



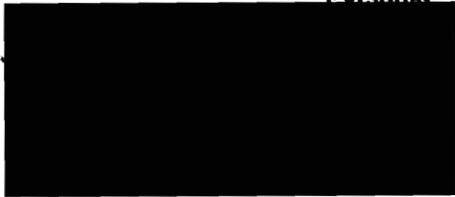
U.S. Department of Justice

Immigration and Naturalization Service

**B3**

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: [Redacted] Office: Nebraska Service Center Date: **DEC 21 2001**

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:



**Public Copy**

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, 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 and teaching hospital. 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 in the United States as a postdoctoral research associate. The director determined that the petitioner had not established that it has offered the beneficiary a permanent research position, or that the beneficiary has earned international recognition as an outstanding researcher in his academic field, as required for classification as an outstanding researcher.

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; and

(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.

The first issue to consider is whether the petitioner has offered the beneficiary a permanent position.

In a cover letter accompanying the petition, Dr. Gretchen E. Tietjen, associate professor, chair, and Residency Program director at the petitioner's Department of Neurology, states that the beneficiary's "appointment here . . . has no fixed term, but [the beneficiary] can expect to be employed in a permanent research position." This vague assertion does not fulfill the regulatory requirement of an "offer of employment . . . in the form of a letter from . . . [a] United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field" set forth at 8 C.F.R. 204.5(i)(3)(iii)(B).

The petitioner's statements directly to the Service do not represent an offer of employment, and the statement that the beneficiary "can expect to be employed in a permanent research position" does not establish that the beneficiary already holds such a position.

We note that 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 temporary" and "the appointment is viewed as preparatory for a full-time academic and/or research career." Thus, the petitioner's use of the term "postdoctoral research associate," coupled with the absence of direct evidence that the petitioner has offered the beneficiary a specific permanent position, raises questions as to whether such an offer had been made as of the filing date.

The director, in denying the petition, stated that "[t]he record does not clearly state that the beneficiary has been offered a permanent research position." The director noted that "[t]he petitioner currently employs the beneficiary . . . on a year by year renewal basis."

On appeal, the petitioner's supervisor, Dr. Gretchen E. Tietjen, director of the residency program at the petitioning institution, states:

[The beneficiary's] position at [the petitioning entity], like all non-teaching research positions, is not bound by tenure. [The beneficiary's] renown, coupled with the advances and additional research precipitated by his past findings, assure him of a continuing appointment as a research fellow.

Dr. Tietjen's ambiguous statement does not resolve the issue. The record does not contain a signed contract or other documentation that would disclose the specific terms of the employment offered to the beneficiary. The assertion that the beneficiary's continued employment is predicated on his "renown" and his "past findings" suggests that the underlying position is not inherently permanent (if it were, the beneficiary's reputation would be irrelevant).

The second issue raised in the director's denial concerns the question of international recognition as an outstanding researcher.

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's evidence addresses only two of the regulatory criteria.

*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, and to presume that most research is "unoriginal."

Dr. Tamás Jánossy, who supervised the beneficiary's medical studies at Albert Szent-Gyorgyi Medical University, describes the project that won the beneficiary his degree, but Dr. Jánossy does not explain why the beneficiary's research results are more significant than those of other graduate students. Professor György Szemere of the same university describes the beneficiary's training activities as a clinical physician but does not describe the beneficiary's research or explain its significance.

Other individuals involved with the beneficiary's training offer positive letters of recommendation but do not indicate that the beneficiary has won international recognition as an outstanding researcher. Many of the letters deal with the beneficiary's work as a physician or medical student, rather than as a researcher.

Faculty members of the petitioning institution describe the beneficiary's current projects, such as the analysis of abnormal blood platelets in stroke patients and sufferers of migraine headaches. Dr. William T. Gunning, an associate professor, states that these projects are be "proceeding with pilot data collection. . . . We have not yet begun to analyze our data for publication purposes." It appears to be too early to determine the significance of these projects which were still incomplete as of the petition's filing date. Dr. Gunning states only that the researchers have found "an apparent correlation . . . between patients with a bleeding history, as well as a history of migraine headaches." Dr. Gunning admits "[i]t is uncertain if there is significance for this correlation or if it is nothing more than a phenomenon."

