



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

[Redacted]

File: [Redacted] Office: Nebraska Service Center

Date: **JAN 03 2002**

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]

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INSTRUCTIONS:

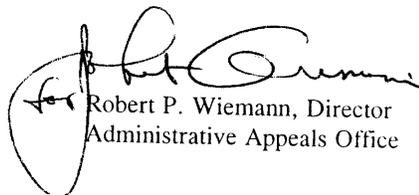
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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, 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 university. 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).¹ The petitioner seeks to employ the beneficiary permanently in the United States as a researcher. 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 challenges the director's conclusions and submits new 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

¹ While the petition and counsel's initial brief clearly state the petitioner is seeking to classify the beneficiary as an outstanding researcher pursuant to Section 203(b)(1)(B) of the Act, the record includes numerous references to the "national interest" and counsel's initial brief analyzes the petition under the three prongs set forth in Matter of New York State Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 1998). That case and "national interest" determinations are relevant to a different classification than that sought by the petitioner.

(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.

INTERNATIONAL RECOGNITION

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. Initially, the petitioner submitted evidence with no explanation of how the evidence satisfied any of the regulatory criteria. On appeal, 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 submitted cards reflecting the beneficiary’s student membership in the Institute of Electrical and Electronics Engineering (IEEE), the American Institute of Aeronautics and Astronautics (AIAA), and the International Society for Optical Engineers (SPIE).

The petitioner provided information about IEEE reflecting that it is the largest technical professional society with 320,000 members. Such a large number of members suggests that IEEE is not restricted to technical researchers who can demonstrate outstanding achievements. Moreover, the beneficiary is only a student member of IEEE. The petitioner initially provided limited information regarding AIAA. On appeal, the petitioner submits evidence that AIAA merely requires a bachelor degree in science or engineering. Obtaining a bachelor’s degree is not an outstanding achievement. In addition, as with IEEE, the beneficiary is only a student member of AIAA. The petitioner provided information on SPIE membership and fellowship downloaded from its website. While SPIE may confer “the grade of fellow” to regular members who have distinguished themselves through outstanding contributions to the technologies, the record contains no evidence that regular members, let alone student members, must demonstrate outstanding achievements.

On appeal, the petitioner submits evidence that the beneficiary joined the American Society for Mechanical Engineers (ASME) in October 2000. The petitioner also submits information reflecting that ASME has certain educational and professional requirements, such as a degree and 12 years of professional experience, including five years which have been “responsible in charge.” Such requirements are not “outstanding achievements” in the field. Regardless, the petitioner has not established that the beneficiary was a member of ASME at the time of filing.

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

In the brief submitted in response to the director's request for additional evidence, counsel asserts that the beneficiary judged the work of others as a technical reviewer for IEEE Transaction on Automatic Control, ASME International Mechanical Engineering Congress & Exposition, American Control Conference and IEEE Conference on Decision and Control. Counsel refers to the beneficiary's resume as evidence of this experience. A review of the record reveals that this review experience is not reflected on the beneficiary's resume submitted with the initial petition, but only on the resume submitted with the supplemental submission. Thus, it is not clear that the beneficiary had this experience at the time of filing. Regardless, as stated by the director, the record includes no independent corroboration of this claim. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). Further, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

On appeal, the petitioner submits no evidence to address the directors concerns regarding the lack of evidence to support the beneficiary's reviewing experience claimed on his resume. In fact, counsel asserts on appeal that the director concluded that the beneficiary met this criterion. Counsel mischaracterizes the director's decision. The director stated that the record did not support the claim that the beneficiary served as a reviewer, but that assuming the record did support the claim, the beneficiary would meet this criterion. Even assuming the beneficiary did serve as a reviewer, the petitioner cannot establish that the beneficiary meets this criterion without providing evidence of the specifics of the beneficiary's role as a reviewer and the selection process.

