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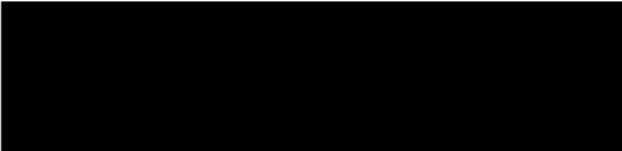
FILE: EAC 06 014 52770 Office: VERMONT SERVICE CENTER Date: **SEP 29 2006**

IN RE: Petitioner:  
Beneficiary:



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:



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, Chief  
Administrative Appeals Office

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

The petitioner is a biotechnology company. 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 scientist.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary had sustained acclaim and was one of the small percentage who had risen to the very top of his field.

On appeal, counsel for the petitioner submits a brief and contends that the beneficiary meets three of the regulatory criteria and that the director did not properly assess certain evidence and disregarded other documentation.

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.

The beneficiary in this matter is a native and citizen of India. The record reflects that he received his doctoral degree in Chemistry from the Indian Institute of Technology in Madras in 2003 and came to the United States as a postdoctoral fellow in the Department of Biological Chemistry at Johns Hopkins University School of Medicine. The record shows that the beneficiary was last admitted to the United States on December 28, 2004, as a J-1 nonimmigrant exchange visitor, subject to the two-year foreign residency requirement. The beneficiary's specific field is variously referred to in the record as "synthetic carbohydrate organic chemistry and glycobiology research," "glycoproteins and [the] use of enzymes in carbohydrate synthesis," "structural glycobiology," and "chemical glycobiology."

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). Neither is the record persuasive in demonstrating 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 criteria below. Counsel does not claim that the beneficiary meets any other criteria.

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

Counsel initially claimed the beneficiary met this criterion through his receipt of a fellowship from the Council of Scientific and Industrial Research (CSIR) in India. The beneficiary's curriculum vitae states that he received the "Junior and Senior Research fellowship" from CSIR in 1996 when he began his doctoral studies at the Indian Institute of Technology. In his support letter, [REDACTED] Executive Director of Research and Development at Shasun Chemicals and Drugs, Ltd. in India and the beneficiary's former professor, explains that the beneficiary began his doctoral studies:

after successfully clearing the national level competitive examination conducted by Council of Scientific Industrial Research and University Grants Commission. More than one thousand students write this examination each year and only a few, the top 10% are awarded this scholarship. This examination is more or less of the same standard as that of the qualifying test conducted by US universities at the beginning of the Ph.D. Program.

The petitioner submitted no documentary evidence of his CSIR fellowship or the criteria for awarding CSIR fellowships. Nonetheless, [REDACTED] letter indicates that CSIR fellowships are awarded on the basis of an examination and for the purpose of supporting top-scoring students' **graduate research**. While they may be prestigious, fellowships, scholarships and other forms of competitive financial aid are not nationally or internationally recognized prizes or awards because only other students – not established scientists – compete for such funding. Moreover, the beneficiary received his CSIR fellowship in 1996, nearly a decade before this petition was filed and the record does not show that the beneficiary has received any other awards or prizes in his field after 1996. Hence, the beneficiary's CSIR fellowship does not demonstrate sustained national acclaim. 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.*

Counsel did not initially claim that the beneficiary met this criterion. In his response to the director's Request for Evidence (RFE), counsel claimed the beneficiary satisfied this criterion through his associate membership in the American Society for Biochemistry and Molecular Biology (ASBMB). The record does not support this claim. The petitioner submitted a letter from [REDACTED] Executive Officer of ASBMB, who confirms that the beneficiary is an associate member of the Society.

explains that ASBMB has over 10,000 members and that "Associate membership is available to individuals sponsored by a Regular member of the Society who can attest to the interest of the candidate in biochemistry and molecular biology." [REDACTED] further states that associate members "may not vote, hold elective office, nominate new members, or sponsor papers by non-members at the Society's annual scientific meeting. Associate members are eligible for promotion to Regular membership when they satisfy the requirements of a Regular member." [REDACTED] does not state, and the petitioner did not submit evidence of, ASBMB's specific membership criteria. However,

indicates that associate membership is available to any individual who is interested in biochemistry and molecular biology and is sponsored by a regular member and that associates have a lower grade of membership than regular members. The record is devoid of any evidence that ASBMB requires outstanding achievements of its associate members, as judged by recognized national or international experts. Consequently, the beneficiary does not meet this criterion.

*(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.*

Counsel initially claimed that the beneficiary satisfied this criterion because he helped his postdoctoral fellowship supervisor review articles for scientific journals in their field. In his October 3, 2005 support letter, [REDACTED] Professor and Director of the Department of Biological Chemistry at the Johns Hopkins University School of Medicine and the beneficiary's postdoctoral supervisor, states that the beneficiary "has proven his capability to be in a position to judge the work of other scientists aiding me to peer-review articles for such high-ranked journals such as the Journal of American Chemical Society, Journal of Biological Chemistry, Cancer Research." The record is devoid of any evidence that the petitioner himself served as a peer reviewer for any scientific journals in his field or that he otherwise participated on a panel, or individually, as a judge of the work of others in his field or other allied areas. The beneficiary does not satisfy this criterion.

