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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
LIN 03 165 52241

Office: NEBRASKA SERVICE CENTER

Date: APR 05 2005

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 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
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.

On appeal, counsel continues to rely on a July 30, 1992 correspondence memorandum from [REDACTED] Acting Assistant Commissioner, to the then Director of the Nebraska Service Center, James [REDACTED]. [REDACTED] issued his correspondence memorandum in response to an inquiry [REDACTED] and makes clear that he is discussing his personal inclinations. Moreover, in contrast to official policy memoranda issued to the field, correspondence memoranda issued to a single individual do not constitute official Citizenship and Immigration Services (CIS) policy and will not be considered as such in the adjudication of petitions or applications. Although the correspondence may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer's analysis of an issue. See Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).¹ Counsel's specific assertions, including those based on this correspondence, will be considered below.

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.

¹ Although this memorandum principally addresses letters from the Office of Adjudications to the public, the memorandum specifies that letters written by any CIS employee do not constitute official CIS policy:

§ 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, meets the following criteria.²

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Counsel asserts that the petitioner's research grants and postdoctoral and fellowship appointments serve to meet this criterion. In addition, the record reflects that the petitioner's poster presentation was recognized at the National Seminar on Crystallography in 1982 and the petitioner received a First Prize for Proficiency in Physics from Jamal Mohamed College. The director concluded that the evidence was merely consistent with a postdoctoral researcher whose work was funded and did not amount to nationally or internationally recognized prizes or awards.

On appeal, counsel states:

[The petitioner] is a citizen and national of India. His groundbreaking work, innovative leaps in progress, and extraordinary skill as a scientist attracted the attention of scientific institutions throughout the world. [The petitioner] received appointments, fellowships, and funding to grant his expertise to the scientific communities of Taiwan, Italy, Germany and the United States. (See Exhibit 4 of Original Application[.]) It is clear that [the petitioner] has received international acclaim and recognition, and has resultantly been awarded these positions of prestige around the world. He thereby satisfies the first criteria of having received lesser national or international awards for excellence in his field of endeavor.

Counsel is not persuasive that a job offer or a research grant is an "award" or "prize" for excellence in the field as those words are commonly understood. Experienced experts do not compete for fellowships and competitive postdoctoral appointments. Moreover, while an applicant's prior accomplishments are obviously a consideration for job offers, employment contracts are not rewards acknowledging excellence in the field. Thus, even appointments in different countries cannot establish that a petitioner is one of the very few at the top of his field. Similarly, research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously 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 research, and not to honor or recognize past achievement.

Further, the only evidence of the award for the poster presentation is the assertion from [redacted] University. Going on record without supporting documentary evidence is not

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190, 193-194 (Reg. Comm. 1972); *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998); *Matter of Ho*, 22 I&N Dec. 206, 211 (Comm. 1998). The record does not contain the award itself or any evidence relating to the significance of the award, such as media coverage of the award selection in any year.

Finally, competition for the commendation from [REDACTED] appears limited to students at that institution. As the most experienced experts nationally do not aspire to win this award, we cannot conclude that it is a nationally or internationally recognized award or prize.

In light of the above, we concur with the director that the petitioner has not established that he meets 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.

Counsel initially asserted that the petitioner was a member of associations that "only grant membership on the basis of outstanding achievements in the applicable field of expertise." In support of this criterion, the petitioner submitted evidence of his lifetime membership in the National Magnetic Resonance Society (India) and the Indian Biophysical Society. Counsel references the petitioner's curriculum vitae as evidence of his membership in the Chinese Biochemical Society and the Association of Managers of Magnetic Resonance Laboratories. We need not accept the petitioner's own assertions on his self-serving curriculum vitae as evidence. *See Matter of Treasure Craft*, 14 I&N Dec. at 193; *Matter of Soffici*, 22 I&N Dec. at 165; *Matter of Ho*, 22 I&N Dec. at 211.

