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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



PUBLIC COPY

File: EAC 99 225 51959 Office: Vermont Service Center Date:

06 NOV 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: Self-represented

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-based research institute. 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 fellow. 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. 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.

Service regulations at 8 C.F.R. 204.5(i)(3)(i), cited above, 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.

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 evidence that the beneficiary has reviewed two manuscripts submitted for publication in various journals. Two letters regarding the beneficiary's review of one of these articles are on the petitioner's letterhead and signed by the beneficiary's supervisor, Prof. Gary Zank, indicating that the beneficiary reviewed that article at the invitation of Prof. Zank. Thus, only one invitation to review a manuscript appears to have come from outside of his own research group at the petitioning institution.

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 must 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."

The petitioner submits three witness letters with the initial petition. Prof. Gary P. Zank, who supervises the beneficiary's

work at the petitioning institution, describes the beneficiary's work:

[The beneficiary] has been involved in both experimental and theoretical space and atmospheric plasma physics. He spent several years running a ground-based programme which accumulated high latitude data in Antarctica. He has been involved in the measurements of broadband radio emissions. . . .

Besides this work, [the beneficiary] has been pursuing an important and comprehensive study of shock wave propagation and associated particle energization in the solar wind. He has shown using computer simulations how shock waves propagate throughout the solar system and how they can eventually reach the interstellar medium. [The beneficiary's] work on the interaction of shock waves with interstellar neutral atoms and cosmic rays has clarified a number of hitherto unexplained phenomena observed by the Voyager spacecraft.

Prof. Zank states that the beneficiary's work is "of great interest to the research being conducted by NASA and NSF," although we note that the record contains no documentation from officials at NASA or the NSF to establish that either of those bodies views the beneficiary's work as being especially significant.

John D. Richardson, principal research scientist at the Massachusetts Institute of Technology Center for Space Research, states that he collaborated with the beneficiary using "a model of solar wind propagation to explain observations showing different arrival times for solar wind shocks and energetic particles."

Professor Arthur Hughes of the University of Natal, where the beneficiary obtained his doctorate, states that the beneficiary "has accurately modeled whistlers recorded on the ISIS 2 satellite and shown how their dispersion varies with latitude due to changing ionospheric and magnetospheric parameters. He also demonstrated a new and important fact that whistler induced electron precipitation may trigger lightning."

All three of the letters submitted with the petition are from individuals who have taught or collaborated with the beneficiary, and thus they do not establish the extent to which the greater international scientific community has acknowledged and embraced the beneficiary's work.

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

The petitioner submits partial copies of four articles by the beneficiary, and documentation of four citations of the beneficiary's work. Of these four citations, two are by

researchers at the University of Durban, where the beneficiary himself studied; one of these two citations is in fact a self-citation by one of the beneficiary's collaborators.

The director instructed the petitioner to submit further evidence to establish that the beneficiary is internationally recognized as outstanding in his field. The director specifically requested "letters and/or affidavits from independent recognized experts in the beneficiary's field of endeavor."

In response, the petitioner indicates that, in the months following the petition's filing, there have appeared several more papers written by the beneficiary, as well as by others citing the beneficiary's work. This evidence cannot retroactively establish eligibility for a filing date which occurred before such evidence existed. 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.

The petitioner also submits new letters from witnesses identified by the petitioner as independent. Professor Martin A. Lee of the University of New Hampshire states that he does not personally know the beneficiary but he knows "Professor Gary P. Zank very well." Prof. Lee states that the petitioner's "recent work" represents "an important step in our understanding of particle acceleration at interplanetary shocks, the solar wind termination shock and even at supernova remnant shocks." Prof. Lee also discusses "two recent papers" by the beneficiary, which may refer to papers not yet published as of the filing date (judging from Prof. Lee's description of the articles, and the titles listed on the beneficiary's updated *curriculum vitae*). Prof. Lee states that the beneficiary's "model of particle acceleration at coronal mass ejection (CME) driven shock waves . . . should assist greatly in Space Weather predictions." While Prof. Lee discusses what "should" arise from the beneficiary's work, he does not clarify the extent to which the beneficiary has already affected research in his field.

Dr. Miriam A. Forman, an adjunct professor at the State University of New York at Stony Brook and a former deputy executive secretary of the American Physical Society, states:

I know [the beneficiary's] work from reading his papers in first-quality scientific journals and reviews, from addresses he has given at important national and international scientific meetings and from talking with him personally when I visited the [petitioning university] for a few days last year.

Dr. Forman states that the beneficiary "is one of the maybe 10 scientists best in the world" with regard to studying shock waves from solar and interstellar radiation sources.

The third witness is Dr. G.M. Webb of the University of Arizona. Dr. Webb has collaborated with the beneficiary and Prof. Zank on several published papers, which demonstrates that Dr. Webb is not truly an independent witness, and Dr. Webb's familiarity with the beneficiary's work is obviously not the result of any international reputation that the beneficiary has earned. Dr. Webb states that the beneficiary "is a very competent, world class space physicist, who has worked on wave propagation problems in plasma physics, and cosmic ray acceleration problems."

