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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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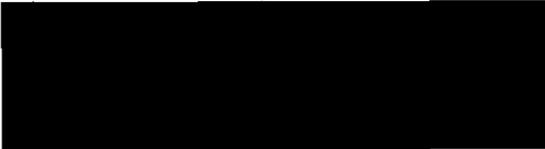
IN RE: Petitioner:

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:



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 preference 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 sustained and the petition will be approved.

The petitioner is a manufacturer of hearing appliances. It seeks classification of 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 senior software engineer. The director determined that the petitioner had not established that the beneficiary has attained the outstanding level of achievement required for the category of outstanding professor or 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.

The sole issue to be considered in this proceeding is whether the beneficiary's scientific accomplishments are internationally recognized as those of an outstanding researcher in his 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 petitioner must meet at least two of six stated criteria. The petitioner claims to have met the following criteria:

Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field.

The beneficiary received a 1,000 franc award from the Swiss Federal Institute of Technology. This appears to be a student prize, as the petitioner was a doctoral student at the awarding institution at the time of the award, and there is no evidence that the award is recognized internationally as a major prize.

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."

In a similar vein, the evidence that the beneficiary holds several patents for his inventions establishes that he is a prolific inventor, but the very existence of the patents does not show that the beneficiary's inventions are more significant than those of others in his field. To establish the significance of the beneficiary's work, we turn to experts in his field, whose letters we discuss below.

Melissa Tobie, the petitioner's human resources representative, asserts that earlier hearing aids simply amplified all ambient sounds without distinguishing between important sounds and background noise, with all these sounds being relayed sometimes so loudly that they caused further ear damage, establishing a "vicious cycle" that exacerbated hearing loss. Ms. Tobie states that the beneficiary's "research uncovered the secrets of how the body processes sound." She continues:

Our body amplifies the quiet sounds and filters out the heavy sounds, but how this happens was a mystery until [the beneficiary] found the root causes and was able to design hearing enhancement devices to suit the listener. . . .

But the tools to deliver this kind of service didn't exist, so [the beneficiary] set about to invent them.

Several witness letters accompany the petition. Jont B. Allen, a technology consultant at AT&T Labs Research, states:

[The beneficiary's] independent and original way of thinking made him look at the problem of hearing aid sound quality from a different point of view. . . . [H]e has shown that restoration of speech understanding is tightly coupled to a loudness model of the hearing impairment and to a quick assessment of the model parameters during the fitting process. . . .

The other two major problems are speech understanding in noise and the annoying problem of [feedback] whistling met in today's amplifying hearing aids. They are addressed by the beam forming microphones arrangement which helps both problems and by the feedback whistling suppression algorithm. . . .

To improve mainly comfort in noisy situations without much improving intelligibility [the beneficiary] started a three years European Community funded project called LISCOM (Listening Comfort) which includes several universities, hospitals and manufacturers of communication products. . . .

[The beneficiary] has distinguished himself internationally as a leading expert in hearing aids.

Professor Harry Levitt of the City University of New York states:

[The beneficiary] has been a leader in developing and improving modern hearing aids. The use of digital technology in modern hearing aids allows for the implementation of fundamentally new approaches to acoustic amplification resulting in hearing instruments with greatly improved capabilities. [The beneficiary] played a prominent role in developing this new technology. As a researcher at a leading Swiss hearing aid company, he introduced digital techniques into the design, development and evaluation of advanced signal-processing hearing aids. This is no mean achievement considering the extremely small size and major power constraints of modern hearing aids. . . .

[The beneficiary's] research has also made important contributions to our understanding of hearing impairment and how to address the problem. A fundamental problem in hearing impairment of sensorineural origin . . . is that loudness grows abnormally rapidly above the threshold of hearing. This effect is known as loudness recruitment. A major consequence of loudness recruitment is that the dynamic range of hearing is reduced substantially; i.e., the threshold of hearing is not only elevated by the available range of hearing, from threshold

to loudness discomfort is substantially less than in normal hearing. Since the vast majority of hearing-aid users have a sensorineural hearing loss, this is a problem of great consequence. [The beneficiary] developed a practical method . . . [which] used digitally controlled amplifier circuits such that, as the intensity of the incoming sound increased, the amplifier gain and frequency response was adjusted so that the growth of loudness approximated that of a normal ear. . . .

[The beneficiary] was among the first to research this problem in-depth and to develop a viable approach that could be implemented in practice. He soon earned international recognition for these contributions and he is now considered to be one of the top researchers in this highly specialized field.

Professor Brian C.J. Moore of the University of Cambridge, president of the Association of Independent Hearing Healthcare Professionals (UK), states that he has followed the beneficiary's work for several years and that the beneficiary "has made substantial contributions to knowledge in several fields." There is no indication that Prof. Moore has directly collaborated with the beneficiary.

