



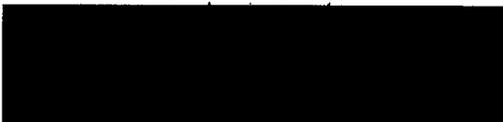
U.S. Department of Justice

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: [Redacted]

Office: Nebraska Service Center

Date: 30 OCT 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:



Public Copy

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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 an environmental testing and analysis 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 senior research scientist at its subsidiary, Environmental Health Laboratories (EHL). 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 argues that the director incorrectly denied the petition after concluding that the beneficiary met two of the necessary criteria.

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:

(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.

This petition was filed on December 15, 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 15, 1999, and that the beneficiary's work has been recognized internationally within the field of chemistry as outstanding. The beneficiary has worked for the petitioner since June 15, 1998. Thus, the petitioner must demonstrate that the beneficiary has an additional 18 months research experience. The beneficiary worked as a "lecturer" at Northeast Normal University from 1988 to 1992 after obtaining his Master's Degree and before pursuing his Ph.D. The record reflects that he conducted research during this period. As such, it appears that the beneficiary meets the three-year requirement.

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 director articulated this principal when he stated that the list of criteria "is a representative selection only and cannot replace the statutory requirement of evidence establishing that the researcher is recognized internationally as outstanding in the academic field specified in the petition." On appeal, counsel quotes this language as evidence that the director erred by demanding evidence above and beyond that required by the regulations. While the director's language is somewhat confusing, we find that the director was simply noting that the evidence for each criteria must be evaluated as to whether it demonstrates 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

The petitioner submits evidence that the beneficiary was awarded the Third Outstanding Research Achievement Award from Northeast Normal University in Changchun, China in 1987 while studying for his Master's Degree; Science Research Achievement Appraisal Certificate from the Education Committee of Jilin Province in 1990; and the Dissertation Research Award from Southern Illinois University in 1996. The record contains no evidence that these are major prizes or awards. Rather, they appear to be local awards limited to individuals attending a particular school or performing research in a particular province.

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

The director conceded that the beneficiary belonged to several "professional" organizations. Counsel argues on appeal that the director thus acknowledged that the beneficiary met this criterion. The director did not, however, concede that the professional organizations required outstanding achievements of their members. Neither counsel nor the petitioner have claimed that the beneficiary belongs to any organizations which require outstanding achievements of their members and the record contains no evidence that the professional organizations to which the beneficiary belongs have such requirements. Thus, the beneficiary does not 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

Counsel asserts that citations of the beneficiary's articles meet this criterion. While independent researchers have cited the beneficiary's articles, they are principally reporting their own findings, not the beneficiary's work. Thus, the beneficiary does not meet this 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

The beneficiary evaluated three manuscripts submitted to the Chinese journal *Applied Chemistry* and three manuscripts submitted to the Chinese journal *Analytical Chemistry*. The evidence in the record indicates that the editorial board of the journals requested the beneficiary personally to review the articles. The record does not contain any evidence, however, regarding the criteria used to select individuals to review articles. The beneficiary was a lecturer at Northeast Normal University at the time. The record does not indicate whether reviewing articles is a common duty of lecturers or whether the beneficiary was specifically sought for his expertise.

On appeal, counsel submits evidence that the beneficiary was requested to evaluate an article for *Water Research* in June 2000. This request was made after the petition was filed in 1999, and cannot constitute evidence of the beneficiary's reputation at the time of filing.

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

Dr. Earl Hansen, General Manager at EHL indicates that the beneficiary was hired to work in the R&D group and his current project involves, "developing a proprietary technology to perform automated sample preparation and online analysis of aqueous samples." Dr. Hansen asserts that this research "could greatly revolutionize the environmental testing industry" and "is a key step in the development of *in situ* monitoring of drinking water and source water." Dr. Hansen does not indicate that the beneficiary has already made any major contributions to this project.