The petitioner did not comply with the director's request for evidence regarding the membership criteria of the above association. Instead, the petitioner submitted evidence of his membership in [REDACTED] the Scientific Research Society, and materials about the society. The director appears to conclude that the "noteworthy achievements" required for full membership in [REDACTED] were common to every Ph.D. recipient.

On appeal, counsel asserts that the director concluded in error that [REDACTED] did not require "noteworthy achievements." Counsel also faults the director for failing to consider the petitioner's other memberships. Counsel misstates the director's conclusion. The director acknowledged that [REDACTED] requires "noteworthy achievements" but concluded that its own definition of "noteworthy achievements" did not rise to the level of "outstanding achievements" as contemplated by 8 C.F.R. § 204.5(h)(3)(ii).

The letter welcoming the petitioner as a member of Sigma Xi is dated September 26, 2003, five months after petitioner filed the petition. As such, it is not evidence of his eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Moreover, the materials about Sigma Xi submitted reveal that [REDACTED] invites to full membership "those who have demonstrated noteworthy achievements in research." These achievements must be evidenced by "publications, patents, written reports or a thesis or dissertation, which must be available to the Committee on Admission if requested." A noteworthy achievement is not necessarily an outstanding achievement. In fact, the record reveals that the society does not take a particularly strict view of noteworthy achievements. Specifically, [REDACTED] Executive Director for the society, states that the "Committee on Qualifications and Membership interpreted this qualification to include primary authorship of two papers." [REDACTED] continues that an earned doctoral degree may be

substituted for one paper. We cannot conclude that primary authorship of one or two papers is an outstanding achievement.

Finally, the director did not err in failing to consider the petitioner's foreign memberships as he failed to provide any evidence of their membership requirements. The assertions of counsel regarding this issue do not constitute evidence. See *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In light of the above, we concur with the director that the petitioner has not demonstrated that he meets 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.

The director rejected the numerous citations of the petitioner's work, concluding that the citing articles were not about the petitioner. Throughout the proceedings, counsel has cited the correspondence memorandum from Mr. [REDACTED] for the proposition that a "goodly number" of citations can suffice to meet this criterion. In his letter to Mr. [REDACTED], Mr. [REDACTED] raised concerns about more than one criterion. Specifically, he noted that "it is almost a job requirement at many universities that professors and researchers publish papers." Separately, Mr. [REDACTED] questioned whether citations were published material about the cited author. In his response, Mr. [REDACTED] unequivocally states that "a footnoted reference to the alien's work without evaluation . . . would be of little or no value." Mr. [REDACTED] goes on to state that "entries (particularly a goodly number) in a field . . . would more than likely be solid pieces of evidence." Mr. [REDACTED] does not, however, identify the criterion to which this evidence would relate.

We concur with Mr. [REDACTED] that a "goodly number" of citations is solid evidence worth consideration. We find, however, that this evidence is of significance to one of the other criteria for which Mr. [REDACTED] expressed concern; namely, authorship of scholarly articles. As will be discussed below, the director correctly considered the petitioner's citations as evidence of the significance of his published articles and even as evidence that his contributions were of major significance. The statutory requirement for "extensive evidence" and the regulatory requirement that a petitioner meet at least three criteria precludes us from considering the petitioner's citation record as evidence to meet three separate criteria. It remains, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be about the petitioner. The articles that cite his work are primarily about the author's work, not the footnoted materials. Thus, we concur with the director that the petitioner's citation record, while significant, is not relevant to this criterion.

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.

Relying on Mr. [REDACTED] correspondence memorandum, counsel asserts that the petitioner's participation as a peer reviewer for the *European Journal of Biochemistry* and the fact that he "provided mentor and guidance for Ph.D. and [REDACTED] students" serve to meet this criterion. Counsel further asserts that the invitations to present work at conferences serve to meet this criterion. Counsel does not explain how presenting one's work constitutes judging the work of others. The petitioner submitted a letter from the Editor in Chief of the *European Journal of Biochemistry* affirming that the petitioner served as a referee for that journal from 1994 through 1997. The petitioner submitted six Masters Theses certified by the petitioner as someone who had

provided "supervision and guidance." The petitioner's seal indicates that he was a lecturer at the university where these theses were submitted.