There is no direct evidence that the high opinions of the beneficiary's work expressed in the above letters are shared internationally, outside of countries where the beneficiary has personally worked or studied. The beneficiary's reputation does not become "international" merely because he studied in two countries, any more than it would be "national" because he studied at a single university located in one nation.

The director denied the petition, stating that the beneficiary's published work and witness letters "do not necessarily establish that he has been recognized internationally in his field." The director further stated that "the record does not separate the beneficiary from his peers and elevate him to the level of a researcher who has been recognized internationally as an outstanding researcher."

The director noted that the beneficiary's "offered salary [\$630 per week] appears to be relatively low," and that citations of the beneficiary's work are not dispositive because "scientists are legally, if not morally obligated to reference research conducted and published by other scientists."

On appeal, Stuart Pittel, director of the petitioning institute, states:

Our reason for applying to classify [the beneficiary] in the outstanding researcher category is that we wish to promote him to a Research Scientist position, which is of indefinite duration. The position carries a higher remuneration with a base salary of \$37,500 per year.

Mr. Pittel does not explain why this promotion is contingent on the beneficiary's classification as an outstanding researcher. In any event, the beneficiary's remuneration does not appear to have been a central factor in the denial of the petition. Rather, the director observed the beneficiary's low remuneration in the context of the broader conclusion that the beneficiary does not appear to have earned wide recognition as an outstanding researcher.

Mr. Pittel asserts that the beneficiary "has given numerous very well received presentations at international and national conferences." As an example, Mr. Pittel cites the beneficiary's presentation at the Fall 2000 meeting of the American Geophysical

Union. The initial submission contained no direct evidence regarding the beneficiary's presentations, and therefore the director did not err in failing to discuss those presentations. Furthermore, a meeting in the fall of 2000 would have taken place over a year after the petition's filing date.

Mr. Pittel also states "scientists are NOT legally obligated to cite the work of others. Numerous articles have cited the work of [the beneficiary] (and certainly not just one as implied" in the director's decision. Whether a legal obligation exists, certainly it is common practice for researchers to provide citations for any information that they derive from outside sources rather than from the specific experiments that they describe in a given paper. A heavy citation rate can establish that other researchers rely heavily on a given researcher's work, but the existence of a small number of citations is not compelling. In this instance, the petitioner has established only four citations as of the petition's filing date, two of those appearing in the work of others at the University of Natal where the beneficiary had studied. Absent persuasive evidence that only outstanding researchers are cited twice by independent scientists, we do not find the beneficiary's citation record to be indicative of an international reputation as an outstanding researcher.

The record does not directly establish that the beneficiary's work has earned him a significant reputation outside of the universities where he has worked and studied, and those who have collaborated with him and his mentors.

Review of the record reveals other issues which further prevent the approval of this petition. Pursuant to 8 C.F.R. 204.5(i)(3)(ii), the petitioner must establish that the beneficiary had at least three years of qualifying research experience as of the petition's July 21, 1999 filing date. The beneficiary completed his studies in December 1997, receiving his degree in April 1998, and therefore the beneficiary does not have three years of non-student research experience.

The overall finding that the beneficiary's research has not earned him international recognition as an outstanding researcher necessarily entails the corollary that the beneficiary's student work has not been thus recognized. Because the petitioner has not shown that the beneficiary's student work has been internationally recognized as outstanding, the petitioner has not established that the beneficiary had at least three years of qualifying employment experience as of the petition's filing date.

Another issue is the requirement of a permanent job offer, as set forth in 8 C.F.R. 204.5(i)(3)(iii). In a letter accompanying the petition, Norman F. Ness, president of the petitioning entity, states that the beneficiary's "employment . . . is on a full-time permanent basis." On the Form I-140 petition, however, the petitioner had responded to the question "is this a permanent

position" was "no," with a notation that the position is "renewable."

The record contains no job offer letter from the petitioner, as required by the above-cited regulation; a letter from the petitioner to the Service is not a job offer letter. The record contains no first-hand documentation to describe the terms under which the beneficiary was employed as of the filing date, or the terms of any job offer which was already standing as of that same date.

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 assertions that "the appointment is temporary" and "the appointment is viewed as preparatory for a full-time academic and/or research career."

As noted above, Stuart Pittel has stated that the petitioner "wish[es] to promote [the beneficiary] to a Research Scientist position, which is of indefinite duration." There is no evidence that the petitioner had offered such a position to the beneficiary on or before the petition's July 21, 1999 filing date.

Given that a postdoctoral position is inherently temporary, and the petitioner acknowledged (under penalty of perjury) on the Form I-140 petition that the petitioner seeks to employ the beneficiary in a temporary but renewable position as a "postdoctoral research fellow," we cannot conclude that the petitioner had offered the beneficiary a permanent, tenured, or tenure-track position as of the filing date. The petitioner's "wish," stated on appeal, to offer an indefinite position to the beneficiary does not demonstrate that such an offer existed as of the filing date, nor does the general proposition that the petitioner intends to promote the beneficiary in the future.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in the field of physics. The beneficiary also lacks the required experience, and the petitioner has not established that it had offered the beneficiary a permanent position as of the petition's filing date. Therefore, the petition as it stands cannot be approved.

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.