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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: SEP 0 8 2006

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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.

Marie Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition and reaffirmed the decision on motion. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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. The director also questioned the petitioner's job prospects.

On appeal, counsel submits a brief and letters. Counsel's assertions and the letters, however, are not supported by primary evidence in the record. In fact, the record lacks evidence supporting the claims that the petitioner has actually engaged in medical research, his claimed area of expertise. Rather, he appears to be an experienced physician with an interest in herbal remedies. Specifically, none of the "scholarly" articles the petitioner has authored appear to report on the results of his own research. Nor has the petitioner established that these articles appear in notable peer-reviewed medical research journals. Thus, the petitioner has not overcome the director's bases of denial.

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. § 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.

On the Form I-140 petition, Part 6, the petitioner indicated that the proposed employment was as a "medical researcher." Counsel confirms on appeal that the petitioner intends to work as a pharmacognosy researcher. According to counsel, pharmacognosy includes the study of physical, chemical, biochemical and biological properties of drugs, drug substances, or potential drugs or drug substances of natural origin as well as the search for new drugs from natural sources. Counsel acknowledges that a medical degree is not necessary for this field and that it is still "a relatively obscure interdisciplinary specialization in the United States." As quoted above, section 203(b)(1)(A) requires that the alien seek to continue working in his area of expertise. Thus, the petitioner must demonstrate national or international acclaim *as a medical researcher.*

On appeal, counsel asserts that the petitioner's "field of endeavor is narrowly defined and it is [therefore] more likely that he has risen to the top of his field." Counsel is not persuasive. A petitioner may not narrow the field to such a small number that an analysis of the small percentage at the top of the field is meaningless. The failure of pharmacognosy to attract a significant following in the wider medical research community is not a mitigating factor.

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.[1]

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

On appeal, counsel asserts that "being designated as the editor of a major publication in a field of endeavor is of itself a lesser nationally recognized 'award' of a sort." Counsel is not persuasive. Selection for a job or editing responsibility, even a competitive one, is not an award or prize for excellence or comparable evidence of such an award or prize. Moreover, judging the work of others is a separate criterion set forth at 8 C.F.R. § 204.5(h)(3)(iv). Considering the petitioner's alleged editing responsibilities under this criterion as well would negate the statutory requirement for extensive evidence and the regulatory criterion that an alien meet at least three criteria. Thus, the petitioner has not established that he meets 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.

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

On appeal counsel asserts that the petitioner meets this criterion "as an editor for Newstart, the leading publication in the field of Pharmacognosy in Poland." The petitioner submits letters from physicians and physical therapists in the United States and Poland affirming that the petitioner wrote for and edited *Newstart*. One reference further asserts that the petitioner was a writer/editor for *Health by Choice*.

Primary evidence to meet this criterion would include copies of the pages of publications listing the editorial staff and crediting the petitioner as an editor. The petitioner initially submitted a self-serving list of magazines and newspapers that have published his articles, *Biznes Elcki, Glos Adwentu, Zdrowie Z Wyboru* and *Rozmaitosci Elcke*. Of these publications, only *Zdrowie Z Wyboru* is identified as a health magazine. The petitioner submitted articles from these magazines and brief translated summaries. In the article "Komu Pomogl Program Newstart," translated as "Who Benefited from the Newstart Program," the petitioner describes this revitalization program. Nothing in the record, other than the assertions of the petitioner's references, suggests that *Newstart* is a publication in addition to a revitalization program. Thus, the petitioner has failed to submit primary evidence that *Newstart* is a publication or that he served as editor for this publication.

The regulation at 8 C.F.R. § 103.2(b)(2) provides that secondary evidence is acceptable only if primary evidence is unavailable or does not exist and that affidavits are only acceptable if secondary evidence is unavailable or does not exist. The record contains no evidence that primary and secondary evidence of the petitioner's alleged role as an editor of a leading journal is unavailable or does not exist. As such, we need not accept the references' attestations as to this alleged role for *Newstart*, a journal that the petitioner has not even established exists.

We accept that *Zdrowie Z Wyboru* is *Health by Choice*, another publication the petitioner is alleged to have edited.[2] Once again, however, primary evidence that the petitioner served as an editor for this publication would consist of his name listed as an editor within the publication. The petitioner did not include a published list of the editorial staff at *Zdrowie Z Wyboru* listing him as an editor. Moreover, primary evidence that this publication is a significant medical research journal would be evidence from the publication documenting its circulation or its official national ranking. The record contains no such evidence.

In light of the above, the petitioner has not submitted primary evidence of his role as an editor for any publication and the petitioner has not corroborated the unsupported assertions of his references that *Newstart* exists or that *Zdrowie Z Wyboru* is a significant publication. Thus, 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.

[2] It is the petitioner's burden to provide complete translations of all foreign language documents. 8 C.F.R. § 103.2(b)(3). Nevertheless, while we were under no obligation to do so, we have confirmed the translation using online Polish-English dictionaries.

On appeal, counsel asserts that the petitioner has performed original research and has made contributions of major significance. Counsel further asserts that other physicians have relied upon the petitioner's work and other researchers have cited it. The only evidence referenced by counsel, however, consists of the reference letters submitted on appeal.