In response to the director's request for additional evidence, counsel reiterates previous assertions and further asserts that supervisory responsibilities serve to meet this criterion. The petitioner submits a letter from Professor [REDACTED] of the University of Arkansas asserting that when he was an associate professor in Taiwan, the petitioner "mentored" one of Professor [REDACTED] Ph.D. students. Dr. [REDACTED] a research scientist at the Free University of Berlin, asserts that the petitioner "helped mentor me through my Ph.D. dissertation" at the Krebs Institute.

The director concluded that the petitioner had not demonstrated that he directed the theses of any students or that he actually judged the work of others, as opposed to merely be invited to do so.

On appeal, counsel asserts that the petitioner was "highly influential in the direction of these Ph.D. candidates." Counsel further asserts "that the invitation itself to review articles is indicative of [the petitioner's] recognition and reputation and is less important that the overall number of articles, which were actually reviewed." Counsel continues to rely on Mr. [REDACTED] correspondence memorandum.

Mr. [REDACTED] stated that "participation by the alien as a reviewer for a peer-reviewed scholarly journal would more than likely be solid pieces of evidence." Mr. [REDACTED] further stated that he was "inclined to believe that thesis direction (particularly of a Ph.D. thesis) would demonstrate an alien's outstanding ability as a judge of the work of others." Mr. [REDACTED] concluded that "we expect the examiner to evaluate evidence, not simply count it."

We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys sustained national or international acclaim. The information on peer reviewers submitted by the petitioner pertains to project plan reviewers for the Agricultural Research Service of the U.S. Department of Agriculture. The record does not reflect that the petitioner served in this capacity.

As Mr. [REDACTED] suggests, we must evaluate the evidence, not merely count it. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner meets this criterion. We note that some of the petitioner's references have served on the editorial boards of prestigious journals, suggesting that the top of the petitioner's field is above the level he has achieved.

We concur with the director that the record does not confirm that the petitioner has "directed" a Ph.D. thesis as the term is commonly understood in academia. Rather, the petitioner was working in the same laboratory and provided some useful guidance. Moreover, as noted in Mr. [REDACTED] letter to Mr. [REDACTED] most professors are asked to serve on thesis review panels. Given Mr. [REDACTED] admonition to evaluation the evidence, we find that requests to an outside expert to direct the thesis of a Ph.D. candidate who is not the expert's student is far more persuasive than the typical oversight of one's own students' theses.

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

The director concluded that the petitioner meets this criterion. While we will not withdraw that finding, we note that the petitioner's references are all either from the petitioner's immediate circle of colleagues or had never heard of the petitioner's work prior to being contacted for a reference. While such letters are useful, letters from independent experts who have been influenced by the petitioner's work are more persuasive evidence of national or international acclaim.

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

The director concluded that the petitioner meets this criterion and we affirm that finding.

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

The director concluded that this criterion relates to the visual arts. On appeal, counsel asserts that the correspondence from Mr. [REDACTED] specifically finds that conference presentations can serve to meet this criterion. Mr. [REDACTED] however, specifically states that the pieces of evidence in question "pertain primarily to published work by others about the alien's work, evidence of the alien's participation as a judge of the work of others, and evidence of either the alien's original research contributions or authorship of scholarly books and articles." While Mr. [REDACTED] subsequently states, "peer-reviewed presentations at academic symposia . . . would more than likely be solid pieces of evidence," he does not indicate that such presentations would constitute display at an artistic exhibition or showcase or even comparable evidence thereof. The inapplicability of this criterion to the petitioner's field is obvious from its plain language and the absence of a similar criterion in the regulations relating to outstanding professors and researchers set forth at 8 C.F.R. § 204.5(i)(3)(i). We consistently hold that conference presentations are much more comparable to the publication of scholarly articles. As stated above, the petitioner meets that criterion. As such, no further discussion of his presentations is necessary.

