identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: APR 26 2005

LIN 03 095 51836

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted, the previous decision for the AAO will be affirmed, and the petition will be denied.

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 and the AAO determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On motion, counsel states:

> Appellant respectfully moves the AAO to reopen and/or reconsider the Appeal of the I-140 denial and requests the AAO to re-adjudicate the appeal considering this time the brief and evidence submitted to the Service Center in support of the Appellant's appeal. The new evidence to be considered in this motion is the brief and supporting evidence submitted to the Nebraska Service Center on November 20, 2003.

Review of the record indicates that the brief and evidence submitted by the petitioner in support of the appeal were received by the Service Center within 30 days of the filing date of the appeal; therefore, they will be addressed below. This documentation was not in the petitioner's file at the time the appeal was considered.

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, counsel 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 submitted an English translation of a certificate from the German Dermatological Society showing that in 1997 he shared an award of 2,000 Deutsche Marks with five other researchers who co-authored a poster presentation with him, entitled "Distribution of Free Calcium Ions in Isolated Human Spermatosomes." The name "S. Eisoldt" is centered in bold on the certificate above the names of the petitioner and his other co-recipients. While the translation of the award certificate is contained in the record, the original copy in German does not appear to have been included.

The petitioner also submitted evidence showing that he received a "poster award at the 35th Annual Conference of Reproduction Physiology and Pathology" in 2002 in Leipzig, Germany. The petitioner shared this award with five other researchers who co-authored the presentation "Interaction Between Major Protein (MP) from Bovine Seminal Vesicles and Sperm Calcium ATPase." The English translation of the award certificate states that their poster "won the 3rd Prize out of all in all 87 poster contributions."

In response to the director's request for further evidence pertaining to this criterion, the petitioner submitted an e-mail "Announcement and call for papers" from the 36th Annual Meeting for Physiology and Pathology of Reproduction. It is noted that this announcement relates to the subsequent year's conference. The conference announcement states that all abstract entries "will be reviewed by two internationally renowned scientists" and it does not limit entrants to students.

Nevertheless, the petitioner has not provided evidence to address the director's observation that the petitioner's poster presentations were "not in the plenary session" of the conference. In the appellate brief, counsel asserts that "[t]here is no evidence on record to indicate that these sessions were not plenary," but in this matter the burden is on the petitioner to demonstrate that his awards are nationally or internationally recognized. The petitioner must provide evidence showing that the third-place poster presentation presented to him and to his co-team members represents a significant national or international honor. The director's observations were not intended to impose a new standard, as counsel claims, but, rather, to provide examples of the types of evidence that demonstrate national recognition for excellence in the field of endeavor. The documentation presented by the petitioner does not identify the specific criteria for receiving a poster award, nor is there evidence to show that the petitioner's poster awards were widely recognized beyond the context of the conference where they were presented.

We note here that section 203(b)(1)(A)(i) of the Act requires "extensive documentation" of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide adequate evidence to establish that the award certificates presented under this criterion enjoy significant national or international stature. The level of recognition and prestige associated with the petitioner's poster awards has not been adequately demonstrated.

Counsel's appellate brief states: "The Director did not consider the numerous grants awarded to [the petitioner] under this category. [The petitioner] requested that the awards be considered under the 'comparable evidence' criterion pursuant to 8 C.F.R. § 204.5(h)(4)." That regulation allows for the submission of comparable evidence, but only if the ten criteria "do not readily apply to the petitioner's occupation." Therefore, the petitioner must demonstrate that the regulatory criteria are not applicable to the alien's field. Of the ten criteria, at least eight readily apply to the petitioner's occupation. Where an alien is simply unable to meet three of the regulatory criteria, the wording of the regulation does not allow for the submission of comparable evidence.

In regard to the research grants for which the petitioner or his employer applied and received funding, it is noted that research grants simply fund a scientist's work. The past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future scientific research, and is not a national or international award to honor or recognize past achievement. Furthermore, we note that a substantial amount of scientific research is funded by research grants from a variety of public and private sources. Therefore, we do not accept the assertion that the receipt of a research grant places a scientist at the very 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.*

In the appellate brief, counsel explains that a signature discrepancy in the two letters from Judith Hansen, Executive Secretary, Society for the Study of Reproduction, was the result of Ms. Hanson granting authorization for another individual to sign in her behalf. Regardless, no evidence has been presented to overcome the director's finding that the Society did not require outstanding achievement.

