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U.S. Department of Justice

Immigration and Naturalization Service

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

[Redacted]

File: [Redacted]

Office: Vermont Service Center Date:

JUN 8 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:

[Redacted]

Public Copy

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, Acting 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 university. It seeks to classify the beneficiary as an outstanding professor 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 a tenure-track position in the United States as an assistant professor. 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 director imposed too high a standard.

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)(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.

Witnesses refer to various awards, but the initial submission contained no actual evidence to confirm the beneficiary's receipt or to establish their significance. Mention of such awards on the beneficiary's resume amounts to a claim rather than evidence.

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

Counsel claims that the beneficiary is a member of "a number of associations which require outstanding achievement." The beneficiary's resume lists memberships in the American Society of Mechanical Engineers, the Materials Research Society, and the American Association for the Advancement of Science. As noted above, the beneficiary's resume is a claim rather than evidence of membership, and there is nothing in the record from any of these associations to establish their membership criteria.

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.

Counsel states "[a] number of authors in the field have published articles based on [the beneficiary's] work." The petitioner submits evidence that other scientists have cited the beneficiary's research in their publications. Citation of the beneficiary's work, however, does not establish that the articles containing the citations are "about" the beneficiary or his work. These citations are better understood as a gauge of the field's reaction to the beneficiary's own writings, which are addressed in a separate criterion further below.

Counsel notes that "the work of [the beneficiary] is specifically mentioned" in an article, "Mechanisms of Crack Nucleation in Ice," by [REDACTED]. This mention is essentially a citation: "[the beneficiary] and Gupta (1994a) have relaxed that requirement and have considered a wide range of boundary angles." This brief mention does not make the article "about" the petitioner any more than it is about [REDACTED] or any of the many other

scientists identified in this manner. The article does not focus on specific findings by the beneficiary; rather, the article describes the author's own efforts which, like virtually all scientific research, built in part upon the earlier efforts of many other scientists.

Furthermore, there is no evidence that this article has been published. An unpublished manuscript is not published material. Finally, [REDACTED] was one of the beneficiary's collaborators at [REDACTED] indeed, one of the articles cited in this article was a collaborative effort between the two and another collaborator. Citation by one's own collaborators is not indicative of international recognition as an outstanding researcher.

Counsel cites a letter from [REDACTED] regarding an article by [REDACTED] which, according to counsel, "makes significant use of the work of [the beneficiary] throughout." This letter, dated November 24, 1997, refers to an article "which will appear shortly in the *International Journal of Fatigue*." The petitioner has subsequently submitted a published version of this article. [REDACTED] does not indicate that the beneficiary's work is the primary focus of the article, and the article itself, while repeatedly mentioning the beneficiary's work, does not focus on it. Rather, [REDACTED] discusses the focus of his own research, and observes that the beneficiary's "work provided the vision which filled the gap" pertaining to certain practical and theoretical problems. [REDACTED] adds that the beneficiary's "work has been beneficial to our task of modeling." The article itself states "[t]he motivation for this work comes in part from the recent publication of a number of articles by [the beneficiary] and Gupta."

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.

The petitioner submits a letter from the publishing firm of [REDACTED], which states in part:

We need your help in reviewing the preliminary plans for the Fifth Edition of *Deformation and Fracture Mechanics of Engineering Materials* by [REDACTED]. The author has provided a brief description of the changes he intends to make in the next edition of his text. This two-page description is enclosed along with a reviewer profile form. . . .

Please answer the following questions:

How often have you taught the mechanics of materials/properties of materials course and what texts have you used?

When you taught this course using the [REDACTED] text, did it meet your and your students needs? If not, why not?

Do you think the changes the author is planning for the next edition will improve the usefulness of this text? . . . Does the author need to give attention to chapters other than those noted? Any planned changes you would advise against?

