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U.S. Citizenship
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Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date: NOV 05 2007

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IN RE:

Petitioner:

Beneficiary:

[REDACTED]

PETITION:

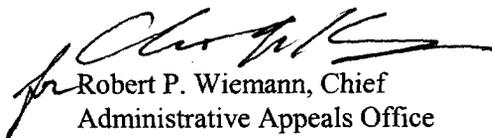
Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a nonprofit research foundation. It seeks to classify the beneficiary, a recent Ph.D. graduate, as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a research scientist. The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher.

On appeal, counsel submits a brief. For the reasons discussed below, counsel has not overcome the director's valid bases for 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):

* * *

(B) Outstanding professors and researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons

full-time in research activities and has achieved documented accomplishments in an academic field.

The regulation at 8 C.F.R. § 204.5(i)(3) states that a petition for an outstanding professor or researcher must be accompanied by:

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from current or former employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

This petition was filed on December 13, 2006 to classify the beneficiary as an outstanding researcher in the field of cognitive neuroscience. The beneficiary received his Ph.D. on January 31, 2006, approximately 11 months prior to the date the petition was filed. In order for us to consider the beneficiary's research conducted while working towards his Ph.D. as qualifying research experience, the petitioner must demonstrate that the beneficiary's doctoral research has been recognized within the academic field as outstanding.

On appeal, counsel asserts that the beneficiary's international recognition can be inferred by his employment for the petitioner and the caliber of those who have collaborated with him. We will not presume the beneficiary's international recognition from his association with distinguished institutions and collaborators. Rather, the regulations set forth specific standards for evaluating eligibility under the classification sought. No "comparable" evidence is permitted under those regulations. *Compare* 8 C.F.R. § 204.5(h)(4) and 8 C.F.R. § 204.5(k)(3)(iii) with 8 C.F.R. § 204.5(i)(3)(i).

The regulation at 8 C.F.R. § 204.5(i)(3)(i) states that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The regulation lists six criteria, of which the beneficiary must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. More specifically, outstanding professors and researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5,

1991)(enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)). The petitioner claims to have satisfied the following criteria.¹

Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members.

Initially, the petitioner asserted that the beneficiary is a member in "the top professional *neuroscience associations*." (Emphasis in original.) The petitioner submitted evidence of the beneficiary's membership in the Cognitive Neuroscience Society (CNS), his "Member-in-Training" membership in the Association for Research in Vision and Ophthalmology and his "student membership" in the Society for Neuroscience. The petitioner failed to submit evidence of the membership requirements for these associations.

In response to the director's request for additional evidence, the petitioner reiterated that the petitioner is a member of the "influential" organization CNS and referred the director to CNS's website. In the final decision, the director did not address this criterion other than to assert it had not been met. Counsel does not challenge this conclusion on appeal.

The record does not reflect that CNS requires outstanding achievements of their general membership. It is the petitioner's burden to establish the beneficiary's eligibility through the submission of evidence rather than simply referring the director to a website. That said, CNS's website, www.cogneruosociety.org/content/membership, provides that joining CNS involves the three following steps:

1. Create an account on our website.
2. Once your account is created, log in and submit a payment for your membership.
3. For payments with major credit cards, such as Visa or Master[C]ard, use the online credit card form provided by Bank of America. For check, cash or money order, mail funds to the CNS business office.

We note that the petitioner submitted evidence that the beneficiary paid a \$50 membership fee. CNS's website reflects that this amount is the postdoctoral membership rate.

In light of the above, the petitioner has not established that the beneficiary is a member of any association that requires outstanding achievements of its members.

Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation.

¹ The petitioner does not claim that the beneficiary meets any criteria not discussed in this decision and the record contains no evidence relating to the omitted criteria.

While neither the petitioner nor counsel has expressly asserted that the citations of the beneficiary's articles serve to meet this criterion, we simply note that articles which cite the beneficiary's work are primarily about the author's own work, not the beneficiary. As such, they cannot be considered published material about the beneficiary.

Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field.

The director concluded that the beneficiary's manuscript review assistance for a journal could not serve to meet this criterion. On appeal, counsel reviews the evidence submitted.

The record reflects that the beneficiary has refereed articles for *NeuroReport*. We note that [REDACTED], the petitioner's director and the beneficiary's supervisor and coauthor, is on the editorial board of this journal. Being requested to review an article by one's own supervisor is not indicative of international recognition in the field as outstanding.

