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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



PUBLIC COPY

AUG 28 2001

File: [Redacted] Office: Nebraska Service Center Date:

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:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision 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.

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 that 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

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

The petitioner is a university. 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 as a research scientist. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in his academic field, or that the beneficiary has at least three years of qualifying research experience, as required for classification as an outstanding researcher.

On appeal, counsel contests the director's findings but the petitioner offers no further evidence.

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. . . .

(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.

(iii) An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or

(C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

Service regulations at 8 C.F.R. 204.5(i)(3)(i) state 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 petitioner 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. The petitioner claims to have satisfied the following criteria.

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

The beneficiary, on her curriculum vitae, claims two awards, the Peking University Guanghua Award in 1992 and a Graduate Research Fellowship from the petitioning institution in 1998. Both of these are student awards, which do not confer international recognition because the pool of potential winners is limited to students at those particular universities. Thus, the most accomplished scientists and the top students at other universities are automatically excluded from consideration. The petitioner has not shown that either award carries significant prestige outside of the awarding universities, much less on an international level.

Furthermore, the research fellowship, judging from documentation in the record, amounts to a grant to fund future research, rather than a prize or award for outstanding achievement. The beneficiary applied for the fellowship by submitting a proposal; the submission of a proposal is not an outstanding achievement. Also, there are several conditions attached to the fellowship, regarding the activities in which the beneficiary may engage during the term of the fellowship. If the fellowship were a prize for past achievements, these conditions would serve no purpose. Thus, the record establishes that the fellowship consists of financial backing for future research, rather than recognizing prior achievements.

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

Obviously, 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, or else to presume that most research is "unoriginal."

Professor Glenn D. Prestwich, who has supervised the beneficiary's doctoral studies at the petitioning university, states that the beneficiary "has become known internationally for her work, and her name is recognized by scientists around the world." He describes her research accomplishments:

She accomplished the first expression of a class of proteins, called GOBPs, that are believed to bind non-pheromone "general" odorants in female moths. Hers was the first effort to identify potential endogenous ligands for this protein using affinity labeling methods developed in my lab.

[The beneficiary's] second project was the isolation and characterization of a bovine fetal protein that was serendipitously discovered to bind an insect juvenile hormone analog. She found, isolated, and partially sequenced the protein, identified a potential endogenous ligand, and is now exploring the binding side of the protein, the physiological role of the protein, and the cloning of the human form of the protein. . . .

[The beneficiary] completed the multi-step organic synthesis of a new phosphoinositide monophosphate, PI(4)P as her third project area. This compound is a central player in the phosphoinositide kinase cascade, and materials she has synthesized are in use by four collaborators already. . . .

I asked [the beneficiary] to accept a series of preliminary experiments involving the use of photoaffinity labels prepared in my group to identify targets for various phosphoinositide polyphosphates. She has already undertaken six collaborative studies. . . . One or two of the most attractive of these will become a final project in which she plans to do peptide mapping and then some of the biophysical techniques . . . used for measuring polypeptide-ligand binding kinetics and energetics.

Professor Iwao Ojima of the State University of New York at Stony Brook, where the beneficiary studied before following Prof. Prestwich to the petitioning university, states that the beneficiary "has already earned an international reputation for her work. . . . Her work has already made important contributions."

The record contains several other letters, all from university faculty who have instructed, supervised, or collaborated with the beneficiary. Some of these witnesses attest to the beneficiary's "international fame" but because they themselves have worked directly with the beneficiary, their statements are not direct evidence of international recognition. Other witnesses assert only that the beneficiary has made valuable contributions to still-ongoing projects, the impact of which it is too early to gauge.

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

The petitioner has submitted copies of articles co-authored by the beneficiary, which have appeared in international journals. The

initial submission contains no evidence (such as citation indices) to establish the international reaction to the beneficiary's work.

The director instructed the petitioner to submit additional evidence, although the request failed to specify what was deficient in the initial submission.

In response, the petitioner has submitted additional letters. Patent attorney Kristine H. Johnson states that she is "of the opinion that [the beneficiary] has contributed to the body of U.S. scientific knowledge." Ms. Johnson expresses confidence that the beneficiary's "research will garner an issued U.S. patent."

Prof. Prestwich, in a new letter, discusses the beneficiary's accomplishments subsequent to the petition's filing date. This information cannot retroactively establish the beneficiary's eligibility as of the filing date. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Dr. Yi Feng Zheng, senior scientist at Dade Behring, Inc., states "I have been working with [the beneficiary] for almost three years in Dr. Glenn Prestwich's laboratories. . . . I attest that her name is known internationally in the field. . . . Her work has already made important contributions."

Dr. Matilda Katan of the Institute for Cancer Research, Royal Cancer Hospital, London, states "I don't know [the beneficiary] personally. But I am completely familiar with her publications and research work. She is widely known internationally for her excellence." While Dr. Katan states that she does not know the beneficiary personally, she adds that her team is actively collaborating with Prof. Prestwich's team, which includes the beneficiary.