The AAO's appellate decision stated:

> 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 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 here is membership requirements rather than the association's overall reputation.
>
> The petitioner submits evidence that he is a member of the Society for the Study of Reproduction. Membership in the organization is "limited to individuals or organizations who demonstrate active interest in the field of reproduction and related areas." Regular membership in the organization is based on "scientific productivity and continuing interest in the field," possession of a doctoral degree or demonstration of its equivalent through scientific accomplishments, and a specific history of publication within the previous six year period. The guidelines allow the membership committee to waive the publication requirement if the individual serves in an administrative capacity that is of "great relevance to the area of reproductive research." The above guidelines make it clear that outstanding achievement is not a prerequisite for membership in the Society for the Study of Reproduction.
>
> The petitioner also claims to meet this criterion based on his membership in the Anatomical Society. Counsel submitted a letter from Dr. [redacted] who states that membership in the society requires documentation of outstanding achievements in anatomical science as a prerequisite for joining. In his request for evidence (RFE) dated June 9, 2003, the director noted that the petitioner became a member of this society while he was still in school, and there is no evidence of his outstanding achievements that resulted in his selection for membership to the society. Counsel did not further address this organization in his response to the RFE, and we find that the evidence does not establish that membership in the organization is based on outstanding achievements.

We further note that the record contains no evidence of the Anatomical Society's bylaws or official membership requirements to demonstrate that it requires outstanding achievement as an essential condition for admission to membership.

On motion, counsel does not challenge the AAO's findings in regard to this criterion. The evidence presented by the petitioner is not adequate to demonstrate that the petitioner's membership in either society required

outstanding scientific achievement or that he was evaluated by national or international experts in consideration of his membership. The record contains no evidence to establish that these two societies require outstanding achievement of their members in the same manner as highly exclusive associations such as (for example) the U.S. National Academy of Sciences.

> *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.*

On motion, counsel states:

> [The petitioner] respectfully requests the AAO to reconsider their determination that [the petitioner] does not meet this criterion.
>
> This criterion requires only that the alien participated as a judge of others in his field; it does not include the requirement that [the petitioner] also demonstrate that his selection for such participation was the result of his "sustained national or international acclaim," as alleged by the Service. The AAO's interpretation erroneously increases the burden on applicants in this category. A plain reading of the statute does not support this added burden.

Section 203(b)(1)(A) of the Act states, in pertinent part, that:

> 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,

Contrary to counsel's statement, a plain reading of the statute does support the conclusion that a petitioner must demonstrate "sustained national or international acclaim" to qualify as an alien of extraordinary ability. It is important to note that the controlling purpose of the regulation at 8 C.F.R. § 204.5(h)(3) is to establish sustained national or international acclaim, and any evidence submitted to meet the regulatory criteria must therefore be to some extent indicative of such acclaim. The evidence presented must be evaluated and properly weighed in terms of the governing statute and regulations; it is not simply a matter of accepting that any piece of evidence presented under a particular criterion automatically satisfies that criterion. By way of analogy, Citizenship and Immigration Services (CIS) sometimes requires copies of income tax returns to establish that a petitioner has the ability to pay the proffered wage to the beneficiary. The petitioner, however, does not automatically meet this requirement by submitting a copy of an income tax return. Rather, we must consider the content of that income tax return; if it does not show that the petitioner can afford to pay the beneficiary, then the petitioner cannot credibly argue that it met its obligation merely by supplying the copy of the tax return. The same reasoning also applies to evidence presented under the criteria at 8 C.F.R. § 204.5(h)(3).

The petitioner submitted an initial letter from Dr. [redacted] Editor-in-Chief, *Andrologia*, stating: "We hereby certify that [the petitioner] has evaluated manuscripts for *Andrologia* from 1996 through 2002."

Dr. does not specifically identify the manuscripts reviewed by the petitioner, nor does he provide information regarding the number of scientists who were also requested to provide peer reviews for the journal during that same period. It is further noted that Professor of the Philipps-University of Marburg in Germany, who offers a letter in support of this petition and who supervised the petitioner's thesis, served as "(Co-)Editor-in-Chief" of *Andrologia* from 1995 to 2000.[1] Given the petitioner's close relationship to Dr. it is rather unlikely that the petitioner's notoriety as a top researcher resulted in his being selected as a reviewer. It would be more reasonable to conclude that the petitioner was selected because his research mentor at that time happened to serve as co-editor of this journal.

In his second letter, Dr. states:

> The editors at *Andrologia* receive about 60 to hundred [sic] manuscripts for publication in our journal. At the moment we reject approximately 50% . . . of the articles submitted.
>
> Publication of manuscripts is based on a peer review system including at least two notable reviewers for each manuscript. We select our reviewers based on their reputation for scientific knowledge in the subject matter of the manuscript. Two very important criteria in assessing a scientist's knowledge are publications in high standard journals and the ability of a scientist to obtain peer-reviewed grants . . . .

According to Dr. letter, one can become a reviewer for *Andrologia* through publication and obtaining peer-reviewed grants. We do not find that such activities elevate an individual scientist above almost all others in the research field at the national or international level. Reviewing manuscripts is recognized as a professional obligation of scientists who publish in research journals. Thus, peer review of manuscripts is a routine element of the process by which articles are selected for publication in scholarly journals. Occasional participation in peer review of this kind does not demonstrate that the petitioner has earned sustained national or international acclaim at the very top of his field. In certain instances, authors who repeatedly decline requests to review will be asked to submit their own manuscripts to other journals. The petitioner has not submitted evidence to show that only a small percentage of researchers review papers in this manner.

