



U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



B3

File: [Redacted] Office: Texas Service Center Date: DEC 5 2000

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

Petition: Immigrant Petition for Alien Worker as an 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)

IN BEHALF OF PETITIONER:



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prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a university hospital and medical center. It seeks to classify the beneficiary 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 postdoctoral fellow. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

On appeal, counsel argues that the beneficiary is recognized internationally as outstanding in his field.

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.

Service regulations at 8 C.F.R. 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:

(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. Such evidence shall consist of at least two of the following:

(A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;

(B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;

(C) 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;

(D) 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;

(E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or

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

(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 former or current 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 March 14, 1997, to classify the beneficiary as an outstanding researcher in the field of biomedical research. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field as of March 14, 1997, and that the beneficiary's work has been recognized internationally within the field as outstanding.

The petitioner claims that the beneficiary has met the following criteria:

Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field.

Counsel observes that the beneficiary received "the 1993-1994 [redacted] award, given by a major international pharmaceutical company [redacted]. The recipient was selected from all graduate students who received their PhDs within this time frame." The record does not show that this award is recognized internationally nor does it show the criteria required to qualify for the award. The petitioner has not shown that this is a major award. The petitioner has submitted no evidence that the award won the beneficiary any attention outside of the [redacted] itself. If the award did not attract international notice, then obviously it cannot add to or demonstrate an international reputation. Some degree of international prestige must attach to a given award. Awards which are wholly or primarily limited to students cannot satisfy this criterion because students, virtually by definition, are the least experienced segment of researchers and therefore generally the least likely to have earned international reputations as outstanding.

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

Counsel claimed that the beneficiary is a member of the American Association for the Advancement of Science. Counsel states:

The American Association for the Advancement of Science was founded in 1848 and incorporated in 1874. Its objectives are to further the work of scientists, to facilitate cooperation among them, to foster scientific freedom and responsibility, to improve the effectiveness of science in the promotion of human welfare, to advance education in science, and to increase public understanding and appreciation of the importance and promise of the methods of science in human progress.

Counsel, however, provided no documentation of the membership requirements for the American Association for the Advancement of Science. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaiqbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). In addition, anyone may join the American Association for the Advancement of Science simply by paying membership dues. An association which is open to anyone is not considered to be one which requires outstanding achievements of its members.

Counsel further asserts that the beneficiary belongs to the International Society for the Study of [REDACTED] and the New York Academy of Sciences. Evidence in the record indicates, however, that the beneficiary became a member of these organizations after the filing of the petition and they may not be considered proof that the beneficiary belonged to organizations which require outstanding achievements of its members. Furthermore, these organizations are open to anyone whose goals and objectives are compatible with the organizations' goals and objectives. No evidence was presented which establishes that these associations require outstanding achievements of their members.

This criterion is intended to refer to the most prestigious associations, such as the National Academy of Sciences, which are extremely restrictive in their membership requirements. The National Academy of Sciences admits a few dozen members each year and these new memberships are decided at the national level rather than by local members. It appears, from the available information, that the American Association for the Advancement of Science is a considerably larger (and less restrictive) organization. The record does not permit the conclusion that the American Association for the Advancement of Science consists entirely of established, renowned researchers, to the exclusion of graduate students and as-yet-unestablished young researchers.

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

Because the purpose of these regulatory criteria is to establish that the beneficiary enjoys an international reputation as an outstanding researcher, the evidence submitted to fulfill the criteria must, to some extent, demonstrate such a reputation.

Counsel lists the beneficiary's "lectures and participation in conferences," but does not establish that presentations at professional gatherings reflect, or cause, international recognition. Documentation from these conferences indicate that very substantial numbers of researchers offer presentations, possibly numbering in the thousands.

Several witness letters accompany the petition. Carl L. Berg, M.D., Associate Physician, Brigham and Women's Hospital, Hepatology Section, states:

. . . I have worked closely with [REDACTED] for the last four years and the comments in this letter reflect my interactions with him at International Meetings, frequent scientific collaborations, and several visits to my laboratory in Boston.

Dr. [REDACTED] has scientific interest in the field of hepatic glucuronidation, an essential metabolic process responsible for the detoxification of numerous drugs and carcinogens. Dr. [REDACTED] work in this field has been top rate. He has presented his findings regarding the molecular biology of a variety of enzyme isoforms at numerous international meetings over the last five years. He has published extensively regarding his studies to date. The work that he is currently pursuing is at the forefront of the understanding of the mechanisms responsible for hepatic glucuronidation. His work has markedly advanced our understanding of this field in the last two to three years. He is clearly recognized as an international leader in this important area.