The actions requested of the beneficiary appear to be more akin to a survey than to judging the work of others. The above questions indicate that the publisher is not familiar with the beneficiary's work. The publisher asks how often the beneficiary has taught particular courses, when in fact at the time of this letter (November 23, 1998) the petitioner was only two months into his first teaching position. The evidence suggests a random survey of professors at recognized universities, rather than the publisher's having singled out the beneficiary on the basis of the beneficiary's reputation.

In May 1998, [REDACTED] editor-in-chief of the [REDACTED] requested the beneficiary's assistance in evaluating a manuscript submitted for publication in that journal. Individual instances of peer review in this manner appear to be routine in the scientific community; the sheer volume of articles which require such review would imply a large number of reviewers. The record does not show that the beneficiary has performed an unusually large number of such reviews, or is a member of a board which regularly performs such reviews, which would indicate that the beneficiary's opinion is routinely and specifically sought by the scientific community.

One of the petitioner's former professors, [REDACTED] states "[v]ery often I receive manuscripts to review . . . I have without fail forwarded them to [the beneficiary]." This indicates that many of the reviews performed by the beneficiary were, in fact, addressed to [REDACTED]. That [REDACTED] forwards those requests to the beneficiary is a strong indication of the professor's faith in the beneficiary's abilities, but it is no indication of wider recognition. If an invited reviewer can pass the task on to anyone he or she chooses, then the decision of selecting the reviewer is removed from the editor's hands.

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."

Four letters discuss the beneficiary's work and its significance. Professor [REDACTED] who served on the beneficiary's doctoral thesis committee at [REDACTED] of Engineering, describes the beneficiary's doctoral research there and his postdoctoral work at Brown University:

[The beneficiary] performed outstanding research on the mechanics of ice and other brittle materials. . . . The research done by [the beneficiary] on ice mechanics and fracture should help both the military and the oil exploration efforts in the Arctic, because it can help explain the breakup of ice sheets and the contact interactions between ice structures. . . .

In his work at [REDACTED] [the beneficiary] applied his considerable talent in mechanics and mechanical behavior of materials to make advances in the understanding of defects and failure mechanisms in silicon and other important materials for electronic components. . . . He has also developed some new techniques to simulate the atomistic and nanomechanical behavior of materials. . . . [The beneficiary's] initial efforts on that subject look very promising and are becoming internationally-recognized.

Professor [REDACTED] states:

The widespread use of plastic pipe for gas distribution dictates the need for a thorough understanding of the mechanical behavior of polymeric solids. . . .

Starting in 1997, [the beneficiary] has provided valuable assistance to me in this program. He began with research dealing with the stress relaxation, following an applied deformation, in monatomic and diatomic liquids. . . .

[The beneficiary] demonstrated exceptional ability in this work and produced valuable results. . . .

These results did, indeed, provide extremely valuable insights into the process of stress relaxation in polymer melts. . . . Further simulations were made by [the beneficiary] to exhibit the close relation between stress relaxation in small molecular liquids and in polymer melts. I feel these results represent a major advance in the field.

Professor [REDACTED] chair of the Department of Mechanical Engineering, Aeronautical Engineering and Mechanics at the

petitioning institution, states that the beneficiary's doctoral research "resulted in a nearly unparalleled dozen publications in internationally renowned, refereed journals. This is an amazing number of publications for an individual, who at the time had not even received his [REDACTED] [REDACTED] asserts that the beneficiary's "work has been cited with approval by many prominent scientists in the field," and "has been deemed outstanding by his scientific peers." As an established expert in his field, Prof. Tichy certainly has standing to attest to the scientific merit of the beneficiary's work; but he does not identify examples of the "prominent scientists" who have cited the beneficiary's work, nor explain how exactly the beneficiary's work "has been deemed outstanding."

The fourth letter is from Professor [REDACTED] now of the University of California at Los Angeles, who had previously overseen the beneficiary's doctoral work at Dartmouth University. [REDACTED] who was a credited co-author of much of the beneficiary's published work, affirms the above statements regarding the significance of the beneficiary's work with crack formation in ceramics and ice.

