projects on which he worked. Dr [redacted] writes that the petitioner is an expert in high vacuum-line chemistry and this makes him "rare." He also states that the petitioner played a "key role" in a project that "developed groundbreaking technology for detecting and preventing cancers." Dr [redacted] credited the petitioner with infusing life into his "main group chemistry research" and being "instrumental to his group's success." Dr. [redacted] writes of the "devastating loss" to his laboratory's research if the petitioner were to leave. Notwithstanding the petitioner's importance to particular projects, a research project is not an organization or establishment within the meaning of this criterion. Nor does working on a project funded by an organization with a distinguished reputation meet the requirements.

Further, while the petitioner may have played a critical role in the cited projects, he has not established that he played a leading or critical role in the laboratories where he worked, or that the laboratories are themselves distinguished organizations, separate and apart from the universities. The evidence further does not establish that the petitioner played a leading or critical role for any of the universities.

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 and skill 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.