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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
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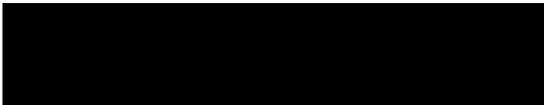
File: EAC-99-226-53597 Office: Vermont Service Center

Date: **DEC 17 2001**

IN RE: Petitioner:   
Beneficiary:

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 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

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is a company which designs, develops and manufactures high tech products including advanced fuel cells and batteries for use in automobiles and consumer appliances. 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 research scientist. The director determined that the petitioner had not established the significance of the beneficiary's research, or 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 has attained international recognition as evidenced by the letters from individuals who have not previously worked with the beneficiary, his high compensation, and his authorship of widely cited articles.

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:

(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 July 23, 1999 to classify the beneficiary as an outstanding researcher in the field of engineering. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field of engineering as of July 23, 1999, and that the beneficiary's work has been recognized internationally within the field of engineering as outstanding. The beneficiary completed his Ph.D. in November 1997 and began working for the petitioner at that time. The director concluded that the beneficiary did not have three years of experience since the record did not demonstrate that his research conducted while a Ph.D. student was recognized within the academic field as outstanding. On appeal, counsel argues that the beneficiary authored five published articles while a student, including one article published in a European journal.

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 were 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 the Service's position that publication of scholarly articles is not automatically evidence of peer recognition; we must consider the research community's reaction to those articles. Even the beneficiary's thesis advisor, Dr. Leventis, concedes that "the Ph.D. degree in chemistry requires original research documented by publication in peer-reviewed journals."

Initially, the petitioner submitted no evidence that the beneficiary's articles had been cited. On appeal, the petitioner submits evidence that all five of the beneficiary's articles have been cited at least once by an independent researcher, the maximum number of independent cites being six times

prior to the date the petition was filed.<sup>1</sup> As will be discussed below, this number of citations is not evidence that the beneficiary's research while a student was recognized in his field as outstanding.

It is noted that the beneficiary lists six years of teaching experience at the Shanghai Institute of Chemical Technology on his resume. The record does not include a letter from the Institute verifying the beneficiary's work there. In addition, as the petitioner is seeking to classify the beneficiary as an outstanding researcher, the petitioner would need to demonstrate that the beneficiary engaged in research while instructing at the Institute.

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 membership in associations in the academic field which require outstanding achievements of their members*

In response to the director's February 11, 2000 request for additional documentation, the petitioner submitted evidence of the beneficiary's membership in the American Chemical Society (ACS) and the Electrochemical Society. The membership verification from the ACS indicates that ACS is the world's largest scientific society with over 159,000 members. The membership verification letter from the Electrochemical Society reflects that a bachelor's degree or other combination of education and professional experience along with the recommendation of two Active members is required for Active Membership. The director concluded that neither society required outstanding achievements of its members. Counsel does not challenge this conclusion on appeal.

*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*

The record includes a press release and a newspaper article regarding the petitioner company's innovations with fuel cells. A press release generated by the petitioner company cannot be considered independent published material. The name of the newspaper in which the article appears is illegible. A story in a local paper is not evidence of international recognition. Moreover, while the beneficiary worked on the fuel cell project at Reveo, the article is not specifically about the beneficiary's work on the project. Other articles in the record discuss fuel cells, but are not primarily about the fuel cell research at Reveo in general or the beneficiary in particular. Finally,

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<sup>1</sup> A petitioner must establish eligibility, and thus international recognition, at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971).

the record contains a Washington Business Journal article about Reveo's work with 3-D visual effects. The record does not establish that the beneficiary took part in this project. The petitioner submits two new articles on appeal, however, they were both published after the date of filing.

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

Dr. Sadeg M. Faris, President of the petitioner company, Reveo, Inc., writes:

[The beneficiary] joined Reveo, Inc. and was given the responsibility to develop a new solid state electrolyte membrane for fuel cells and other electrochemical processes. He immediately demonstrated ingenuity and hard work. He invented and developed novel membranes that can be use[d] to conduct different ionic species, especially hydroxide (OH<sup>-</sup>). To my knowledge, this hydroxide conducting membrane is very unique because there is nothing like this existing in the world. The membrane technology developed by [the beneficiary] is applicable to different membrane applications other than fuel cell and battery, such as separation and filtration. His process is also a low cost process which has a potential to reduce the cost of existing fuel cell and batter technologies. His contributions to our company and scientific field are thus enormous.