Professor J. David Castle of the University of Virginia Health Sciences Center, like the other witnesses, collaborates with the petitioner and the beneficiary. Prof. Castle discusses the beneficiary's latest, not-yet-published work, rather than anything which may have brought the beneficiary recognition prior to the petition's filing date.

The beneficiary has certainly engaged in collaborations with researchers at a variety of prestigious institutions. Many of these collaborators have indicated that Prof. Prestwich has a long-standing reputation as a top researcher in the field, which would indicate that many researchers would seek collaborations with Prof. Prestwich's laboratory. It is not clear how much of a reputation

the beneficiary has earned in her own right, rather than as a researcher at an already well-known laboratory.

The petitioner submits copies of correspondence with various researchers, regarding the exchange of various samples for use in experiments. The record does not clarify whether such exchange is a sign of distinction in the field, or rather a common and routine practice among research laboratories. We cannot conclude from the available evidence that this exchange of laboratory materials establishes that the beneficiary has earned an international reputation as an outstanding researcher. There is a definite distinction between "useful" research and "outstanding" research; and while the beneficiary has provided samples to (and used samples from) a wide variety of other researchers, the record does not show that a similarly broad group of researchers have (for example) cited the beneficiary's past publications. Independent citations are widely recognized as a fairly reliable gauge of a researcher's impact.

The director denied the petition, addressing the regulatory criteria one by one and concluding that the petitioner has not met at least two of them. The director noted that the petitioner intends to seek a patent arising from the beneficiary's research, but that the patent has not yet been granted. On appeal, counsel states that the director "erred in not giving weight to an invention that has been granted a Confidential Invention Disclosure, but has not yet been issued a patent due to the lengthy patent process."

The director did not state that the issuance of a patent is *prima facie* evidence of a significant contribution to the field. Even so, counsel fails to explain how the director's decision was in error. The "Confidential Invention Disclosure" is not a sign of national or international recognition or acknowledgment; it is an internal document issued by the petitioning institution itself. The disclosure is a questionnaire-style "form" document, with blank spaces for various purposes such as "Technology Interest Categories," which suggests that the petitioning university processes a number of such disclosures.

It is not clear how much international recognition can arise from the above document; if it is "confidential," as the very name suggests, then information about the invention has presumably been closely guarded rather than disseminated internationally. The disclosure form does not establish that anyone inside or outside of the petitioning university regards the pertinent research as outstanding.

The other issue raised in the director's decision concerns the statutory requirement of at least three years of experience in the academic field. The petition was filed on November 9, 1998.

Therefore, the petitioner must establish that the beneficiary had accumulated at least three years of research experience as of that date.

In documents which accompanied the initial filing, the beneficiary, counsel, and representatives of the petitioner all indicate that the petitioner was expected to complete her Ph.D. degree in the spring or summer of 1999, some six months after the filing of the petition in autumn of 1998. A letter submitted after the filing of the petition indicates that the beneficiary "successfully defended her Ph.D. dissertation in July 1999." In denying the petition, the director stated "[t]he beneficiary does not appear to have been awarded her Ph.D. degree at the time of filing the petition; as such she does not appear to qualify for having three years of research in the academic field."

On appeal, counsel states that the beneficiary "has well over three years experience in her field. [The director] seriously erred in counting years of experience only after award of Ph.D." Counsel does not address the director's finding that, as of the filing date, the Ph.D. had not yet been awarded at all. The beneficiary had maintained an impressive 4.0 grade point average during her doctoral studies, but by the plain wording of the regulations, "[e]xperience in . . . research while working on an advanced degree will only be acceptable if the alien has acquired the degree." 8 C.F.R. 204.5(i)(3)(ii). It is irrelevant that the beneficiary may have since obtained her degree. See Matter of Katigbak, supra. See also Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998), in which the Service found that a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements.

Because the regulations specifically preclude consideration of the research conducted by the beneficiary during her then-unfinished doctoral studies, the only time period available for the beneficiary to have accumulated the necessary experience was between receiving her B.S. degree in July 1990 and commencing her doctoral program in autumn 1994. For most of this period, the petitioner was studying for her M.S. degree at Peking University.

Because the beneficiary was studying for an advanced degree between 1990 and 1993, the above-cited regulation indicates that this research counts toward the three-year minimum "if the research conducted toward the degree has been recognized within the academic field as outstanding." Thus, the petitioner must show that the research which led to her master's degree has been so recognized. The vast majority of the record, however, pertains to the beneficiary's work with Prof. Prestwich's laboratory. The witnesses who discuss the beneficiary's work do so in the context of Prof. Prestwich's laboratory, with which they have collaborated.

The research experience which the beneficiary accumulated while studying under Prof. Prestwich can only be considered in the context of a new petition, filed after the conferral of the degree; the regulations are unambiguous on this point.

We briefly note an additional issue. The petitioner, on the petition form, indicates that the position offered to the beneficiary is permanent "dependent on funding." This unexplained comment raises questions about the petitioner's commitment to offer permanent employment to the beneficiary, as well as the petitioner's ability to pay the beneficiary's salary.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in the field of medicinal chemistry, or that the beneficiary has earned at least three years of qualifying research experience. 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.