The petitioner also submitted a letter from Editor-in-Chief, *Biology of Reproduction*, who states that reviewers for her journal "are chosen among those who have expertise in the area of the manuscript." As evidence of his service as a reviewer, the petitioner submitted pages 1856 and 1857 of the June 2001 edition of *Biology of Reproduction*. The top of page 1856 bears the heading "AD HOC REVIEWERS" and states: "The editors express their gratitude to the following individuals who evaluated papers for *Biology of Reproduction* from September 15, 2000, through April 10, 2001. . . . Members of the Editorial Board are not included on this list; their names appear on the inside cover of each issue of the journal." Pages 1856 and 1857 consist of an alphabetic listing of approximately 750 names. The petitioner's name appears under the letter "W" along with 26 other "ad hoc" reviewers. To assert that peer review of this kind is adequate to satisfy this criterion would be to assert that all 750 of these individuals are of that small percentage who have risen to the very top of the field of endeavor. The record contains no evidence to support this conclusion. The evidence presented here indicates

---

[1] According to his resume, the petitioner studied and worked at Philipps-University of Marburg from 1988 to 1997. The petitioner's resume identifies as the petitioner's "Principal Professor."

that serving on the "Editorial Board" enjoys a significantly higher level of prestige than that of serving as an "ad hoc reviewer."

Without evidence that sets the petitioner apart from others in his field, such as (for example) evidence that he has peer-reviewed an unusually large number of manuscripts for publication in various scientific journals, received multiple independent requests for his services from a substantial number of journals, or served in an editorial position for a distinguished journal (in the same manner as Drs. for example), we cannot conclude that he meets this criterion.

> *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 in support of the petition. We cite representative examples here.

Dr. Assistant Vice President, Wyeth Research, states that the petitioner "innovated 'single sperm cell photometry,' a significant new tool used by scientists to analyze and experimentally manipulate individual sperm." Dr urther states:

> The buffer system that [the petitioner] utilizes in this technique essentially slows spermatozoa activity to the point where individual cells can be studied while maintaining viability; this has been a limitation in the field. Prior to this revolutionary development, researchers were forced to extrapolate results from tests performed either on groups of sperm or spermatogenic cells, thus lowering the reliability and reproducibility of the data. Single Sperm Cell Photometry is now employed by other researchers all over the world.

Dr. Program Director, Male Reproductive Health, Reproductive Sciences Branch, National Institutes of Health, states:

> This new methodology allowed [the petitioner] to immobilize spermatozoa for significant periods of time during which tests could be performed. While this may sound simple to a non-scientist in actuality it was groundbreaking. Up to this point, no one had been fully successful in obtaining ion flux measurements from mature spermatozoa.

Dr. Professor, Department of Physiology and Biophysics, University of Washington, and Elected Member of the U.S. National Academy of Sciences, states that the petitioner's spermatozoa studies have "pushed the envelope in two directions. One is that his technique has been fine enough to follow the signaling evens in single spermatozoa on a second-by-second basis . . . . The second is that he has greatly advanced the leads available for research in male disorders of fertility and in regulation of fertility."

The petitioner's appellate submission (not previously reviewed by the AAO) included evidence showing that his published articles have been cited approximately 100 times. In this case, the large number of citations of the petitioner's published articles demonstrates widespread interest in, and reliance on, his work. These citations show that many other researchers have acknowledged the petitioner's influence and found his work to be significant. Such evidence bolsters the witnesses' claims that the petitioner's findings are of major

significance in the andrology field. The record adequately demonstrates that the petitioner's contributions are important not only to the research institutions where he has worked, but throughout the greater field.

After reviewing the petitioner's appellate submission, we find that the evidence presented is adequate to satisfy this criterion. The AAO's prior finding in regard to this criterion is withdrawn.

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

The AAO previously found that the petitioner's evidence is adequate to satisfy this criterion.

In this case, we find that the evidence presented satisfies only two of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

The fundamental nature of this highly restrictive visa classification demands comparison between the petitioner and others in his field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every scientific researcher who has published the results of his work, or who has trained under prominent researchers, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from experts in the field, without reaching the top of that field.

It has not been shown, nor does the overall tone of the witness letters presented in this case suggest, that the petitioner's achievements are comparable to those of scientific experts such as Professors [redacted] That these individuals have demonstrated achievements that far exceed those of the petitioner demonstrates that, however respected the petitioner may be and whatever future promise his career may hold, the petitioner has not yet reached the top of his field. For example, a November 10, 2003 letter provided on appeal from Professor [redacted] Scientific Director and Professor in Reproductive Medicine, University of Birmingham, states that the petitioner "is likely to be principal investigator in the very near future." Even if it were unanimously agreed that the petitioner would one day reach such a level, this visa classification is reserved for those already at the top of their field, not for those who are expected eventually to reach that level.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself as a scientific 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. As the evidence presented does not overcome the grounds for the previous decision of the AAO, and it has not been shown that that decision was based on an incorrect application of law, the previous decision of the AAO will be affirmed.

In conclusion, we find that the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The AAO's decision of March 29, 2004 is affirmed. The petition is denied.