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

Counsel asserts that the petitioner meets this criterion through invitations "to set up a few international scientific conferences." Counsel no longer advances this assertion and we find that assisting one's supervisor set up meetings is not indicative of national or international acclaim. Counsel further asserts that the petitioner meets this criterion through his appointment as "Site Head/Site Manager" at AstraZeneca, a major biochemical company in India. Counsel references a letter from Professor [REDACTED] and the petitioner's self-serving resume as evidence of these responsibilities. Professor [REDACTED] states:

In addition to [the petitioner's] scientific activities, [he] is good in organizing scientific meetings. He has helped me in organizing the prestigious 57th National Academy of Sciences meeting as well as two other international meetings on Nonlinear Dynamics.

While not initially referenced by counsel, the petitioner submitted a letter from Dr. [REDACTED] former president of AstraZeneca - India, asserting that the petitioner worked as a scientist at that company. The petitioner also submitted a letter from S. [REDACTED] Director of AstraZeneca - India, also asserting that the petitioner worked as a scientist at that company. Mr. [REDACTED] further asserts:

[The petitioner] has been responsible to build strength in structural determination of proteins by NMR and structure based drug design facilities. During the initial period, [the petitioner] has prepared a double-labeled mutant protein, carried out multi-dimensional NMR experiments in the facilities of our parent company in Sweden and partially determined the structural characteristics of the protein. In addition to the structural biology work, he was assigned to put in place a chemo informatics unit at the Bangalore R&D facility, which he has executed satisfactorily.

In his request for additional evidence, the director requested evidence of the petitioner's leading role for AstraZeneca and its distinguished reputation. In response, the petitioner submitted a new letter from Dr. [REDACTED] who states:

Based in [the petitioner's] performance and on his experience in molecular modeling, I appointed [the petitioner] Head of R&D informatics and chemical IT discipline. Under this division, [the petitioner] was granted the entire responsibility of the local compound database management, linking and uploading the local database to the global database, etc. Further, he was responsible for the commercial small molecular database from Molecular Design Ltd. He was also responsible for all the scientific software at the company.

The petitioner submitted a report by [REDACTED] supervised by the petitioner and guided by [REDACTED]. The petitioner also submitted a press release on AstraZeneca's website proclaiming its selection as the 2003 Pharmaceutical Company of the Year by Med Ad News, "one of the pharmaceutical industry's leading business and marketing publications. The press release further indicates that AstraZeneca is one of the top five pharmaceutical companies in the world.

The director concluded that the second letter from Mr. [REDACTED] was insufficient in light of the far less persuasive statements made in his first letter and the lack of confirmation in Mr. [REDACTED] letter. On appeal, counsel notes that Mr. Ramachandran's second letter was in response to the director's inquiry and that Mr. [REDACTED] provides the petitioner's specific duties, quoting the paragraph from his letter we have quoted above.

At issue is the nature of the position the petitioner was hired to fill and the reputation of the entity for which he served in that position. We do not question the distinguished reputation of AstraZeneca's parent company. According to Mr. [REDACTED] the company is headquartered Sweden. The press release submitted reveals that AstraZeneca - U.S. employs 12,000 employees. As such, the entity with the distinguished reputation is a large multinational company with thousands of employees. While the petitioner carried out experiments in Sweden, it is not clear that he served in a leading or critical role while there. Not every first-line supervisor for every unit in a branch of a multinational company necessarily plays a leading or critical role for the company as a whole. The record contains no evidence of the reputation of AstraZeneca - India or an organizational chart for that company. The record also contains no information regarding the significance of the chemo informatics unit formed by the petitioner in Bangalore to AstraZeneca-India or to the parent company in Sweden.

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 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.