We note that all of the above witnesses have worked closely with the beneficiary. Clearly, they are impressed with the beneficiary's accomplishments, but they have not shown that the international scientific community shares their assessment.

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

Counsel claims that the beneficiary has written 26 articles that have been published or presented at conferences. It is not clear how many of the published articles appeared in journals with international circulation. Several of the beneficiary's early articles were published in the Romanian language, which would suggest that their circulation was limited to Romania.

The petitioner submits copies of citation indices from 1995 through 1997. These indices list a total of 19 citations of the beneficiary's published work. All but five of these citations, however, are self-citations by the beneficiary. While citation of one's own prior work is common and accepted practice in academia, it is certainly no indication of international recognition.

The director instructed the petitioner to submit further information to address several of the concerns raised above. In response, counsel argues that the petitioner satisfies five of the criteria. Counsel asserts that the beneficiary "is a member of Sigma Xi, the Scientific Research Society, which is an association which requires outstanding achievement." Counsel does not mention the three memberships claimed with the initial petition.

The petitioner submits a letter from [REDACTED] membership coordinator of [REDACTED] who states that the beneficiary was elected to membership "in 1999 . . . in recognition of his demonstrated research ability." [REDACTED] defines "demonstrated research ability" as "primary authorship of two papers . . . time factors, career path, quality of research and similar factors." Nothing in her letter indicates that any of these qualifications represent outstanding achievements rather than simple productivity and professional competence. Ms. Massenburg refers to an attached brochure, which is not in the record.

[REDACTED] does not specify when in 1999 the beneficiary was elected to membership in [REDACTED]. Considering that the petition was filed on Monday, January 4, 1999, which was the first business day of the year (Friday the 1st being a holiday), it seems highly unlikely that the beneficiary was a [REDACTED] member when the petition was filed. The beneficiary was definitely not a member as of December 23, 1998, the date of the letter in which counsel asserts that the beneficiary "has been admitted to membership in a number of associations which require outstanding achievement." See [REDACTED] 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.

Counsel asserts that the beneficiary's "work has been the subject of a review article . . . by [REDACTED]. Initially, counsel claimed only that this review article mentioned the beneficiary. There is no indication that the beneficiary's work is the central focus of this apparently unpublished article, and it remains that Dr. Frost collaborated with the beneficiary on the cited research.

Counsel asserts "[w]e have submitted proof that [the beneficiary] . . . has reviewed books for the [REDACTED] publishing house." In fact, as we have already discussed, the record shows only that the beneficiary was asked to comment on a two-page summary of suggested changes to one existing textbook. Whether intentional or otherwise, counsel's distortions of the evidence raise troubling questions regarding the overall reliability and accuracy of counsel's claims and assertions. We must decide this matter based on the evidence of record, rather than on counsel's interpretation of that evidence.

Regarding the initial witnesses, counsel states:

[Y]ou were concerned with the fact that "the majority of these letters appear to have been offered by individuals who have either worked or studied with the beneficiary." In fact, this is not the case. We have submitted letters of reference from Professors [REDACTED] and [REDACTED] and from [REDACTED]. Only 2 [REDACTED] of these 7 individuals have worked with [the beneficiary].

Counsel's assertion is misleading. [REDACTED] letter was written not to the Service, but directly to the beneficiary, over a year before the petition was filed, and has nothing to do with the claim of eligibility for this visa classification. Dr. Lawson acknowledges that the beneficiary's "work has been beneficial" but he does not assert that the beneficiary is internationally recognized as outstanding. His letter represents, essentially, a courtesy letter.

Professor [REDACTED] worked on the beneficiary's doctoral thesis committee. [REDACTED] is the chair of the department where the beneficiary now works. Their direct connection with the beneficiary is obvious and beyond serious dispute.

Regarding the letters from [REDACTED] and Professor [REDACTED] counsel asserts that both of these letters were written in May 1999. Given that the director's notice was issued on April 22, 1999, the director can hardly be faulted for failing to consider those letters in that notice.

