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U.S. Citizenship and Immigration Services

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[redacted]

MAR 0 2 2004

FILE: LIN 02 288 52404 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.

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

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. 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 associate. 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 claims to have submitted evidence that meets the following four criteria.

> *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 reviewed one manuscript in 1999 prior to its publication in the *Journal of Chemical Ecology*. Counsel asserts that this one review, together with the prestige of the journal in which it was published, is sufficient to establish that the petitioner meets this criterion. Dr. [redacted] a professor in the Entomology and Nematology Department of the University of Florida, states that he requested the petitioner to review the manuscript because the petitioner was an authority in the subject of the manuscript. Counsel also stated that the petitioner had been requested by the Royal Society to referee for its journal; however, no evidence of the request was submitted with the petition. In response to the director's request for evidence dated March 21, 2003, the petitioner submitted a letter from the editor of *Physiological Entomology* thanking him for his review.

The director determined that one review in three years did not satisfy this criterion. Counsel asserts that by apparently requiring that participation as a judge must be "significant" and by establishing a time frame in which the petitioner must participate, CIS uses a "two-fold" test that is "neither appropriate nor necessary."

As noted by Professor [redacted] peer review is an integral part of the scientific publication process. It does not follow that every person who is selected to review papers for publication is an extraordinary research scientist, nor is every authority on a subject considered to have extraordinary ability. Evidence submitted in support of this criterion must reflect that the alien was selected to perform reviews because of his expertise in the field. Further, because the statute requires extensive documentation, the AAO will look at the frequency and the regularity of invitations to perform peer review. 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. The evidence is insufficient to establish that the petitioner meets this criterion.

The petitioner also submitted evidence that he has received other requests to perform peer reviews of manuscripts. However, as these requests were made subsequent to the filing of the petition, they cannot be used to establish eligibility. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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

The director determined that the petitioner meets this criterion. However, as the evidence does not support this conclusion, we withdraw the director's determination.

To establish that he meets this criterion, the petitioner submits letters of recommendation and support from various experts in the field of entomology and chemical ecology. Several of the authors use similar words to describe the petitioner and his work. Dr. [redacted] Professor and Chair of the Department of Entomology of Cornell University; Dr. [redacted] Professor of Entomology at Iowa State University; and Dr. [redacted] of the University of Arizona, all write that they have been "impressed" with the petitioner's "efforts and his intellect ever since reading his papers originating from his Ph.D. work at the University of Lund." Dr. [redacted] and Dr. [redacted] both speak of the petitioner's "startling discovery that the sensitivity of some olfactory" neurons on the moth antennae is heightened by exposure to volatile plant compounds. Dr. [redacted] also states that he is aware of the petitioner's work with the Defense Advanced Research Projects Agency (DARPA), which is:

> focused on trying to find ways to use insect antennae ... to create an olfactory biosensor, which promises to be useful for the humanitarian and defense-related purpose of locating unexploded landmines. This work is novel and cutting-edge, and is leading the way toward developing a

useful biosensor for use in defense and in agriculture.

Dr. [redacted] letter, while clearly respectful of the petitioner's work, does not establish that the petitioner has already made a contribution of major significance to the field. Research that may lead to exciting discoveries in the future does not qualify under this criterion.

Dr [redacted] Professor of Chemical Ecology in the Department of Entomology at the University of California at Davis, states that the petitioner and his collaborator, Dr. [redacted] "discovered peripheral interactions in insect antennae between insect pheromones and plant-derived compounds, which may lead to new strategies for insect pest control, such as those aimed at disrupting mate finding and, consequently decreasing insect pest populations." This letter does not establish that the petitioner's discovery has already had a significant impact on his field.

Dr [redacted] states the petitioner's "single antennal neuronal recordings have uncovered an underappreciated feature of insect olfaction, odor mixture interactions, that are related to our behavioral work showing that closely intertwined odor filaments can be resolved from one another." Dr [redacted] also states that the petitioner is the "only researcher in this field in the world who can perform single-neuronal recordings from an insect antenna using blends of odor volatiles as the stimulus, reliably and with great accuracy label the neurons with dye, and then follow them to their arborization points in the insect brain."

