



B3

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: [Redacted] Office: Nebraska Service Center Date: 06 NOV 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:



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 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, Acting 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 drug discovery research 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 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 asserts that the director applied too strict a standard and committed reversible error by denying the petitioner without first requesting additional documentation.

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.

This petition was filed on December 22, 1999 to classify the beneficiary as an outstanding researcher in the field of chemistry. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field of chemistry as of December 22, 1999, and that the beneficiary's work has been recognized internationally within the field of chemistry as outstanding.

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 is a member of the American Association for the Advancement of Science (AAAS) and the American Chemistry Society. Counsel points out that the petitioner's membership in the AAAS was by "special invitation." The record does not include any evidence as to the significance of a "special invitation." Specifically, it is not known how the list of those receiving "special invitations" is determined or by whom. The petitioner has not demonstrated that this certificate is any more than a mass mailing to individuals engaged in scientific research. Moreover, the certificate indicates at the bottom that "this certificate is valid for 60 days upon AAS' receipt of your Membership Acceptance Form." Thus, the certificate is not even evidence that the beneficiary actually joined the AAAS, only that he was "invited" to do so.

Regardless, even if the "special invitation" is significant and the beneficiary actually joined AAAS, the AAAS website, www.aaas.org, indicates that membership is open to all individuals who support the goals and objectives of the association. We do not agree with counsel that a distinguished membership within an organization which does not generally require outstanding achievements of its members is sufficient to meet this criterion. The regulations specify that the association must require outstanding achievements of their members, not simply some members. As AAAS does not require outstanding achievements of its general membership, the beneficiary's membership "by special invitation," cannot meet this criterion.

The website for the American Chemical Society, www.acs.org, indicates that there are five categories of membership. The highest category, full membership, requires either a certain level of education or a significant achievement. As an individual can become a member simply based on attaining a certain level of education or experience, the beneficiary's membership in this organization cannot serve to meet this criterion.

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 director found that the list of articles which cite the beneficiary's work was not evidence which could meet this criterion. Counsel does not challenge this conclusion, and notes that the citations were submitted as evidence that the beneficiary's work has impacted his field.

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 record contains a letter from Dr. James Ellingboe at Eaton Publishing verifying that the beneficiary reviewed an article for *Peptide Research* in 1996. The letter indicates that the beneficiary was asked to review the article "based on his extensive expertise in peptide chemistry and organic synthesis." As stated above, the evidence submitted for each criterion must be indicative of international recognition. Dr. Ellingboe does not indicate how he became aware of the beneficiary's expertise. Furthermore, it is not uncommon for professors to recommend Ph.D. students to review articles for various journals. That the beneficiary reviewed a single article for one journal is simply not evidence of international recognition.

It is acknowledged that the director discussed three letters verifying that an unrelated individual reviewed articles for three journals in China. Counsel concedes that these letters were submitted in error and asserts that he contacted the director to advise him of this error. Counsel also expresses concern with the degree of care in reviewing the petition since the director failed to notice that the letters did not pertain to the beneficiary. While the director focussed on the substantive claims in the letters without realizing the discrepancy in the name, we do not find that the director's failure to catch counsel's error renders the remaining analysis suspect. The director correctly noted that the language in the three letters was identical, a fact that might have been overlooked in a truly cursory review of the evidence. In fact, that these unrelated letters included language very similar to that used by Dr. Ellingboe raises questions regarding whether Dr. Ellingboe's words were his own, or were suggested to him.

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

Dr. Hongmei Huang, a research scientist working for the petitioner, writes of the beneficiary's current work:

Our goal is to synthesize anti-cancer agents which have selectivity towards tumor cells and in this way decrease side effects and improve the beneficial treatment effects of the drugs. [The beneficiary] has already made great progress in his work as he has already synthesized a number of agents. He has also identified a few agents with very promising initial activities which could herald a great improvement in cancer therapy. . .

. . . . [The beneficiary] has a number of patents pending for some of the new reagents that he has developed. Many of his reagents have been recognized as major breakthroughs and were quickly commercialized. Similarly, his work has been repeatedly cited by others in his field.

Dr. George Barany, a professor at the University of Minnesota, discusses the beneficiary's work at that institution as follows:

Faced with some very sophisticated chemistry that had previously stumped two experienced post-doctoral fellows in my laboratory, [the beneficiary] successfully developed a number of novel, elegant, and reproducible procedures to achieve net reductive amination of families of xanthenyl species which give highly stabilized carbocations and are thus the basis of new anchoring linkages (handles) for solid-phase peptide synthesis. Several of these protocols were verified and tested by chemists at Hoffman-LaRoche and PerSeptive BioSystems, and the latter company has released commercial projects based on our discoveries. Subsequently, [the beneficiary] was able to generalize the xanthenyl chemistry for asparagine, glutamine, and cysteine protection, including side-chain anchoring and systematic studies of racemization as a function of coupling protocol. This body of work provides exciting and important solutions to several long-standing problems with incorporation of these amino acid residues. As with the handles project, [the beneficiary's] amino acid studies attracted the interest of commercial manufacturers.