[REDACTED] was on the faculty of Brown University while the beneficiary was a postdoctoral researcher there, and therefore his letter, while highly complimentary, does nothing to establish first-hand that the beneficiary's work is highly regarded outside of the universities where he has worked.

Counsel cites a letter from [REDACTED] of General Motors Corporation, but careful examination of the record indicates that this letter is missing. Counsel quotes [REDACTED] as saying "I have collaborated with [the beneficiary] at [the petitioning institution] over the past year," thus directly contradicting counsel's claim that [REDACTED] has not worked with the beneficiary. It remains that the only people who have been shown to hold the beneficiary's work in especially high regard are the beneficiary's collaborators and officials of institutions where the beneficiary has worked or studied. While their opinions are without a doubt sincere and informed, their statements do not amount to an international reputation.

The director denied the petition, stating that the petitioner has failed to establish that the beneficiary has achieved international recognition as an outstanding researcher or professor. On appeal, counsel argues that the director "imposes a standard far higher than the outstanding professor or researcher standard envisioned" in the statute.

Counsel again argues that the beneficiary's [REDACTED] membership satisfies the membership criterion, even though the beneficiary was not a [REDACTED] member when the petition was filed, and no evidence has been submitted to show that outstanding achievement (rather than productivity) is a requirement for membership.

Counsel also contends that the beneficiary's very employment by the petitioner amounts to such a membership, because the petitioner is a prestigious institution and hundreds of applicants compete for faculty positions there. We reject this characterization of employment as a membership in an association, as well as the implication that aliens can automatically fulfill this criterion based on the reputation of the petitioner.

Regarding publications about the beneficiary's work, [REDACTED] late-1997 journal article heavily cites the beneficiary's work, but the beneficiary's efforts are not the sole or principal focus of the article.

Counsel states that the director "apparently admits that [the beneficiary] has met the criteria of being a judge of the work of others in his field." The director, in the decision, observed that "the beneficiary has been asked to referee papers submitted for publication," but stated no conclusion. The record does not show that the beneficiary has acted as a judge to an extent which demonstrates international recognition as an outstanding researcher or professor.

It is important to consider the content and context of evidence, rather than simply whether it can be pigeonholed into one of the six criteria. For instance, if a given alien's research were unequivocally discredited by new experiments and investigation, and the scientific press issued articles describing the event, such articles would, technically, be about the alien and the alien's work in the field. From their content, however, it would be obvious that the alien is not widely regarded as outstanding.

Similarly, in this case, we must consider not only whether the beneficiary has been in a position to evaluate the work of other researchers, but also whether the beneficiary has done so to an extent and in a context compatible with and demonstrative of international recognition as outstanding. Serving on a jury to nominate and select winners of an international prize would serve this function, as would serving as the editor of a major international journal. A teaching assistant, grading papers submitted by undergraduate students, is "judging" the work of the students, but few would seriously suggest that teaching assistants thereby demonstrate that they are recognized as outstanding. In the proceeding at hand, the beneficiary has documented two instances of being directly invited to review one manuscript and one two-page synopsis; and he has reviewed other manuscripts not because the journals' editors selected him, but because his former collaborator referred his own invitations to the beneficiary.

The same logic applies to the beneficiary's original contributions and scholarly publications. The beneficiary has certainly conducted original research; its very publication lends support to its originality. But the inquiry cannot simply stop at the point of establishing original, published research. It is unlikely that

a respected university would grant an advanced degree to any student whose research was not original.

With respect to publication, the Association of American Universities' Committee on Postdoctoral Education, on page 5 of its [REDACTED] March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition was the assertion 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 significant recognition; we must consider the research community's reaction to those articles.

In this proceeding, the petitioner has documented only a half-dozen instances of independent citation (as opposed to self-citation) of the beneficiary's work. We do not ignore that several expert witnesses are impressed by the sheer quantity of the beneficiary's published works, but also we cannot ignore that most of the citations of these articles are by the beneficiary himself.

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.