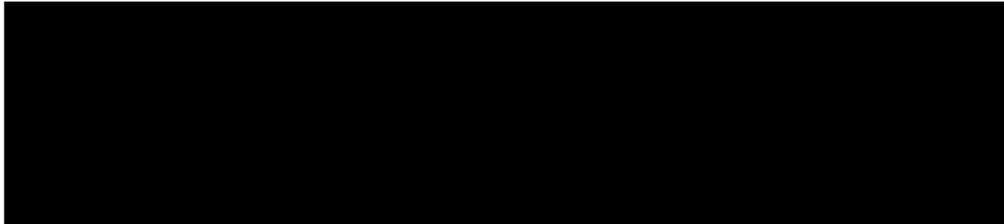


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U.S. Citizenship  
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Services

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FILE: WAC 06 160 52954 Office: CALIFORNIA SERVICE CENTER Date: **MAY 31 2007**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

**MAY 31 2007**

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.

*Maura Deadnick*

*fr* Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a medical school. The beneficiary is a scientist. The petitioner seeks O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien with extraordinary ability in science. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as a research instructor.

The director denied the petition because the petitioner failed to establish that the beneficiary had achieved sustained national or international acclaim and was one of the small percentage who had risen to the very top of his field.

On appeal, the petitioner submits additional evidence.

Section 101(a)(15)(O)(i) of the Act provides classification to an alien who

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, and seeks to enter the United States to continue work in the area of extraordinary ability[.]

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i).

The corresponding regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) prescribes:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

- (1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
  - (2) 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;
  - (3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
  - (4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;
  - (5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;
  - (6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;
  - (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;
  - (8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.
- (C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The beneficiary in this matter is a native and citizen of China. The record shows that in 1999 he received his doctoral degree in pharmacology from Southern Illinois University, where he was subsequently employed as a postdoctoral fellow and research instructor.

The record contains no evidence that the beneficiary has received a major, internationally recognized award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A). The evidence also does not demonstrate that the beneficiary has met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). We address the relevant evidentiary criteria below. The petitioner does not claim that the beneficiary meets any criteria not discussed as follows.

*(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The beneficiary's curriculum vitae states that he received: a travel award for young scientists to attend an international symposium in his field in 2001, the "honor of participation" in a research symposium of the petitioner in 1999, grant funding from the National Natural Science Foundation in China from 1990 to 1994 and acceptance to the Shanghai Institute of Biochemistry in 1985 as a graduate student without examination. The petitioner submits no documentation of these honors. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Even if documented, the beneficiary's honors would not satisfy this criterion. Travel awards for young scientists indicate the recipients' promise as emerging researchers, but do not demonstrate sustained national or international acclaim as scientists. Participation in research symposiums is inherent to the beneficiary's field and does not, in and of itself, reflect national or international acclaim. The record contains no evidence that the beneficiary was a keynote speaker or received any other nationally or internationally recognized prize or award at the petitioner's 1999 symposium. The petitioner's grant funding in China would also fail to meet this criterion. Research funding through competitive grants is inherent to many fields within the basic and applied sciences. Although prestigious grants may indicate the recognized value of the recipient's research, they are not prizes or awards for documented achievements. The petitioner's acceptance to graduate school without examination is also inconsistent with sustained national acclaim because it was a scholastic honor granted to him as a student and occurred 11 years before this petition was filed. Accordingly, the beneficiary does not meet this criterion.

*(2) 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 beneficiary is an active member of the American Association for Cancer Research (AACR). A printout from the AACR website states that the organization has over 24,000 members. The printout further explains:

Active Membership in AACR is open to investigators worldwide who have conducted two years of research resulting in articles in peer-reviewed publications relevant to cancer and cancer-related biomedical science, or who have made substantial contributions to cancer research in an administrative or educational capacity . . . . Evidence of patents relevant to cancer-related research may be provided as qualifications for membership in lieu of peer-reviewed publications.

The printout also states that an AACR active membership application must be endorsed by two Active, Emeritus or Honorary AACR members in good standing. The record does not show that these

membership requirements are outstanding achievements in the petitioner's field. Consequently, the beneficiary does not meet this criterion.

*(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation.*

In his October 30, 2006 letter submitted on appeal, the beneficiary's postdoctoral supervisor, [REDACTED], Professor of Pharmacology at the petitioning school, claims the beneficiary meets this criterion through the citations to the beneficiary's article published in 2002 in *Circulation Research* and the discussion of the article in the introduction to that issue. Mere citations of an alien's work by other scientists in their scholarly publications do not meet this criterion because the citing articles are primarily about the authors' own research, not the work of the alien. The single, brief discussion of the beneficiary's article in the introduction to the issue in which the article was published, while notable, does not reflect sustained national or international acclaim. Accordingly, the beneficiary does not meet this criterion.

*(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field.*

The petitioner submitted nine support letters from six scientists employed by the petitioner in the beneficiary's field or related specialties. [REDACTED], Assistant Professor in the Department of Medical Microbiology, Immunology and Cell Biology and Director of the Molecular Oncology Core Facility of the Simmons Cooper Cancer Institute at the petitioning school, is the beneficiary's current supervisor. [REDACTED] was the beneficiary's post-doctoral supervisor and co-authored three articles with the beneficiary. [REDACTED], Professor in the Department of Medical Microbiology, Immunology and Cell Biology at the petitioning school, is the chairman of the Department in which the beneficiary is currently employed. [REDACTED] is the director of the Simmons Cooper Cancer Institute at the petitioning school, where the beneficiary is currently employed as a research instructor in [REDACTED]'s laboratory. [REDACTED], Professor of Molecular Oncology at the petitioning school, wrote his letter as a "peer group advisory consultation," but indicates that he was unaware of the beneficiary's work until requested to provide a letter in support of this petition.