Several of the beneficiary's LISCOM collaborators from various European nations state that the beneficiary made significant contributions to that project. Various professionals also attest to the beneficiary's development of the feedback reduction algorithm described above, as well as other elements of digital technology that the beneficiary has introduced into formerly all-analog hearing aids.

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

The beneficiary co-authored an article in High Performance Hearing Solutions in 1997, and he was the sole author of a short piece which appeared in a German-language periodical in 1983. The petitioner refers to these articles as a "representative sample" of the petitioner's published work, but there is no evidence to establish the existence of any other published work. Prof. Moore, identified above, has observed that because the beneficiary has worked primarily in private industry rather than in academia, he has produced relatively few publications.

Ms. Tobie of the petitioning company states that the beneficiary's "research has been cited by other researchers in his field," and that a "representative sample of these documents are appended" to the petition, but we can find no such citations in the record. Ms. Tobie does not specify what documents in the record contain these citations, and an itemized exhibit list does not include any reference to published citations of the beneficiary's work.

The director denied the petition, acknowledging the beneficiary's "noteworthy accomplishments," but concluding:

[T]he evidence of record indicates that the beneficiary has co-invented the listed patents. Therefore, the evidence of record does not establish the beneficiary's original scientific or scholarly research contributions to the academic field. . . .

[The beneficiary] has co-authored an article in the academic field and has not solely authored an article in the academic field. Therefore, the evidence submitted does not satisfy as evidence of the alien's authorship of scholarly books or articles.

The director determined that the beneficiary's achievements do not establish him as outstanding among others with doctorate-level education in his field. The director did not explain why the beneficiary's evidence is diminished simply because the efforts were collaborative. As counsel observes on appeal, most modern scientific research is collaborative by nature. Furthermore, witnesses of record have plainly stated that the beneficiary was a primary motivator in assembling the multi-national LISCOM collaboration, indicating that the beneficiary does not merely participate in collaborative ventures; he conceives and organizes them, which is indicative of a leadership position. That the beneficiary succeeded in organizing such an international effort says something about his reputation in the international research community.

Accompanying the appeal, the petitioner submits new letters and additional evidence, along with copies of previously submitted letters and documents. Dr. Patrick M. Zurek, president of Sensimetrics Corporation and a principal research scientist at the Massachusetts Institute of Technology, affirms that the beneficiary's "work on abnormal masking in impaired ears and signal-processing algorithms to overcome it represents a truly novel approach to signal processing in hearing aids." Dr. Zurek indicates that the beneficiary has focused his efforts on producing patents rather than publications, and that "[t]he fact that [the beneficiary] has co-authors on some of his patents should not diminish his contribution." Dr. Zurek refers to "interactions" with the beneficiary but nothing in the record suggests that the two have actively collaborated.

The petitioner submits two additional scholarly articles, not submitted with the initial petition but clearly published before its filing. The petitioner also submits documentation of the beneficiary's presentations at international conferences, and evidence to satisfy an additional regulatory criterion:

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.

A letter from the Vienna-based Fund to Support Scientific Research thanks the beneficiary for his "evaluation of [an] application for a research grant." The letter notes "effective support for research projects . . . is only possible when outstanding experts are willing to donate their time to the examination and assessments of applications for research funding." A certain degree of peer review appears to be routine in the scientific research community. At the same time, however, we must note that this review request came from an organization in Austria, a nation where the beneficiary does not appear ever to have lived or worked. The fact that an organization in Austria sought the opinions of an "outstanding expert" then based in Switzerland indicates that the petitioner's reputation crossed national boundaries.

The petitioner also submits a certificate from the Marquis Who's Who Publications Board, showing that the beneficiary "is a subject of biographical record in Who's Who in the World." The significance of the beneficiary's listing in a Who's Who directory is not clear from the available evidence, and therefore this particular document is not dispositive in this instance.

Upon careful consideration of the evidence offered with the initial petition, and later on appeal, we conclude that the petitioner has established that the beneficiary enjoys international recognition as a leader in the design of new hearing aid technology. While many of the witnesses are the beneficiary's collaborators, not all of them are; and furthermore, the nature of the LISCOM collaboration is, if anything, a testament to the beneficiary's ability to assemble and hold together a multinational group of researchers working autonomously toward a common goal. Certainly, mere participation in an international research effort does not confer international recognition as an outstanding researcher, but the evidence of record persuades us that the beneficiary's recognition extends beyond mere acknowledgment by his co-workers and professors. The petitioner has overcome the objections set forth in the director's notice of denial, and thereby removed the stated obstacles to the approval of the petition.

The record indicates that the beneficiary meets at least two of the six criteria listed at 8 C.F.R. 204.5(i)(3)(i). Based on the evidence submitted, it is concluded that the petitioner has established that the beneficiary qualifies under section 203(b)(1)(B) of the Act as an outstanding researcher.

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 met that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.