We acknowledge the letter from Professor [REDACTED] Editor-in-Chief of *NeuroReport*, asserting that "reviewing for an international journal of this stature is not a trivial matter and is considered a mark of the very highest distinction in our field. Only those who have attained the highest standard in their own research and who would be considered to have an international reputation in the field are asked to serve in this capacity." 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 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* While we do not question Professor Gabella's credibility and sincerity, we note that he does not provide information that would allow us to evaluate the significance of selection as a reviewer for *NeuroReport*, such as the number of reviewers and the official selection process as provided on their website or other official materials. We further note that, unlike the more exclusive editorial staff, reviewers are not credited in the journal or on the website materials provided.

Ultimately, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review the numerous submitted manuscripts each journal receives. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition as an outstanding researcher. Without evidence that sets the beneficiary apart from others in his field as an outstanding researcher, 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 beneficiary meets this criterion.

Evidence of the alien's original scientific or scholarly research contributions to the academic field.

The director concluded that the beneficiary's reference letters were not sufficiently supported by objective documentary evidence independent of the preparation of the petition. The director incorporated his discussion of the beneficiary's scholarly articles. That discussion concluded that the beneficiary's publication and citation record "fall well short of establishing international recognition in the field."

On appeal, counsel asserts that there is no evidence that the references "lack objectivity or verifiability" and, thus, the director should have afforded these letters additional weight. Counsel further asserts that the beneficiary "announced his original pioneering research" in journal articles prior to the filing date of the petition. In addition, counsel characterizes the reference letters as attesting to the beneficiary's influence on the references' work, demonstrating the beneficiary's impact in the field. Counsel implies that these letters are actually more persuasive than published literature about the beneficiary because the letters, apparently unlike published literature, demonstrate that the references are relying on the beneficiary's work. Counsel does not acknowledge, however, that work which serves as the foundation for future research must be cited in the articles reporting the future work. Thus, work that is truly impacting the field can be expected to be widely and frequently cited. Finally, counsel notes that the beneficiary's work is supported by grant funding. All of the hundreds of thousands of successful scientists engaged in research, however, receive funding from somewhere. Counsel has not explained how grant funding sets the beneficiary apart as internationally recognized in his field.

We will consider the reference letters and the beneficiary's publication record in detail below. At the outset, however, we note that the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of international recognition. As stated above, CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. 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. 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of an international reputation 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. In addition, letters from independent references who were previously aware of the beneficiary through his reputation and who have applied his work are the most persuasive. 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 international recognition should be able to produce unsolicited materials reflecting that recognition.

Finally, the petitioner cannot satisfy this criterion simply by listing the beneficiary's past projects and demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research. Research work that is unoriginal would be unlikely to secure the beneficiary a master's degree, let alone classification as an outstanding researcher. Because the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher, it stands to reason that the beneficiary's research contributions have won comparable recognition. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

As stated above, outstanding researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. *See* 56 Fed. Reg. 30703, 30705 (July 5, 1991). Any Ph.D. thesis, postdoctoral or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. To conclude that every researcher who performs original research that adds to the general pool of knowledge meets this criterion would render this criterion meaningless.

The beneficiary received his Ph.D. in January 2006 from Yeshiva University. While there, he collaborated with [REDACTED]. While earning his Ph.D. and upon graduating, the beneficiary performed research at the petitioning entity, directed by [REDACTED] with whom the beneficiary has coauthored articles, abstracts and conference presentations.

Initially, the petitioner submitted three letters all from individuals at the petitioning institution. In response to the director's request for additional evidence, the petitioner submitted seven additional letters, six of which are from the beneficiary's immediate circle of colleagues or those who have collaborated multiple times with [REDACTED].

[REDACTED] explains that the beneficiary works on basic vision and multisensory integration with implications for schizophrenia and epilepsy. [REDACTED] notes that the beneficiary has developed "a set of highly specialized skills involving leading edge research methodologies utilizing high-density brain electrical mapping and functional magnetic resonance imaging" and that these skills have "enabled him to spearhead an advanced line of research in patients suffering from epilepsy" that has drawn the attention of other New York research institutions.

Another coauthor of the beneficiary at the petitioning institution, Dr. Charles D. Benninger, discusses the complexity of the field, praises the beneficiary's training and skills and makes vague assertions of contributions. [REDACTED] fails, however, to identify a specific contribution or explain how it has impacted the field. [REDACTED] another coauthor of the beneficiary at the petitioning institution, provides similar information. While both [REDACTED] imply that the beneficiary's skills are rare, that issue is not before us. The issue of whether similarly trained workers

are available in the United States is not within our jurisdiction. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 (Commr. 1998).²

asserts that the petitioner "elucidated important neural functions in the human brain" and introduced novel techniques that "have led many other scientists in the U.S. and throughout the world to adopt his experimental approach to brain research." does not identify any of these other scientists or their institutions.

a senior research psychiatrist at the petitioning institution, asserts that he and his colleagues have "been able to apply" the beneficiary's work in their research on schizophrenic patients. This assertion does not reflect that the beneficiary's work has proven influential beyond his own institution and collaborators.