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

Dr. Gregory Washington, the Director of the Intelligent Structures and Systems Laboratory at Ohio State University, the petitioning university, provides detailed information regarding the beneficiary's work in his laboratory. He states:

In our lab, [the beneficiary] has developed a twisting wing technology using piezoelectric materials. The technology he developed makes rapid roll maneuver for modern fighters and can be applied to unmanned reconnaissance aircraft. . . . He has also developed a new vibration absorber for a landing gear component using both passive and active approaches in a project co-sponsored by BFGoodrich and the Ohio Aerospace Institute (OAI). In this, he used piezoelectric actuators to design an active vibration control, which had never been applied to large aircraft structures before. . . .

Dr. Washington then provides a lengthy discussion of the importance of the beneficiary's current project with aperture antennas, but fails to identify any specific contributions made by the beneficiary to this project.

M.H. Herman Shen, a member of the beneficiary's dissertation committee at Ohio State University provides general praise of the beneficiary and his area of research.

Marcello Napolitano, an associate professor at West Virginia University where the beneficiary obtained his Master's degree states that the beneficiary worked with fault tolerant flight control systems, sensor failure detection, identification, and accommodation using a neural network approach. While Professor Napolitano provides general praise of the beneficiary's work at West Virginia University, he fails to identify any specific contributions which led to international recognition.

F. Hubert Ho, R&D Manager at BFGoodrich, Aerospace, asserts that he came to know the beneficiary through a project at Ohio State University sponsored by BFGoodrich and that the beneficiary "completed successfully the project in the scheduled time and resource," and that he is a "very capable research scientist." The timely completion of a project within a budget demonstrates only that the beneficiary is competent. While Mr. Ho asserts that the beneficiary has been making "significant contributions" to the field of "Smart Structures," he fails to identify those contributions.

Dr. Hyun Dae Kim, an engineer at NASA and former fellow doctoral student of the beneficiary, discusses the importance of reducing vibrations of aircraft structures, stating:

[The beneficiary] designed and implemented vibration absorbers both in passive and active ways, and especially for active vibration control, he applied a smart structure technique using piezoelectric actuators. The point is, as far as I know, that [sic] he is the first scientist who applied the technique to real large aircraft structures in this research area.

Dr. Narendra S. Khot, a principal research aerospace engineer at the Air Force Research Laboratory, writes:

[The beneficiary] conducted one of our projects, "Roll Maneuver Control and Vibration Analysis for A High Speed Fighter Aircraft Deformable Wing." His results have given us promise for the active vibration and flight control for the aircraft/spacecraft. He applied a smart structure technique using piezoelectric actuators. The smart (adaptive) structural techniques use the interaction between electrical, mechanical, thermal and control disciplines.

Dr. Khot then discusses the various applications of smart techniques and concludes that the beneficiary is an expert in this area.

The petitioner also submitted several articles purportedly relevant to the beneficiary's work. The first article, "A Smart Way to Reshape Antennas," published in the February 1999 issue of Aerospace America does refer to the research at Ohio State University with piezoceramics in shaping antenna reflectors on satellites in orbit. The article, however, credits the work to Dr. Washington and graduate student Hwan Sik Yoon. The article does not mention the beneficiary. The inclusion of another graduate student's name and the omission of the beneficiary's name in conjunction with Dr. Washington's failure to specify any contributions to this project made by the beneficiary suggests that the beneficiary did not contribute significantly to this project. The remaining articles have no apparent relation to the specific projects on which the beneficiary is working. Rather, they present general discussions of unrelated aerospace news.

The director concluded that the reference letters and articles established only that the beneficiary's area of research was important, which was not at issue. On appeal, the petitioner submits a new letter from Dr. [REDACTED] and letters from Lockheed Martin, Boeing, and HRL Laboratories which attest to the importance of the work being performed in Dr. [REDACTED] laboratory. Dr. Washington's letter provides no new information and the remaining letters attest more to Dr. Washington's recognition in his field than the beneficiary's.