Dr. Fernando Albericio, a professor at the University of Barcelona, who worked with the beneficiary as a post-doctoral researcher in Dr. Barany's laboratory writes:

[The beneficiary's] research in the field of peptide and oligonucleotide chemistry is of singular importance to modern science. These biomolecules play a key role in many aspects of the biochemical, pharmacological, and neurobiological processes. A significant number of synthetic peptides and oligonucleotides are commercial and pharmaceutical products. Thus, the development of new synthesis methodologies for these biomolecules is crucial for the development of new drugs. One of the central contributions [the beneficiary] has made to peptide and oligonucleotide science is the preparation of new handles for solid-phase peptides. In addition, [the beneficiary] has developed a new reagent for pharmaceutical-scale production of oligonucleotide phosphorothioates. These discoveries have led to two patents in [the beneficiary's] name.

Dr. Gregg B. Fields, currently a professor at Florida Atlantic University, oversaw the beneficiary's dissertation at the University of Minnesota; he provides more detail about the beneficiary's projects while studying for his Ph.D.

Jin-Yan Tang, Vice President of Production at Hybridon Specialty Products, writes of the beneficiary's work at Hybridon:

While here, [the beneficiary] successfully developed a critical technology for the production of oligonucleotide phosphorothioates. Due to [the beneficiary's] significant contributions, the cost of these compounds has been dramatically reduced. [The beneficiary] also successfully developed a polymer-supported sulfurizing reagent, which can be critical for other pharmaceutical applications. In fact, Hybridon has filed two patent applications based on [the beneficiary's] discoveries. [The beneficiary] also developed an important protocol for the optimal synthesis of oligonucleotides. Finally, [the beneficiary] designed and synthesized an important universal linker for the solid-phase synthesis of oligonucleotides.

Youhuai Wang, who supervised the beneficiary's Master Thesis at the Chinese National Academy of Science, asserts that the beneficiary has made "a remarkable series of contributions," but does not specify any.

Dr. Gerald S. Jones, Jr., Vice President of Chemistry at RSP Amino Acid Analogues, Inc., writes:

[The beneficiary's] successes at RSP included the syntheses of several amino acid analogues that were previously unavailable commercially, and which have received considerable interest from chemists in drug discovery programs.

As noted by the director, the letters are all from collaborators, advisors, and supervisors of the beneficiary. On appeal, counsel argues the director erred in discounting these letters of reference, noting that the most persuasive letters are from those who know the beneficiary's work best. Counsel further argues that the letters are sincere and that the references have nothing to gain.

We do not discount the evidentiary value of letters from those who have worked with the beneficiary. Those individuals are clearly in the best position to provide details regarding the beneficiary's work. Nor do we presume the letters are not sincere. Such evidence, however, must be supported with evidence from disinterested experts. We do not require letters from individuals with no knowledge of the beneficiary's work; such letters would not demonstrate international recognition. In order to demonstrate international recognition, however, the record must contain evidence that experts beyond the beneficiary's circle of colleagues are aware of his work. Otherwise, the concept of international recognition is meaningless.

The director also found that the beneficiary's pending patents were not necessarily evidence of significant contributions as original inventions are inherent to research. Counsel challenges this conclusion as unfounded. Counsel also asserts that Matter of New York State Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 1998), recognized the importance of patents in the context of national interest waivers of the labor certification requirement. Counsel's reliance on Matter of New York State Dept. of Transportation is misplaced. In that case, the AAO actually concluded that a patent was insufficient to demonstrate that waiving

the labor certification requirement for the holder was in the national interest. *Id.* at note 7. Regardless, the considerations for waiving the labor certification requirement in the national interest are not relevant to a determination of whether the beneficiary's contributions have resulted in international recognition. We concur that the petitioner's field, like most science, is research-driven, and there would be little point in pursuing projects which did not add to the general pool of knowledge in the field.

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

The beneficiary submitted a list of 15 "selected" published articles and seven title pages of his published articles. 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 international recognition; we must consider the research community's reaction to those articles.

The record contains some evidence that the beneficiary's articles have been cited. Specifically, the record contains the final page of an article published by Peptides International, Inc. with two citations, both articles authored by the beneficiary. The record does not reveal, however, the author of the citing article. Thus, it is not known whether the article represents a self-citation. The petitioner also submitted internet citation lists for four articles authored by the beneficiary. These lists reveal that an article published in the *Journal of Organic Chemistry* in 1996 has been cited 11 times, six times by independent researchers; an article in the *Journal of Organic Chemistry* in 1997 has been cited five times by independent researchers; a second article in the *Journal of Organic Chemistry* in 1997 was cited four times, once by an independent researcher; and an article published in *Peptide Research* in 1996 was cited twice, once by an independent researcher.

Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers. The number of independent citations simply does not rise to a level that would demonstrate international recognition. Further, as stated by the director, without some of the articles themselves, the context in which the beneficiary's articles were cited is unknown.

Finally, counsel raises a procedural issue on appeal, arguing that the director's denial without first issuing a request for additional documentation constitutes reversible error. Even if we agreed that the director erred, the remedy would be to consider any new documentation on appeal. The director's decision put the petitioner on notice of the director's concerns with the instant petition.

The petitioner, however, does not submit any new documentation on appeal that might have been submitted in response to a request for additional documentation.

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.