



U.S. Department of Justice
Immigration and Naturalization Service

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



File: WAC 99 034 51491 Office: California Service Center Date: JAN 3 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)

Public Copy

IN BEHALF OF PETITIONER:
[Redacted]

Identifying data removed to prevent clearly documented 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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an agricultural research and development company. 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 that the beneficiary is recognized internationally as outstanding 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. . . .

(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.

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.

The petitioner claims to have fulfilled this criterion with evidence of the beneficiary's membership in the American Phytopathological Society ("APS"), the Gamma Sigma Delta Honor Society of Agriculture, and the Advisory Board Committee for the Hispanic American Studies Program at Cornell University.

The record contains no evidence to show that membership in the APS requires outstanding achievement. According to the APS constitution, "[a]ny person interested in the study and control of plant diseases is eligible for membership." Given that this information comes from the APS' principal, defining document, any assertion to the contrary is simply incorrect.

A letter in the record states that the beneficiary received a three-year appointment to the society's Chemical Control Committee, and indicates that "this appointment . . . recognizes [the beneficiary's] achievement in this area of plant pathology." The APS' own materials, however, do not support this assessment; these

materials indicate that "[a]ll members of APS are eligible" to sit on committees, and that some 500 APS members, or roughly one-tenth of APS' entire membership, sit on "over 40 committees." APS committee members are chosen not only by nomination, but also on a volunteer basis. APS materials do not indicate that committee membership is based on special distinction in the field; rather, "[n]ew members are recommended for appointment based on a number of considerations that would lend balance to the committee: geographic location, employer, level of experience, etc."

According to materials in the record, membership in Gamma Sigma Delta "is based on academic record, leadership, and potential for professional contributions" rather than actual career achievements. Gamma Sigma Delta is a student honor society, rather than a professional association. The beneficiary was nominated by the Cornell University chapter, and there is no evidence that any larger governing body oversaw or approved the nomination. Selection by a university organization does not demonstrate international recognition.

The Advisory Board Committee is not an association in the beneficiary's academic field; the beneficiary's field is plant pathology, rather than Hispanic American studies. The purpose of the committee has nothing to do with plant pathology; rather, its purpose is "the development of a strong academic program devoted to understanding more fully the experience of Hispanic people in the United States." Furthermore, there is no indication of how the beneficiary's involvement on a committee at one university reflects an international reputation as outstanding.

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 petitioner submits evidence that the beneficiary's research has been cited in publications by other scientists. Citation of the petitioner's work, however, does not establish that the articles containing the citations are "about" the beneficiary or his work. These citations are more properly considered with regard to establishing the significance of the beneficiary's own published work.

A number of citations appear in book chapters and articles by [REDACTED] Dr. [REDACTED] however, also co-authored some of the cited articles. Self-citation by a collaborator is not evidence of wider recognition of the beneficiary's work. The same is obviously true of an article by the beneficiary himself, in which he cites two of his previous articles. The value of citations lies in showing that one's research has attracted the attention of others. Clearly, citing one's own work does not meet this standard.

Leaving aside self-citations by the beneficiary and his collaborator, Dr. Lenné, the record establishes four independent citations of the beneficiary's published work, to be discussed in the context of the beneficiary's own work. The record does not indicate that the body of any published article is devoted to the beneficiary and his work.

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 the latter adjective beyond any useful meaning.

The petitioner submits several witness letters discussing the beneficiary's work. [REDACTED] who collaborated with the beneficiary from 1983 to 1988, describes the beneficiary's work in Colombia during that time:

[The beneficiary's] research responsibilities in Colombia dealt with diseases of tropical pastures. He was particularly interested in studying the foliar blight diseases caused by *Rhizoctonia solani* on *Centrosema* and *Stylosanthes*. His research identified considerable variability in the fungal pathogen complex affecting these two important tropical pasture legumes. This information was critical for orientating the breeding program towards selection for resistance to *R. solani* and the consequent development of productive and sustainable legume based pastures.

We note that Dr. [REDACTED] refers to the APS as a "highly selective professional association," even though APS' own constitution indicates that membership is open to any dues-paying individual "interested in the study and control of plant diseases."

Cornell University Professor [REDACTED] indicates that the beneficiary's graduate research dealt with the effects of *R. solani* on table beets and other plants, as well as "the inheritance of resistance to *Macrophomina phaseolina* in beans and the influence of soil matric potential on the pathogen and disease development."

Professor [REDACTED] of Cornell University states that the beneficiary is "an internationally renowned plant pathology and fungicide resistance expert," but does not specify the nature of the beneficiary's findings; Prof. [REDACTED] offers only general assertions about the importance of the beneficiary's specialty, and the contention that the petitioner "has consistently propelled forward technology" in this area.