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

As evidence of his original scientific contributions, the petitioner submitted copies of the beneficiary's publications, citations to his work, and 12 support letters from scientists in his field or related specialties who discuss the value of the beneficiary's work. The record indicates that at the time of filing, the petitioner was engaged in his first postdoctoral fellowship. Professor [REDACTED] the beneficiary's doctoral advisor, describes the following major contributions of the beneficiary's doctoral work:

- a) design and synthesis of several  $\beta$ -1-*N*-amido saccharides from glycosylamines; b) enzymatic synthesis of disaccharide analogs using glycosidases as biocatalysts; c) structural characterization of the enzymatically synthesized oligosaccharides by two dimensional NMR methods and d) a systematic and detailed investigation of the molecular assembly of the models and analogs by X-ray crystallography.

[REDACTED], Head of the Molecular Glycobiology Group at the *Centre National de la Recherche Scientifique* in France, states that the beneficiary's doctoral work "represents a major advance in the field of structural glycobiology." The value of the beneficiary's doctoral work is also discussed in several of the other support letters submitted. The record further shows that between 1998 and 2005, the beneficiary published five articles related to his doctoral work in *Carbohydrate Research*, *Journal of Carbohydrate Chemistry*, *Biochemical and Biophysical Research Communications*, *Tetrahedron: Asymmetry*, and *Acta Crystallographica*. The beneficiary is the lead author of three of these articles,

two of which have been cited once each in the publications of other researchers. Two articles of which the beneficiary is the second author have been cited a combined total of five times in the publications of other researchers.

In his December 6, 2005 letter, counsel states that citations to the beneficiary's articles have been published in top-ranked journals, however, counsel submits no evidence of the journal's rankings to support his assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In his November 10, 2006 letter, Professor [REDACTED] the beneficiary's postdoctoral fellowship supervisor, states that the beneficiary has provided major contributions to science in the area of glycobiology. [REDACTED] Assistant Professor of Medicinal Chemistry at the University of Utah, explains that the beneficiary "developed the Expressed Protein Ligation strategy for the semi-synthesis of differentially post-translationally modified forms of c-Myc." Professor [REDACTED] states that the beneficiary's work "is expected to throw light on the molecular mechanisms of c-Myc in cancer cells." The record shows that at the time of filing, the beneficiary had published one article related to his postdoctoral work with Professor [REDACTED]. In his November 10, 2006 letter, Professor [REDACTED] states that the beneficiary also delivered an invited lecture at the Department of Clinical Pharmacology, GS Medical School and KEM Hospital in Mumbai, India on Professor [REDACTED] behalf.

Apart from the support letters, the beneficiary's six published articles and their combined total of seven citations in the publications of other researchers, the record contains no other evidence of the significance of the beneficiary's work to his field. Although the support letters indicate that the beneficiary's work is highly valued by 12 scientists in his field or related specialties, 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. **The beneficiary does not satisfy this criterion.**

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

As discussed above under the fifth criterion, the record shows that the beneficiary has published six articles in scientific journals and that his work has been cited seven times in the publications of other researchers. The beneficiary is the lead author of four articles, only two of which have been cited once each. Two articles of which the beneficiary is the second author have been cited a combined total of five times. On his curriculum vitae the beneficiary lists an additional article that he co-authored as being in press and in his November 10, 2005 letter, Professor Hart states that he anticipates that the beneficiary "will be a co-author on at-least 3 to 5 papers in top-flight journals" that Professor [REDACTED] laboratory will be submitting in the coming year. We cannot consider such statements as evidence of the beneficiary's authorship. The petitioner must establish 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).

On appeal, counsel cites an article entitled, "Glycoscience Finally Comes of Age," as evidence that "glycoscience is a rarified field in which publications are not as frequent as most scientific fields." The article does not support counsel's assertion. Although the authors refer to glycoscience as "the neglected stepchild of molecular biology" and note that the field has attracted substantially less research funding and private investment than other scientific areas, they do not indicate that publication of glycoscience research is significantly less frequent than in other scientific fields. Indeed, in their short article, the authors cite articles published by 31 different research teams.

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. Accordingly, the beneficiary does not 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.*

In his November 10, 2005 letter, Professor [REDACTED] states:

[The beneficiary] has worked with me for the last three years as a very critical member of the Department [of Biological Chemistry at the Johns Hopkins Medical School]. [He] has trained several post-doctoral fellows and graduate students in the both the [sic] synthetic and instrumental aspects of organic chemistry and biochemistry in our Department and in other Departments as well in [sic] the Johns Hopkins University. Virtually all problems in organic synthesis in the Department were referred to [the beneficiary]. . . . [He] has been irreplaceable in my laboratory and the Department for the past three years. His contributions have been truly critical for the sustained growth of my laboratory at the Johns Hopkins Medical School.

While Professor [REDACTED] clearly views the beneficiary as a critical and essential member of his laboratory, the record does not indicate that he has been employed in a critical or essential capacity for the Department of Biological Chemistry or the Johns Hopkins Medical School as a whole. We do not question the distinguished reputation of the Johns Hopkins Medical School. However, at the time of filing, the beneficiary was employed as a postdoctoral fellow. Such a position is not considered employment in a "critical or essential capacity," as would employment **as a department head, senior researcher or principal investigator**. Moreover, in their support letters, [REDACTED] and Dr. [REDACTED], both Assistant Professors in the Department of Biological Chemistry at Johns Hopkins University School of Medicine, discuss the value of the beneficiary's research conducted in Professor [REDACTED] laboratory, but do not indicate that the beneficiary is employed in a critical or essential capacity for the Department as a whole. Accordingly, the beneficiary does not meet this criterion.

In order to establish eligibility for extraordinary ability classification, the statute requires evidence of the alien's "sustained national or international acclaim" and evidence 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.