The letter of [REDACTED] Professor and Associate Director for Basic Cancer Research at the Simmons Cooper Cancer Institute at the petitioning school, submitted on appeal repeats verbatim several paragraphs of the September 20, 2006 letter of [REDACTED], Executive Director of Human Resources for the petitioner, submitted below. This repetition indicates that the language of Professor Chakrabarty's letter is not his own and greatly detracts from the document's probative value.

While recommendation letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by

independent experts, letters solicited by an alien in support of a visa petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has achieved sustained national or international acclaim.

Apart from the support letters, the record contains little evidence of the recognition of the beneficiary's accomplishments in his field. As discussed in more detail below, the petitioner had published nine articles at the time of filing. He is the lead author of eight of these articles, just two of which had been cited a combined total of 16 times by independent research teams at the time of filing. In addition, the petitioner's 2002 article published in *Circulation Research*, is mentioned in the introduction to that issue of the journal. Some of the support letters discuss recent publications of the beneficiary and the petitioner submits evidence of recent citations to two of his articles on appeal. We cannot consider this evidence, however, because the petitioner must establish the beneficiary's eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Although the support letters indicate that the beneficiary's work is well respected by six scientists employed by the petitioner, the record does not demonstrate that the beneficiary has made contributions of major significance to his field in a manner consistent with sustained national or international acclaim. Consequently, the beneficiary does not meet this criterion.

*(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media.*

The director determined that the beneficiary met this criterion, but did not address the relevant evidence. Duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine to the occupation itself. As frequent publication of research findings is inherent to success as a research scientist, publications alone do not necessarily indicate the sustained acclaim requisite to classification as an alien with extraordinary ability.

In this case, the record shows that, at the time of filing, the beneficiary had published nine articles in professional journals in his field. The petitioner is the lead author of 8 of these articles, only two of which have been cited by independent research teams a combined total of 16 times. The beneficiary's publication and citation record does not indicate that his articles have significantly influenced other scientists in his field or related specialties in a manner consistent with sustained national or international acclaim. In response to the RFE and on appeal, the petitioner submitted evidence of the beneficiary's more recent publications and citations to his work. Again, we cannot consider this evidence because the petitioner must establish the beneficiary's eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Accordingly, we withdraw the director's affirmative finding for this criterion and find that the beneficiary does not, in fact, meet this criterion.

(7) *Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.*

On appeal, [REDACTED] and [REDACTED] claim that the beneficiary is employed in a critical or essential capacity for the distinguished Simmons Cooper Cancer Institute (hereinafter "the Institute") at the petitioning school. As discussed above under the fifth criterion, [REDACTED]'s letter is of little probative value given his verbatim repetition of a significant portion of [REDACTED]'s September 20, 2006 letter submitted below. While we do not question the distinguished reputation of the Institute or the petitioner, the record fails to establish that the beneficiary had been employed in a critical or essential capacity for the Institute or the petitioner at the time of filing.

In his October 27, 2006 letter submitted on appeal, [REDACTED] states that in his laboratory, the beneficiary worked on projects "to explore the important role and the underlining mechanisms of microRNA in tumorigenesis, and using his pharmacology knowledge to develop an anti cancer drug selection system." [REDACTED] notes that these projects are supported by grants from the National Institutes of Health and the Department of Defense. [REDACTED] reports that the beneficiary presented one of his findings at the AACR annual meeting in 2006 and that his related article has been accepted for publication in *Oncogene*. On appeal, the petitioner also submits a copy of the beneficiary's *Oncogene* article, which was published after the petition was filed and consequently cannot be considered. The petitioner must establish the beneficiary's eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Id.*

While [REDACTED] views the beneficiary as a critical and essential member of his laboratory, the record does not indicate that the beneficiary had been employed in a critical or essential capacity for the Institute at the time of filing. After obtaining his doctorate from the petitioner, the beneficiary was employed by the petitioner as a postdoctoral fellow through 2004. Although the beneficiary states on his curriculum vitae that he began working with [REDACTED] in 2005, the appointment letter of [REDACTED] indicates that the beneficiary was not employed as a research instructor in Professor [REDACTED]'s laboratory until April 10, 2006, just two days before this petition was filed. The record does not document how many laboratories comprise the Institute and how many research instructors are employed by those laboratories. Without such information and additional, probative evidence, we cannot conclude that all research instructors at the Institute are employed in critical or essential capacities. Because the beneficiary's work cited by [REDACTED] as establishing the importance of the beneficiary's role at the Institute was not published until after the petition was filed, we also cannot conclude that the beneficiary's individual position was critical or essential to the Institute at the time the petition was filed.

The record does not document the significance of the beneficiary's previous employment at Zhejiang Medical University in China. Accordingly, the beneficiary does not meet this criterion.

In order to establish an alien's eligibility for extraordinary ability nonimmigrant classification, the statute requires evidence of the alien's "sustained national or international acclaim" and proof that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i). The petitioner has not established that the beneficiary's achievements have been so recognized. The regulation further requires the petitioner to establish that the beneficiary is "one of the small percentage who have arisen to the very top" of his field. 8 C.F.R. § 214.2(o)(3)(ii). The record does not demonstrate that the beneficiary has ascended to this level.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.