Dr. [redacted], a purported pathologist in Florida,[3] asserts that the petitioner supervised a long-term clinical study "on Ginco balboae in cerebral hypoxia and arterial hypertensio [sic] treatment using Herba viscid and Folium rutae." Dr. [redacted] further asserts that the petitioner was the "pionier [sic] investigator [for a] clinical study in rules of plant sterols in receptors of [the] digestive tract." The record, however, contains no evidence that either study has been published in a major peer-reviewed medical research journal. Dr. [redacted] Vice President of the Springs of Life Foundation, asserts that the petitioner "supervised over three hundred senior citizens and treated them with natural medicine." Dr. [redacted] does not provide the results of this study or explain how it is significant in the field. The record contains no evidence that the petitioner has published the results of this study in a major peer-reviewed geriatric or medical research journal.

Finally, Dr. [redacted] Chief of a medical faculty at a clinic in Poland, asserts that the petitioner's work has been "cited by many other researchers" and that the petitioner has advanced the field "particularly in the area of cancer research." Finally, Dr [redacted] asserts that the petitioner has performed pioneering work in the "use of algae and green powders consisting of a mix of plants" widely acknowledged as groundbreaking. Dr. [redacted], a professor in Poland, provides similar information, asserting that the petitioner has performed research on the use of plant algae, chlorophyll and green plant material to treat cancer, which has been relied upon and cited "by many research medical people." Primary evidence that the petitioner has been cited would be the citations themselves or the results of a search through a citation index service. The petitioner provided no such evidence and has not explained why such evidence is unavailable or does not exist. As such, we need not accept a reference letter as evidence that the petitioner has been cited. In fact, the record lacks evidence that the petitioner has even published his work in a major peer-reviewed cancer or medical research journal.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also 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)).

[3] The record does not contain Dr. [redacted] credentials.

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

The only primary evidence of the petitioner's research consists of the brief summary translations of articles the petitioner wrote for what appear to be magazines of undocumented circulation and newsletters. The vast majority of the articles are not even health related. Of those that are health related, the petitioner discussed the health benefits of attending a spa in the City of Vistula, herbal remedies for diabetes, the Newstart revitalization program as a way to treat diseases and ailments, early screening for coronary heart disease, remedial properties of sunflower flowers and raspberries, herbal baths for urolithiasis, bedwetting and sweaty feet, the effects of overeating, herbal remedies based on a book by another individual, the healing and culinary properties of sage and marjoram based on an herbal encyclopedia by another individual, the health benefits of tea, the properties of culluna vulgaris and achillea millefolium and recommendations for varicose veins. None of these summaries suggest that the petitioner actually performed research, especially in the areas discussed by the petitioner's references. The petitioner has not established that any of the publications are major peer-reviewed research journals.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. The record contains no evidence that the petitioner has reported the results of his own research in peer-reviewed journals or presented his results at reputable medical conferences (or any conferences). Thus, there is no evidence that the petitioner has been widely and frequently cited as would be expected of a medical contribution of major significance.

In light of the above, 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.

On appeal, counsel asserts that the petitioner has authored "numerous scholarly articles." As discussed above, the record lacks primary evidence, such as official rankings or circulation data, establishing that any of the magazines or newsletters publishing the petitioner's articles are "professional or major publications or other major media." 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).

Moreover, as also stated above, the vast majority of the articles have no medical relevance. The brief summaries provided suggest that even those articles discussing health benefits are more journalistic or anecdotal in nature rather than scholarly. Specifically, in at least two articles the petitioner is discussing herbal remedies that appear in other publications written by other individuals. There is no suggestion that he is reporting the results of his own research.

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

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

Counsel has consistently asserted that the petitioner was appointed "Chief of the United National [sic] Health Service" in Lebanon where he was in charge of Poland's medical contingent there. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. at 534; *Matter of Laureano,* 19 I&N Dec. at 1; *Matter of Ramirez-Sanchez,* 17 I&N Dec. at 506. In fact, the petitioner's appointment letter asserts that during his medical duty as an *assistant* to the gynecological ward at the military hospital in Elk, Poland, the petitioner "was sent to perform his duty at the UN Temporary Peace Corps in Libanon [sic] *at the post of* the Chief of the Health Service." (Emphasis added.) Thus, while the petitioner worked *for* the Chief of the Health Service, there is no evidence that he actually served as the chief. Moreover, the petitioner has not established that serving in a leading or critical role as a physician is indicative of or consistent with national or international acclaim as a medical researcher, his claimed area of expertise.

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

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 medical 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 indicates that the petitioner is an experienced physician with a medical column in a newsletter of undocumented significance, but is not persuasive that the petitioner's achievements set him significantly above almost all others in the field of medical research. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

In addition, the regulation at 8 C.F.R. § 204.5(h)(5) provides:

> *No offer of employment required.* Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

On appeal, the petitioner submits a personal statement confirming that he intends to continue working as a researcher in the field of pharmacognosy and has discussed employment with a number of enthusiastic prospective employers. The petitioner also submits a letter from Dr. [redacted] asserting that he intends to hire the petitioner in his clinic to perform research and publish the results. The petitioner's personal statement is not sufficiently detailed. Dr. [redacted] indicates that he operates a clinic, not a research facility. The record is absent any evidence that his clinic includes a research laboratory. Thus, the record lacks evidence that the petitioner is coming to the United States to work as a medical researcher.

For the above stated reasons, considered both in sum and as separate grounds for denial, 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.