Recently, Dr. [REDACTED] has been working with his colleague, Dr. [REDACTED] at the University of Arkansas for Medical Sciences in Little Rock. These two investigators have formed an impressive series of collaborations which have resulted not only in recent important publications in peer review. The work that he is currently pursuing has important implications regarding the mechanisms of drug metabolism. In this regard, his studies are likely to have a significant impact on our understanding of the toxicity of drugs in the human system.

Dr. [REDACTED] is in all regards an outstanding researcher, as well as an individual of high moral character, and compassionate personality. His contributions to the field of hepatic metabolism will likely be numerous in the years to come. I believe him to be a first rate scientist.

[REDACTED] Ph.D., Associate Professor of Medicine, University of Arkansas for Medical Sciences, asserts:

I first met Dr. [REDACTED] in the Department of Pharmacology, University of Nancy, France, when I was a visiting professor in that institution. During my stay, I interacted with him at a series of different levels. We have developed a collaborative research project which has necessitated a close interaction between our two institutions. Subsequently, I have participated in a variety of scientific meetings at which [REDACTED] has presented data. . . .

As a consequence, I invited [REDACTED] to my laboratory during his graduate training in 1992, where he prepared a significant portion of his Ph.D. studies. Two publications resulted from his five month stay in my lab. After completing his Ph.D. thesis in October of 1993, he became a postdoctoral fellow in my laboratory. Since June 1994, [REDACTED] has been carrying out research on the structural and functional characterization of the protein involved in UDP-glucuronic acid uptake. He also continued studies on the contribution of

competitive inhibitors, and probes for the study of human recombinant UGTI*6. He is highly productive, producing three papers in press, and six in preparation from my lab thus far. . . . Without him and his leadership, my lab would not be as productive as it is, in terms of publications as well as NIH grants. My research on UGTs is funded by three NIH grants and [REDACTED] is supported by two of them. In order for my lab [REDACTED] our present success, we must be assured of Dr. [REDACTED] participation.

In summary, I believe that [REDACTED] has made substantial and significant scientific contribution to his field. He has already achieved recognition for his studies and is held in high regard by the international scientific community, as reflected by his involvement in international meetings. Although his salary is guaranteed by 2 of my grants, he is presently preparing an NIH grant to provide his salary and to be the base of a future promotion to a faculty position in our Division.

[REDACTED] MD, Division of Gastroenterology, University of Arkansas for Medical Sciences, states:

[REDACTED] work, under the guidance of one of our Associate Professors, [REDACTED] deals with fundamental processes of liver physiology. I have observed closely [REDACTED] work and his presentations at major scientific meetings. Moreover, I have had contact with him on social occasions.

. . . . As a scientist, he is focused on his projects, extremely hard-working and dedicated. He analyzes information carefully and draws appropriate conclusions. As a consequence, his efforts have yielded 3 full publications with at least 6 in preparation. This is an extremely impressive output for someone so junior in his career. It speaks highly of what we can expect from Dr. [REDACTED] in the future.

Other witnesses offer letters, with varying degrees of detail, discussing the beneficiary's skill as a researcher. Most of the initial witnesses have employed, instructed, or collaborated with the beneficiary, and, therefore, their statements are not evidence that the beneficiary has earned a broad reputation.

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

Counsel asserts that "Dr. E. [REDACTED] is first author on five publications in international scientific journals resulting from his research project, four of these resulted from his work at the

University of Arkansas for Medical Sciences. [REDACTED] Counsel also states that the beneficiary [REDACTED] has two additional publications as a second and third author (copies of the manuscripts are enclosed). Three more of his articles have been submitted and are currently being considered for publication. The scientific journals accepting these articles require a full reviewing process by 3 independent reviewers and their acknowledgment of the significance of the work before acceptance."

The initial submission contained little evidence about the various journals or presentations that the beneficiary's publications were included in. There is no evidence in the record which corroborates the assertion that these journals possess international circulation or that publication in these journals gives an author international acclaim.

The director denied the petition, having determined that the petitioner has not established that the beneficiary is internationally recognized. The director observed various shortcomings or omissions in the petitioner's initial submission.

On appeal, counsel asserts:

[REDACTED] has been involved for seven (7) years in the study of detoxifying enzymes and their role in health and disease. [REDACTED] has allowed significant progress to be made on the understanding of the mechanism by which toxic substances are deactivated in the liver in the form of a highly water soluble compound that can be excreted in the bile and urine. Because of their extreme importance of this general mechanism of detoxification in protecting the human body from its own toxic waste products and from the chemically dangerous environment of the modern world, and the dramatic consequences resulting from the impairment of this protective system, the research program conducted by [REDACTED] is of special importance. Dr. [REDACTED] also addressed the problem of how compounds involved in this mechanism of detoxification (compounds which are inactivated by a versatile enzyme rescue system, the UDP-glucuronosyltransferase ("UGT"), as well as a particular molecule required for this reaction to take place (UDP-glucuronic acid) can actually reach the UGT, considering the location of the enzyme in a closed compartment of liver cells (hepatocytes), the endoplasmic reticulum.

