



U.S. Citizenship
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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: JUL 28 2009
SRC 08 800 00964

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:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that the director applied incorrect standards in denying the petition.

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 into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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, filed on October 16, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a microbiologist.

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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).

As aforementioned, each petition must be adjudicated on its own merits under the statutory provisions and regulations which apply. Thus, the petitioner's eligibility will be evaluated under the regulatory criteria relating to the immigrant classification as claimed by the petitioner.

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.

The petitioner submitted the following evidence:

1. A certificate of qualification in Medical and Public Health Microbiology from The American Board of Medical Microbiology ("ABMM"), dated June 26, 2007;
2. A certificate of qualification in Bacteriology Diagnostic Immunology, Mycobacteriology Mycology and Parasitology Virology, dated September 7, 2007;
3. A doctorate degree in Comparative and Experimental Medicine from the University of Tennessee, dated August 9, 1991;
4. A master of science from the University of Tennessee, dated March 15, 1988;
5. A certificate of postdoctoral study in Medical and Public Health Laboratory Microbiology from the University of California, Los Angeles, dated September 1, 2001;
6. Two certifications as a Specialist in Microbiology from the The American Society of Clinical Pathology, one dated March 31, 2004 and the other dated 2007;
7. A certification as a Technologist in Microbiology from The American Society of Clinical Pathology, dated April 30, 2003;
8. A license as a Clinical Laboratory Technologist from the University of the State of New York, dated February 20, 2007;
9. A license as a Clinical Microbiologist from the State of California, which indicates its validity until March 8, 2008; and
10. Transcripts for coursework taken by the petitioner.

On appeal, the petitioner provided additional information from the American Society of Microbiology's website. The materials included a quote from a microbiologist, who stated, "ABMM [American Board of Medical Microbiology] certification is recognized as a measure of excellence" and a description of the ABMM certification as the "highest credential available to practicing medical laboratory microbiologists." A letter from the American College of Microbiology, dated September 22, 2008, confirmed the petitioner's ABMM certification. The letter stated that such certification is "recognized by federal and state governmental agencies as a significant component toward meeting licensure requirements to direct laboratories engaged in the microbiological diagnosis of human disease."

In his decision, the director found that the petitioner has not met this criterion, and we agree. The evidence provided indicates that the petitioner is qualified for his position with the Beth Israel Medical Center in New York. He appears to have met the requirements necessary for such a career, as he is both academically trained and holds the appropriate licensures and certifications. However, qualifications such as credentials or licensures do not constitute membership in an organization. As such, none of the evidence submitted is consistent with membership in an organization.

Even if such certifications or qualifications represented membership in the organizations which accredited the petitioner, the record lacks evidence to establish that outstanding achievements are required for membership in any of these organizations. For example, no evidence was included (such as membership bylaws or official admission requirements) to show that the organizations require outstanding achievements or that membership is judged by recognized national or international experts in the field.

Accordingly, the petitioner has not established 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 provided a list of publications citing to his various articles. However, the petitioner did not produce any of these publications which cited to him. As such, it is not clear whether the petitioner's work was cited to as an original contribution of major significance. The petitioner also submitted his own scholarly articles which he both authored and co-authored. Although such scholarly articles fall under a separate criterion below, we have also considered them under this criterion. On appeal, the petitioner provided information regarding his dissertation requirements for the University of Tennessee, his dissertation for his Doctor of Philosophy (dated August 1991) and a list of researchers who cited to his work. However, again, the petitioner failed to provide the actual articles that referenced his work, and therefore we cannot conclude that the petitioner's articles are considered original contributions of major significance to the field of microbiology by other scientists in that field.

While the findings set forth in an article may constitute a contribution of major significance, the burden is on the petitioner to establish the significance of his work. The petitioner cannot meet this criterion simply by showing that his work has been published or that others have cited to it in their own publications. To satisfy the criterion relating to original contributions of major significance, the

petitioner must demonstrate not only that his work is novel and useful, but also that it has attracted sustained attention and had a demonstrable impact on his field at the national or international level. The petitioner has not shown how the field has changed as a result of his work, beyond the incremental improvements in knowledge and understanding that are expected from valid original research. Further, the petitioner has not demonstrated that he has earned national or international acclaim as a result of his publications.

In his decision, the director found that the petitioner had not satisfied this criterion, and we agree. The petitioner has failed to establish how his work has influenced his field and how it is considered to have been a contribution of major significance to his field. Accordingly, the petitioner has not established that he meets this criterion.

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

In his decision, the director found that the petitioner had satisfied this criterion and, after a review of the record, we disagree. The petitioner submitted the following as evidence of his authorship:

1. A list of articles that cited to the petitioner's publications;
2. An article published by the American Society of Microbiology, that the petitioner co-authored entitled, "Preclinical and Clinical Performance of the Efoora Test, a Rapid Test for Detection of Human Immunodeficiency Virus-Specific Antibodies;"
3. An article published by the Journal of Antimicrobial Chemotherapy, that the petitioner co-authored entitled, "Evolution of antimicrobial resistance among *Pseudomonas aeruginosa*, *Acinetobacter baumannii* and *Klebsiella pneumoniae* in Brooklyn, New York;"
4. An article published by the Ophthalmology & Visual Science, that the petitioner co-authored entitled, "Herpetic Stomal Keratitis: An Immunopathologic Disease Mediated by CD4 + T Lymphocytes;"
5. An article published by the Journal of Clinical Microbiology, that the petitioner co-authored entitled, "Sensitivity and Specificity of Rapid rRNA Gene Probe Assay for Simultaneous Identification of *Staphylococcus aureus* and Detection of *mecA*;" and
6. An article with a publisher that is not legible, that the petitioner co-authored entitled, "Immunopathology of Herpes Simplex Virus Infection."

The petitioner also provided his dissertation for his Doctor of Philosophy. As authoring scholarly articles is inherent to the research field,¹ such as the instant case where the petitioner was a doctoral

¹ The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition was the acknowledgement 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 USCIS's conclusion that publication of scholarly articles is not presumptive evidence of sustained national or international acclaim.

candidate and now works in the research field, we evaluate a citation history or other evidence of the impact of the petitioner's articles when determining their significance to the field. With regard to item 1, the petitioner failed to provide a source, and therefore the reliability of its contents cannot be ascertained. Further, even if a source was provided for item 1, the petitioner failed to provide any of the articles in which his articles were cited to, and therefore he failed to demonstrate that his articles were frequently cited in a manner consistent with sustained national or international acclaim. The evidence provided for item 6 is also incomplete, as the name of the publisher was not legible. Although the petitioner is the author of articles in professional publications, this is expected of anyone working in this field, and there is no evidence that his articles have resulted in sustained national or international acclaim in the field of microbiology.

As such, the petitioner has not established that he meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

Although the petitioner did not claim this criterion, he submitted a W-2 Wage and Tax Statement for 2005 and 2006 indicating that his state wages were approximately \$86,000 per year. However, the petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field. There is no indication that the petitioner has earned a level of compensation that places him among the highest paid scientists or researchers in Turkey, the United States or any other country.

In light of the above, the petitioner has not established that he meets this criterion.

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). Review of the record does not establish that the petitioner has distinguished himself 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. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A)(i) of the Act and the petition may not be approved.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the

benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.