Dr [redacted] writes that the petitioner's work with the DARPA "promises to lead to useful inventions with application for a variety of tasks including the humanitarian and defense-related purpose of locating unexploded landmines." Dr [redacted] Division Head of Chemical Ecology at the Swedish University for Agriculture Sciences states that the petitioner has:

> demonstrated a synergistic effect between plant- and sex pheromone-odour processing in moths that have not been documented neurophysiologically before. His results will have important practical significance in that pheromone mating disruption dispensers for some moths can be manufactured with less of the expensive pheromone active ingredients while retaining or even increasing disruption efficacy by adding small amounts of selected inexpensive plant volatiles to the pheromone blend.

The petitioner's references all speak highly of his skill and dedication and indicate his research is "novel," "cutting edge," has "tremendous potential," and "promises to lead to useful inventions." While the record establishes that the petitioner has potential, it lacks evidence that his contributions have already been recognized as significant to the field. Dr [redacted] states that the petitioner's research on the effect between plant and sex pheromone odor processing in moths is an "extraordinary achievement in this field;" however, no independent evidence of the practical use of the petitioner's research was submitted. Dr [redacted] Professor of Zoology at the University of Munich, writes that the petitioner has made a number of "highly original discoveries," but does not indicate the impact these discoveries have had on the field of entomology or chemical ecology. Other than those with whom he works or has worked, none of the petitioner's references discuss how his research has impacted or advanced their own research in similar areas. The record lacks either objective or specific documentation of the petitioner's contributions to the field, and does not establish sustained national or international acclaim.

The criterion requires extensive documentation that the alien has made a contribution of major significance to the field. We find that the evidence of record does not establish that the petitioner has met this 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. In his curriculum vitae, the petitioner indicates he has co-authored 20 refereed articles and made 10 oral presentations regarding his work. The petitioner, however, submitted copies of only six of these articles. The record also contains a copy of a report entitled "Science Citation Index – Multiple Databases," but there is no indication of the source of this information and accordingly, it has very little evidentiary value. The petitioner submits copies of eight articles that referenced his published work. 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 demonstrated extraordinary ability in his 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 scientific community's interest in and reliance on the published research. The acceptable evidence does not establish that other researchers have frequently cited the petitioner's work. We further note that Dr [redacted] Distinguished Professor of Entomology at the University of California, Riverside, equates the petitioner's publication record to that of a newly hired associate professor with tenure. The evidence of record does not establish that the petitioner 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 claims to meet this criterion based on his work as a doctoral student at the University of Lund in Sweden, his postdoctoral work at Iowa State University where he participated in research for the DARPA, and the research articles he wrote while associated with both institutions. The evidence establishes that the University of Lund and Iowa State University are highly regarded institutions for the study of entomology. The evidence does not establish that the petitioner played a leading or critical role at either of the institutions. Dr. [redacted] in whose laboratory the petitioner did his PhD studies, does not state that the petitioner played a leading or critical role in any aspect of his work at the university. Dr [redacted] with whom the petitioner worked at Iowa State, states that the petitioner's "main contribution" at his laboratory was in regard to their ongoing studies on olfaction in heliothine moths. The petitioner "helped take this effort to levels we had not imagined before." Dr [redacted] also states that the petitioner's work is "indispensable to viability of my laboratory's ability to discover new knowledge in this field," and that it would be impossible to replace him. Despite Dr [redacted] contentions, however, the evidence does not establish that the petitioner's work was critical to the success of Dr. [redacted] laboratory. The laboratory's reputation as a premier entomology laboratory was apparently established prior to the petitioner's association with it (*see* Dr. [redacted] letter), and the record does not establish that the petitioner's work was so critical that he achieved a level above that of research associate.

Counsel argues that focusing on job titles "ignores the fact that most universities have limited budgets and, as a consequence, a limited number of higher-paid positions with more lofty-sounding job titles." However, an individual who is truly indispensable to an organization will not be relegated to one of the lowest paid, least professionally acknowledged positions within the organization.

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 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 is highly regarded and shows talent and promise 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.