[REDACTED] has developed an experimental system to screen for toxicity of various chemicals including new drugs in human: the cell line expressing a single human UGT developed by Dr. [REDACTED] and his collaborators have tremendous applications in the area of drug metabolism and toxicity . . . This is of clinical importance to predict the elimination of a drug from the body. Such a system is a useful alternative to

animal testing and is relevant to human health since the enzyme introduced in the cell line is of human origin. [REDACTED] has also developed an innovative approach in this area by designing and testing molecules (inhibitors) which by interacting directly with the UGT can modulate the action of the detoxifying enzyme. Because numerous drugs used today in hospitals are transformed by this enzyme and, therefore, eliminated from the body, it is clearly of clinical importance to control the metabolic fate of these compounds with specific inhibitors of this enzyme.

Evidence was submitted with the petition that [REDACTED] was the recipient in 1994 of a major prize for his work while he was a graduate student in France. The [REDACTED] award, given by the international pharmaceutical company, [REDACTED] is awarded to the best PhD student at major French universities. The recipient is selected by a panel of nine (9) scientists of international renown, and is based on the scientific work performed by the candidate. Candidates do not apply for this award. Being a recipient of this award affirms that Dr. Battaglia performed outstanding research work in his field prior to receiving his PhD, and thus, fulfills the requirements of three (3) years of research.

As further evidence of [REDACTED] status as an outstanding researcher, he has been recently awarded a Postgraduate National Research Service Award ("NRSA") by the NIH in recognition of the importance of his work. These awards are given only to the very best postgraduate research candidates. The selection process is based upon the individual applicant's research potential and experimental research outline. . . .

. . . Being "first author" in a list of contributing authors is an indication of the importance and significance of the contributions of that particular author. It is clear that Dr. Battaglia is outstanding in the area of publication given the large number of articles he has authored, especially those where he is the first author.

In addition [REDACTED] has been invited to be a presenter at several national and international meetings. He attended and presented a lecture at the "VIIth International Workshop on Glucuronidation and UDP-Glucuronosyltransferases," which was held at the University of Iowa, Iowa City, Iowa on May 19-22, 1996. Attendance at this meeting was by invitation only. There were participants from ten (10) countries and only half of those invited to attend the meeting were invited to give oral presentations. Oral presenters were selected based on their recent and ongoing significant contributions in the field of glucuronidation.

The petitioner has submitted no evidence that the award mentioned above won the beneficiary any international recognition. If the award did not attract international notice, then obviously it cannot add to or demonstrate an international reputation.

Virtually all scholarly writings contain a significant number of bibliographic footnotes, including the beneficiary's own writings. To hold that every cited author has an international reputation as outstanding is unacceptably broad. The evidence must be weighed, rather than automatically slotted into the various criteria. By following this standard, a researcher whose work has been the primary subject of scholarly articles plainly enjoys more recognition than a researcher who happened to write on the same subject as a later author, who cited the earlier researcher's work in a footnote.

In addition, it does not automatically follow that the beneficiary is internationally recognized as outstanding in his field; dozens of researchers make presentations at each of hundreds, if not thousands, of international gatherings each year, and countless articles appear in professional journals. It is unrealistic to claim that every piece of research which reaches an audience in more than one country is, by definition, outstanding. The petitioner has not shown that, outside of those entities where he has worked, the beneficiary's work is in any way distinguished from that of others in the same or related fields. It cannot suffice to claim that the beneficiary enjoys a vicarious reputation stemming from the acclaim of his employer or collaborators.

The petitioner has not shown that the journals previously mentioned are international publications. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The only new evidence submitted on appeal are letters from various researchers reiterating their belief that the beneficiary meets the outstanding scientist category and a copy of the National Institutes of Health grant received by the beneficiary to continue his studies. The petitioner, on whom the burden of proof rests, has not shown that grant funding is the rare exception, rather than the rule, in terms of financing university-level research, or that NIH has placed a higher priority on this project than on most of the unspecified number of other projects which NIH funds nationwide.

The record shows that the petitioner, the beneficiary's professors, and the beneficiary's collaborators think highly of the beneficiary's work, and that the beneficiary's efforts have attracted some degree of notice on a wider scale. The record stops short, however, of demonstrating that the beneficiary's work is

recognized internationally as outstanding. Assertions about the value or potential applications of the beneficiary's research do not establish or imply international recognition.

On appeal, counsel has failed to provide adequate documentation to establish that the beneficiary has been recognized internationally as outstanding in the field of biomedical research. 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 met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.