Dr. John A. Koropchak, the beneficiary's graduate advisor at Southern Illinois University (SIU) writes:

[The beneficiary's] research here focused on various aspects of particle beam liquid chromatography-mass spectrometry (LC-MS). The first area that he worked on related to fundamental characterization of aerosol phase phenomena that influence this method. The specifics of the problems with particle beam methods are difficult and intriguing, as satisfying explanations for unique artifacts of this experiment have been somewhat elusive, and the particles involved are in the nanometer size regime. [The beneficiary] conducted research using scanning mobility particle spectrometry, electron microscopy, and analytical measurements for characterization of transformations in particle size distributions and particle morphology that occur with this technique, and we have obtained extremely enlightening results to this point. These results were summarized in an extensive publication in the journal *Instrumentation Science and Technology*. [The beneficiary] did a fine job of developing this project. In addition, he evaluated an approach to alleviating the particle beam problems using ultrasonic coagulation.

In addition, [the beneficiary] developed a rationale design of a new aerosol generation system for particle beam LC-MS based on the fundamental understanding that we developed, and used a new approach that we call droplet electrospray nebulization (DESN). The idea was to develop a method to generate droplets of uniform and basically huge size, to minimize momentum losses with in [sic] the particle beam, and then a desolvation and transport system that can efficiently transport those droplets/particles to the momentum separator. Included in the design process was consideration of the mechanisms and equations for aerosol transport. He also largely designed and constructed his apparatus from scratch on his own. The results of this work were astounding, and show significantly improved sensitivity and linearity over the conventional methods. Perhaps most importantly,

the idea was entirely [the beneficiary's], that he conceived via consideration of other electropray work that we are doing. In fact, my direction to him on this part of his work hasn't been much more than an occasional mention of a potentially useful reference. This work is also summarized in a publication in press to Instrumentation Science and Technology. As a bonus to the development of DESN, he tested an effective charge neutralization device to counter-act the electrostatic loss mechanism which partly affects the process, and further boost sensitivity.

Dr. Koropchak asserts that the University awarded the beneficiary a Dissertation Research Award in 1996 for the above research, which is in the record. Professor James Tyrell, who served on the beneficiary's graduate committee, echoes the above information regarding the beneficiary's research at SIU. Dr. [REDACTED], a colleague of the beneficiary's at SIU provides general praise of the beneficiary's abilities and briefly reiterates his contributions discussed above. Dr. Marjan Veber, indicates that he met the beneficiary at SIU during a 1994 "visit," and reiterates the above information. Dr. Veber's resume indicates that he spent a one-month sabbatical at SIU in 1994 and again in 1997. Thus, it appears that Dr. [REDACTED] is another colleague of the beneficiary's and his familiarity with the beneficiary is not evidence of international recognition. Finally, Dr. Yuefeng Xie, Co-Director of the U.S. EPA Small Public Water Systems Technology Assistance Center at Penn State, Harrisburg also discusses the above contributions. Dr. Xie met the beneficiary at a conference in 1998 and they subsequently co-authored an article together. While it is impressive that Dr. Xie admired the beneficiary's work enough to work with him on an article, it is not evidence of international recognition.

Dr. Zhongmin Su, Assistant President of Northeast Normal University, writes:

[The beneficiary's] most important contributions to the trace analysis included developing an analytical liquid membrane sample preparation technology which was granted by the National Natural Science Fund of China in 1987-1990 and appraised by the Education Committee of Jilin Province of China in 1990. As one of the pioneers, [the beneficiary] studied and developed a number of new liquid membrane emulsions for the extraction and preconcentration of metal ions and rare earth elements from aqueous solutions. His liquid membrane sample preparation methods were simple and resulted in high concentration enrichment. Coupled with atomic and ultraviolet/visible spectrometries, his liquid membrane extraction technology provided the ultrasensitive determination of metal ions and rare earth elements. His work has been internationally recognized, including the research collaboration program with Professor J.C. Van Loon of the University of Toronto supported by the World Bank through the International Advisory Panel, several significant articles published in western and Chinese journals, and several significant presentations at international conferences.