Eric Tedford, plant pathology specialist at the petitioning firm, describes the beneficiary's "impressive body of ground-breaking plant pathology research":

[The beneficiary's work for the petitioner] has focused on an especially promising new class of fungicides known as Strobilurins, which have proven highly effective as a pest-management strategy since they became commercially available three years ago.

They are expected to become one of the major groups of agricultural fungicides. . . .

[The beneficiary] directs an aggressive research program aimed at developing methodologies to identify and manage baseline resistance sensitivities to many diverse pathogens that cause diseases in different crops. . . . [The beneficiary] has directed the fungicide research activities for a team of 5 research scientists in the laboratory. He has developed new and exciting methodologies to allow his colleagues to develop sensitive and reliable baseline resistance assays that will allow us to determine if and when resistance is/has developed within populations of fungi.

Dr. [REDACTED] fungicides technical business lead at the petitioning company, states that the beneficiary "has developed and tested a reliable investigative system for the assessment and quantification of resistance risks to new antifungal agents and is in the process of evaluating and optimizing anti-resistance strategies."

Other witnesses offer similar descriptions of the beneficiary's work. All of these witnesses have supervised or collaborated with the petitioner. While they have described the nature of the beneficiary's research, they have not explained particularly how that research stands out from the research of others working in the academic field. The record contains no letters from independent experts, to establish that the petitioner's work has earned a reputation that extends significantly beyond the entities where the beneficiary has worked and studied. The record also lacks objective documentary evidence to establish the impact that the beneficiary's findings have had on the practice of agriculture. Prof. Wilcox asserts that "[t]he positive impact of [the beneficiary's] findings

on commercial agriculture are most impressive," but this assertion is so vague as to be of little use.

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

The petitioner submits copies of several published articles and abstracts by the petitioner. As noted above, independent researchers have cited the beneficiary's work on four occasions.

In addition to published work, the beneficiary has presented his work at international conferences, a forum which can be considered to be akin to publication because such presentations bring the beneficiary's work to the attention of other researchers in the same field.

The petitioner has established the beneficiary's publication record, although the relatively low number of independent citations does not suggest that the international research community regards the beneficiary's work as outstanding.

The director denied the petition, stating that the beneficiary was not the sole author of his published work; that the letters from his colleagues amount to little more than "reference letters"; and that nothing in the record establishes that the beneficiary's memberships require outstanding achievement in the academic field.

On appeal, counsel maintains that the beneficiary "is a world-renowned expert in the field of plant pathology." Such an assertion should be readily verifiable through abundant and unambiguous evidence. While the evidence submitted with the petition establishes that the beneficiary has been active in his field, the evidence stops considerably short of establishing worldwide renown as claimed.

Counsel credits the beneficiary with "several important discoveries in agricultural science research," but the burden is on the petitioner to establish the importance of these discoveries. Listing them in the petition, and again on appeal, does not demonstrate that the international community views those discoveries as being outstanding in comparison to the many other new developments in the field during the same period.

The petitioner submits evidence to show that the beneficiary was the first author on many of his published articles, and that the author who is named first on such articles is generally the one who made the greatest contribution to the article. Evidence submitted on appeal also demonstrates that almost all journal articles are collaborative efforts. The evidence demonstrates that the director

was incorrect in concluding that the beneficiary's published work is somehow diminished by the involvement of collaborators.

Counsel asserts that "[a]s a result of his outstanding achievements, [the beneficiary] has been selected for membership in three important professional steering committees." Two of these committees are APS committees, which (according to APS' own documents) seat volunteer members based on ensuring "balance" among committee members. For one of these APS committees, the beneficiary was nominated by one of his former professors. The third committee is "the North American STAR Group, which manages and makes recommendations for the use of strobilurin fungicides." The record contains nothing from the STAR Group itself. Nothing in the record indicates that the beneficiary was on this committee when the petition was filed in November 1998, and the lack of any mention of the committee in the initial filing suggests that he was not. In Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. New qualifications attained in 1999 or 2000 cannot retroactively demonstrate that the beneficiary was already eligible as of November 1998.

Counsel asserts on appeal that the beneficiary satisfies an additional regulatory criterion as a judge of the work of others. The evidence supporting this claim consists of two letters, dated 1999 and 2000, inviting the beneficiary to review research proposals. Matter of Katigbak, *supra*, applies here as well.

Nothing submitted on appeal offers any new support for the assertion that the beneficiary was internationally recognized as an outstanding researcher as of November 1998, when the petition was filed. Therefore, the petitioner has not established that the beneficiary is eligible 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.