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

The record shows that the beneficiary has co-authored a number of conference presentations. The abstracts from some of these presentations have appeared in journals, but the petitioner's initial submission contains no full-length articles or books by the beneficiary, nor any evidence that the preparation of conference presentations inherently demonstrates, or causes, international recognition as an outstanding researcher.

The director denied the petition, based in part on the finding that the beneficiary is not internationally recognized. On appeal, the petitioner submits additional letters and other documents.

Faculty members of the petitioning institution state that the beneficiary has contributed to several research projects. These faculty members state that the beneficiary's work has been important to the petitioning institution, but they do not establish that this work has won international recognition for the

beneficiary. The petitioner cannot establish eligibility simply by relying on the beneficiary's work.

Other witnesses similarly describe various projects on which the beneficiary has worked, but these witnesses have for the most part collaborated directly with the beneficiary. Dr. Mohtashem Samsam, now at Bayerische Julius Maximilianus Universität, states that he first met the beneficiary the year after the beneficiary graduated from high school.

One witness letter was written in September 1999, considerably before the filing of the petition, let alone the appeal. The petitioner's former collaborator Dr. B.K. Ahmad, now of Henry Ford Hospital, states "I have no doubt that [the beneficiary] will turn out to be an excellent neurology resident and clinician upon graduation from a residency program. I can foresee a very bright future for him in neurology." Dr. Ahmad's letter indicates that the beneficiary is working toward a career not as a full-time researcher, but as a clinical physician practicing as a neurologist. Dr. Ahmad's comments further suggest that the beneficiary's training to that end is not complete.

The petitioner submits evidence showing that the beneficiary continues to make conference presentations, but this evidence does not establish the reaction of the international scientific community to the beneficiary's work. The record contains no direct evidence that the beneficiary's work has attracted significant notice outside of his own circle of instructors and collaborators.

The petitioner submits background documentation regarding research into migraine headaches and other neurological issues, but this evidence does not mention the beneficiary and thus cannot establish that the beneficiary is internationally recognized in the field.

As evidence that the beneficiary has earned international recognition, the petitioner cites "an invitation from Datamonitor Healthcare for [the beneficiary] to participate as an 'opinion leader in acute stroke treatment in the U.S.' to assist in research in that area for an international study being conducted in London, England." This invitation consists of an electronic mail message from Caroline Rawkins. The message reads, in part:

I am a researcher working for the global market analysis experts Datamonitor in London, England. We are currently conducting an international study into the treatment and management of stroke. I am contacting you to see whether you would be interested in helping us with our project.

We aim to interview opinion leaders in acute stroke treatment in the US for approximately 45 minutes (by telephone). In the

interview we would discuss exactly how you diagnose and treat patients presenting to you with stroke. . . .

[A] summary of our findings . . . would be, I feel, extremely valuable to doctors such as yourself, providing a unique facility for you to compare and contrast your own treatment initiatives with those of your colleagues in the major developed countries. . . .

I should also be very grateful if you could let me know of any colleagues (Neurologists, Geriatricians, or other stroke specialists) who might be interested in participating.

The electronic mail message indicates that Datamonitor seeks to conduct a survey among practicing physicians rather than researchers; it refers to "doctors such as yourself" and "your own treatment initiatives," and an accompanying questionnaire asks several questions about patient treatment and hospitals. While Ms. Rawkins does use the phrase "opinion leaders," she also requests the names of "any colleagues . . . who might be interested in participating." This open solicitation of participants does not suggest a rigorous screening process. As examples of colleagues, Ms. Rawkins identifies various types of physicians. Upon consideration, we cannot conclude that this invitation to participate in a marketing company's survey of physicians establishes that the beneficiary is internationally recognized as an outstanding researcher in his field.

In this matter, the petitioner has not established that it has offered the beneficiary a permanent position, or that the beneficiary has been recognized internationally as outstanding in his academic field. Therefore, the petitioner has not established the beneficiary's eligibility 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.