A review of the entire record, including the letters submitted on appeal, the petitioner has not established that the beneficiary has made major contributions to his field. Nearly all of the letters are from professors who collaborated with the beneficiary and fellow students. While such letters are useful in detailing the beneficiary's research and his role in the laboratory, they cannot, by themselves, establish that the beneficiary has attained international recognition based on his contributions to his field. The letters from independent experts discuss the importance of the research in Dr. Washington's laboratory, an issue never contested by the Service. As stated by the director, the petitioner has established that the beneficiary has made original scientific research contributions, as all Ph.D. students must to obtain their degree. As further stated by the director, however, the petitioner has not demonstrated that the beneficiary is recognized internationally for any contributions to his field at this stage of his research career.

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

The beneficiary's resume submitted with the initial petition listed eight "publications." Three of those publications were "in review" and were not yet published. Of the remaining five, one was the beneficiary's Ph.D. dissertation and another was the beneficiary's Master's thesis. All advanced degree graduates must complete a thesis or dissertation. Unless published in a journal meeting the requirements set forth in the regulation, these papers cannot serve to meet this criterion. The petitioner initially submitted no evidence that the remaining articles listed on the beneficiary's resume were published. On appeal, the petitioner submits evidence that two of those articles were published as well as evidence of other articles published or accepted for publication after the date of filing. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Therefore, the articles published after the date of

filing cannot serve to establish the beneficiary's eligibility for this petition. Moreover, the record includes no evidence of the circulation of the journals which have published the beneficiary's research. Thus, the petitioner has not established that they have an international circulation.

Regardless, 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.

In the letter submitted on appeal, [REDACTED] asserts that most of the beneficiary's work has not been published because it is "time sensitive," but that it will be published and widely cited as "time progresses and patent filings and disclosure agreements are reached." Whatever the reason for the lack of international recognition of the beneficiary's publications, it remains that his articles had not attained international recognition at the time of filing.

RESEARCH EXPERIENCE

In addition, 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.

(Emphasis added.) This petition was filed on December 3, 1999 to classify the beneficiary as an outstanding researcher in the field of aerospace engineering. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field of aerospace engineering as of December 3, 1999.

Contrary to counsel's assertion on appeal, the director accepted that the beneficiary had three years of research experience, including his academic research because he acquired his degree. We disagree, however. As stated in the emphasized portion of the regulation quoted above, in order for

student research to be considered research experience, it must have been recognized in the field as outstanding. For the reasons discussed above, the beneficiary's research while a student did not reach the level of outstanding. Accordingly, that research cannot be considered part of the beneficiary's required three years of experience. While the beneficiary's resume lists research experience prior to entering the United States, the record does not include letters from those employers. Thus, the petitioner has not established that the beneficiary had three years of qualifying research experience at the time of filing.

JOB OFFER

Finally, 8 C.F.R. 204.5(i)(3)(iii) provides that the initial evidence for this classification includes:

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 initial submission did not include a job offer. In fact, Professor R.K. Yedavalli, a professor at the petitioning university, wrote that when certain proposals were funded, "it is highly likely that [the beneficiary] will be asked to lead a team of researchers to carry out this important research." On June 9, 2000, the director requested evidence of a job offer. In response, the petitioner submitted a letter from Dr. Gregory Washington, Director of the Intelligent Structures and Systems Laboratory at the petitioning university. It is noted that while the new letter is not dated, the initial submission included a letter from Dr. Washington in which he stated that the beneficiary was currently a "visiting scholar," and made no reference to a permanent job offer. The new letter is addressed to the Service and states, "I am *now* offering [the beneficiary] a permanent research position to conduct research on these projects." (Emphasis added.) As this letter is addressed to the Service, it does not constitute a binding job offer to the beneficiary. Regardless, the letter was submitted after the petition was filed and is not evidence that the petitioner had offered a permanent job to the beneficiary at the time of filing.

The petitioner has shown that the beneficiary is a talented and prolific researcher, who has won the respect of his collaborators, employers, and mentors. The record, however, stops short of demonstrating that the beneficiary has an international reputation as an outstanding researcher or professor. Moreover, the petitioner had not offered the beneficiary a permanent job at the time of filing. 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.