[The beneficiary's] scientific contributions also included developing a new multiwavelength linear combination spectrometry applied to the determination of

group rare earth elements in mixed rare earth solutions. The problems with conventional visible spectroscopy for analysis of rare earths are difficult and spectrum interference [sic]. The new multiwavelength linear combination spectrometry successfully reduced the blank error and spectrum interference by choosing effective linear combination wavelengths and formats. [The beneficiary] also developed a new linear titration graphics for determination of acids and bases. This invention significantly simplified the operations and calculations, and improved the method accuracy for the titration of acids and bases.

On appeal, the petitioner submits two more letters from collaborators which add little information to the record. The petitioner, however, also submits two letters from disinterested researchers in the field. Dr. Jack Wang, Director of Water Quality Monitoring and Research at Louisville Water Company, indicates that he met the beneficiary at an American Water Works Association conference in 1998 where the beneficiary was presenting his research. Dr. Wang states:

[The beneficiary] successfully developed a Twin-PAL technique that was effectively interfaced with large-volume injection GC/MS technology for water analysis. This new technology remarkably broke through traditional technological limitations of water analysis and used robotic technology leading to online analysis of organic contaminants such as pesticides and herbicides in a variety of water matrices.

Dr. Wang also reviews the beneficiary's earlier work, noting that the beneficiary was involved with a Toronto specialist in a project funded by the National Natural Science Fund of China and the World Bank. Dr. Li-Ming "Lee" He, a research scientist at San Diego State University provides a similar letter. Dr. He, however, does not explain how he became familiar with the beneficiary's work. While he asserts that the beneficiary's "Twin-PAL large volume injection gas chromatography-mass spectrometry is currently the only technique that can be applied to online *in situ* analysis of semi-volatile organic chemicals in water," he offers no support for this conclusion. The record does not indicate the beneficiary's technique has been universally adopted as suggested by Dr. He. In fact, even Dr. Hansen at EHL suggests the success of the beneficiary's current research would merely be a "key step" towards *in situ* monitoring.

The record still remains absent evidence of the beneficiary's international recognition. Publishing work in concert with a researcher in another country is not necessarily evidence of recognition among the international community. It is significant that while the article published as a result of that collaboration has been cited, it has not been cited extensively. Similarly, presenting research at international conferences is not uncommon for researchers. The petitioner has not submitted evidence that the beneficiary's techniques are currently being applied worldwide or are in the process of being implemented. The only letter from a government agency is the one from Dr. Wang, who does not indicate that the beneficiary's techniques have been implemented in Louisville.

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

The record reflects that the beneficiary has published several scientific articles. As the director acknowledged this fact, counsel argues on appeal that the director conceded that the beneficiary met this criterion. The director, however, also noted that such work is expected of a researcher. As stated above, each criterion must be evaluated in terms of whether the evidence reflects international recognition.

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 evidence that the beneficiary's 1993 article in *The Journal of Analytical Chemistry* was cited eight times by independent researchers. The beneficiary's 1994 article in *Analytical Letters* was cited six times by independent researchers. Three independent researchers cited the beneficiary's 1992 article in *Talanta* (the beneficiary's World Bank funded collaboration with the Toronto specialist). The citation of the beneficiary's articles is not extensive and cannot be considered evidence of international recognition. The record contains no evidence that the beneficiary's work at SIU or EHL has been cited.

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.

Beyond the decision of the director, the petitioner has not provided the required evidence of a permanent job offer. 8 C.F.R. 204.5(i)(iii) provides:

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.

The letter from the petitioner, a private employer, merely states, "the quality of [the beneficiary's] work has been excellent as is the outlook for his continued employment with our company." This statement does not constitute a permanent job offer.

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.