Based on his demonstrated abilities, both technically and managerially, I have promoted him from a Research Staff Member to the Manager of Chemistry Laboratory to supervise R&D activities in chemistry related field in my company. He continued to make significant advances, to solve many technical problems, and he is destined to help the company create new products that have multi-billion dollar market potential in the field of energy. This will provide zero emission, clean, environmentally friendly energy sources for automobiles and, indeed, even to supply power to homes. He thus has become an indispensable member of my company, and I am convinced he also has become a national asset worthy of becoming a citizen of the U.S.A.

Reveo, Inc. senior scientist Dr. Yuen Ming Chang, echoes these accolades. Joseph Vittoria, former Chief Financial Officer and Director of Reveo, Inc. provides general praise of the beneficiary and asserts that his research is "the lynchpin in the development of fuel cell technology while showing a high degree of creativity," and that "his breakthrough research with electrolytes and other related sciences is very well regarded among his contemporaries."

Dr. Nicholas Leventis, the beneficiary's thesis advisor at the University of Missouri-Rolla, writes:

[The beneficiary] joined my research group in January 1994, and he proved himself as an outstanding and innovative researcher. He was able to complete a series of not related projects in record-time of three years and eight months. . . . [The beneficiary's] scientific strength is in his diverse skills ranging from organic

synthesis to fairly sophisticated electrochemistry and microfabrication. His thesis work resulted in numerous oral presentations in national meetings of the American Chemical Society and the Electrochemical Society, and in five papers published in prestigious scientific journals such as The Journal of Physical Chemistry, Chemistry of Materials, The Journal of the Electrochemical Society and Tetrahedron. All these are scholarly journals with international circulation and are well known in the scientific community. It is highly unusual, and in fact [the beneficiary] is quite unique in that regard, for someone to have the diverse expertise required in order to publish in all these journals which are intended for very different scientific audiences.

Please note that [the beneficiary's] work on sol-gel materials attracted attention and I was invited at the Naval Research Laboratory (NRL) in Washington D.C. in the summer of 1998 to conduct research in that area and transfer technology. It is also noteworthy that while I was at the Naval Research Labs, scientists there became aware of and interested in [the beneficiary's] studies of electrochemical phenomena in magnetic fields and their interest became the impetus for a workshop at NRL in August 1998 where numerous scientists from around the country were invited to attend.

Harvest Collier, Chairman and Professor of Chemistry at the University of Missouri-Rolla, writes that the beneficiary's dissertation involved electrochemical materials and systems and electrochemistry with stationary disk and ring-disk millielectrodes in magnetic fields. Dr. Collier, however, does not elaborate on how this research contributed to the field of engineering. Another professor at the university, Dr. Jay Switzer, who served on the beneficiary's Ph.D. committee, also fails to explain how the beneficiary's work while a student influenced or contributed to the field of engineering.

Liang Chen, a professor at East China Normal University, writes that he has known the beneficiary since he was an undergraduate student and that he has followed the beneficiary's work since he moved to the United States. As stated by the director, the above letters are from colleagues and collaborators, and do not represent international recognition.

The director, by asserting that the reference letters are "almost entirely" from colleagues acknowledged that the petitioner submitted some letters from independent researchers. M.A. Ryan, Senior Member of the Technical Staff and Leader for Advanced Power Systems at the Jet Propulsion Laboratory in Pasadena, California, writes:

I have been familiar with [the beneficiary's] work since his work on the topic of dye modified electrodes was presented at the Electrochemical Society (ECS) Meeting in 1996. At the time, I was Secretary of the Energy Technology Division of ECS, and reviewed his work for inclusion in the conference. I was interested in the approach to electrode modification using dyes, as it was an area in which I had done a great

deal of work; I found the approach to electrochemical synthesis interesting and innovative.

Dr. Ryan also asserts that the beneficiary's current innovative work with fuel cells is "exciting work with tremendous potential." She concludes that the beneficiary has filed for sixteen patents, two of which represent inventions for which he was the primary inventor.

Dr. Victor Wouk, Technical Advisor to the U.S. National Committee of the International Electrotechnical Commission, writes:

[The beneficiary] is doing unmatched and novel R&D in the field of "alternative fuels", [sic] particularly for Electric Vehicles. The work is one of the most promising I have ever seen, for solving the two serious problems mentioned above [air pollution and depletion of fossil fuels]. I have observed [the beneficiary's] work on a novel solid state hydroxide conducting membrane, which is the key component to achieve outstanding performance of the novel fuel cell. I have been told that he has filed three patents on this invention.