, President and Chief Executive Officer (CEO) of VeriSci Corporation in New Jersey and a frequent coauthor with asserts that he intends to rely on the beneficiary's expertise in conducting a multi-site research project funded by the National Institutes of Health. The record does not contain the grant or other project materials listing the beneficiary's role on this project. Regardless, a request for input from the collaborator of a close colleague is not indicative of international recognition as an outstanding researcher.

of Trinity College in Dublin characterizes the beneficiary as an "exceptional young scientist with a growing track record of international stature." discusses the challenging nature of the beneficiary's techniques and the rarity of his expertise but does not explain how he learned of the beneficiary's work. We note that are frequent collaborators, coauthoring articles since at least 2004.

Dr. Mark McCann, Director of the Center for Visual Neuroscience at North Dakota State University, praises the beneficiary's academic accomplishments (a medical degree and a Ph.D.) and notes the prestige of the petitioner, the beneficiary's employer. further asserts that the beneficiary's expertise with electroencephalographic data "has made him invaluable as a scientific consultant to the North Dakota State University Center for Visual Science." use of the beneficiary's expertise is supported by a pending article coauthored by him and the beneficiary. We note, however, that has been collaborating with since at least 2002. Once again, being asked to work with the long-time collaborator of one's own supervisor is not indicative of international recognition as an outstanding researcher.

More significant is the letter from , a professor and Associate Vice-President of Research at McMaster University in Canada. asserts that she has known the beneficiary since 2005, when they initiated discussions regarding a future collaboration. She does not indicate how they met or who initiated the discussions. She asserts that the beneficiary is a named co-investigator on

² While this case involved a lesser classification, it does stand for the proposition that it is the Department of Labor that has jurisdiction over issues of skill shortages.

a project proposal, which requires his technical skills using intracranial electroencephalography. The petitioner submitted a printout from the database of the Canadian Institutes of Health Research (CIHR) reflecting that the beneficiary is part of a project for which [REDACTED] is the principal investigator. The beneficiary's individual role is not specified and the record does not include the grant proposal itself.

The above letters establish that the beneficiary has useful skills that have made him a desirable collaborator, mostly with his colleagues' collaborators. They do not establish that he has already made contributions that have impacted the field consistent with international recognition as an outstanding researcher. We acknowledge that, in response to the director's request for additional evidence, the petitioner submitted five articles that cite the beneficiary's work. Four of the citing articles cite the beneficiary's 2006 article on the spatiotemporal dynamics of human object recognition processing in *NeuroImage* and one of the citing articles cites the beneficiary's 2006 article on audio-visual multisensory integration in the *Journal of Neurophysiology*. Of the five citations, three postdate the filing of the petition. We note that the petitioner must establish the beneficiary's eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Thus, the petitioner must demonstrate that the beneficiary already enjoyed international recognition as an outstanding researcher as of that date, at which time his work had only been cited twice. Considering the citations themselves, the beneficiary's work is cited either by itself or with one or two other articles for his related results. None of the articles single out the techniques used by the beneficiary as noteworthy or indicate that the authors adopted the beneficiary's techniques based on the significance of his results.

While the beneficiary's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. The record does not establish that the beneficiary's contributions are consistent with international recognition as outstanding in his field. Accordingly, the petitioner has not established that the beneficiary meets this criterion.

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

The petitioner submitted evidence that the beneficiary has coauthored 14 published abstracts, three published articles and one conference presentation. The director concluded that this evidence fell short of what was required to meet this criterion. On appeal, counsel asserts that the beneficiary's three articles in international journals, which have been cited five times in published articles and in grant proposals, should serve to meet this criterion. Counsel asserts that the quality and not the quantity of the articles should be the primary consideration.

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 are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and 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 our position that publication of scholarly articles is not automatically evidence of international recognition; we must consider the research community's reaction to those articles.

While we concur with counsel that the significance of the articles should be the primary consideration, we will not presume the significance of the articles from the publication in which they appeared. The petitioner must demonstrate the significance of the individual articles. As of the date of filing, one of the beneficiary's articles had been cited twice. Even as of the date of the response to the director's request for additional evidence, the beneficiary had only been cited five times. We are not persuaded that the beneficiary's publication record, including citations, is consistent with international recognition as outstanding.

The petitioner has shown that the beneficiary is a talented researcher, who has won the respect of his collaborators, employers, and mentors, while securing some degree of international exposure for his work. The record, however, stops short of elevating the beneficiary to the level of an alien who is internationally recognized as an outstanding researcher or professor. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.