Dr. Wouk does not explain how he came to know of the beneficiary's work. Dr. Edmund H. Immergut, Editorial Director of Hanser Publishers, provides general praise of the beneficiary. He does not explain, however, how he came to know the beneficiary.

Dr. Saad G. Khbeis, a senior scientist at Maxxam Analytical, Inc. in Ontario, Canada, writes that he has reviewed the beneficiary's academic record and current research and is impressed with his achievements. On appeal, counsel asserts that Dr. Ryan, Dr. Wouk, and Dr. Immergut never worked with the beneficiary and, like Dr. Khbeis, provided recommendations only after reviewing the beneficiary's resume. In order to demonstrate international recognition for the beneficiary's contributions, however, it is necessary that international experts in the field are aware of his research prior to being contacted for a reference.

The most compelling evidence in the record of international recognition based on scientific contributions is the letter from Andrew Shioujenq Lin, senior research scientist at Energy and Resources Laboratories, Industry Technology Research Institute (ITRI) at Taiwan. He writes:

I am currently also in charge of the investigation and selection of the power sources of the next generation electrical vehicles and electrical scooters for the Taiwan government. Before I joined ITRI in 1993, I was a research scientist working on the fuel cell subject at [the] Naval Research Laboratory, Washington, D.C. and I have been working on academic and industrial research in the electrochemical energy technology field for more than 15 years.

Because of the nature of my job, I visited numerous fuel cell and battery companies all over the world. These include . . . in the United States, . . . in Europe, and . . . in Asia. During my visit, I had the opportunity of meeting the world's best scientists

in the electrochemical energy research field. Among them, [the beneficiary] stands out as one of the most inventive and energetic gifted researcher.

I first met [the beneficiary] in June of 1999 when I visited Reveo, Inc. and we had a fruitful discussion on the development of fuel cells. I was greatly impressed by [the beneficiary's] creative and dynamic thinking and his in depth knowledge of electrochemistry. His research project of developing high performance rechargeable zinc/air fuel cells systems for electric vehicles is the key technology item that ITRI has strong interest to develop at Taiwan. Such zinc/air system has high power and high capacity and will promote the development and commercialization of electrical vehicles. In addition, this energy source will eliminate the air pollution problem usually associated with the use of the internal combustion engine. However, it is [the beneficiary's] work that makes fast electrical recharging possible. [The beneficiary's] technology can recharge a cell in [an] extremely short period of time with very high cycle life. The performance of these systems [the beneficiary] developed is clearly the best I have seen in the world.

While this letter demonstrates that the beneficiary may be acquiring a reputation outside his immediate circle of colleagues, the respect of one foreign expert is insufficient evidence of international recognition.

Finally, the petitioner submitted a chart listing the beneficiary as an inventor on 16 patent applications. While this number of patent applications is not insignificant, the beneficiary works in a research and development department of a private company. It is inherent in his job to invent new products. These patent applications are not evidence of international recognition.

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

Initially, the petitioner submitted five published articles authored by the beneficiary. As discussed above, in order to demonstrate that the publication of scholarly articles is evidence of international recognition, the petitioner must demonstrate that the beneficiary's articles are widely cited. The evidence submitted on appeal reveals that at the time of filing, all five of the beneficiary's articles had been cited. One of the beneficiary's articles had been cited by six independent researchers, a second article was cited by five independent researchers, two additional articles were cited by two independent researchers and a final article was cited by one independent researcher.

The petitioner submitted copies of the articles which cite the beneficiary's work. It is acknowledged that researchers in Belgium, Israel, Japan, Bulgaria, and the United Kingdom have cited the beneficiary. The total number of citations, however, is not reflective of being "widely cited," as claimed by counsel. Moreover, further review of the articles themselves, reveals that four of the articles cite the beneficiary as one of several articles for the same proposition. The record simply does not establish that the beneficiary's work has been singled out and recognized as outstanding by the international community. It is acknowledged that the beneficiary's 1997 article

has been cited another six times since the petition was filed, suggesting that the beneficiary's reputation may be growing.

The petitioner has shown that the beneficiary is a talented and prolific 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 an international reputation 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