



**D3**

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

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



**JAN 09 2002**

File: EAC 00 132 50275 Office: Vermont Service Center Date:

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

**PUBLIC COPY**

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, 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 record contains two Form I-140 petitions. The earlier form identifies the American Museum of Natural History as the petitioner, but the beneficiary appears to have filed that petition on her own behalf. The beneficiary, rather than any museum official, signed the petition form, and the cover letter accompanying the submission was also written by the beneficiary rather than by any official of the museum.

The director notified the American Museum of Natural History that the "petition . . . must be filed by a qualifying United States employer." The director stated that an official of the entity that seeks to employ the beneficiary must sign the petition. In response, a new petition form was submitted, signed by Maria Kolotov of [REDACTED], along with a cover letter asserting that Met Tek wished to assume the role of petitioner. The appeal has also been filed by [REDACTED] of [REDACTED]. Therefore, the totality of the evidence indicates that [REDACTED] rather than the Museum of Natural History, is the petitioning entity.<sup>1</sup>

The petitioner is a seller of medical equipment. 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 researcher (the petitioner states no other job title). The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in her academic field; that the beneficiary has the required three years of research experience; or that the petitioning entity employs at least three full-time researchers. All of these conditions must be met for classification as an outstanding researcher.

On appeal, the petitioner argues that the beneficiary has indeed won international recognition as an outstanding researcher, and that her research experience while a graduate student should count towards fulfilling the experience requirement. The petitioner does not address the finding regarding its employment of researchers.

---

<sup>1</sup>While the priority date of this petition is moot because we are dismissing the appeal, we note that the petition was not properly filed until the submission of a Form I-140 from a U.S. employer. Therefore, if a priority date had attached to this petition, it would have corresponded to Met Tek's submission of the amended Form I-140 rather than the beneficiary's prior submission of the initial Form I-140.

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.

The first issue we will address concerns the requirement that the petitioner must employ at least three full-time researchers. 8 C.F.R. 204.5(i)(3)(iii)(C), cited above, requires that a

department, division, or institute of a private employer offering the alien a permanent research position 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.

On the amended Form I-140 petition, the petitioner indicated that it employs five persons. Under "type of business," the petitioner stated "sales." The record does not specify the duties of the petitioner's five employees. The director found that the petitioner has submitted no evidence to show that it employs at least three persons full-time in research positions.

On appeal, the petitioner does not contest or even address this finding, let alone refute it with documentary evidence that the petitioner employed at least three full-time researchers at (and since) the date of filing. Consequently, the director's finding stands, and this finding alone is sufficient to warrant denial of the petition and dismissal of the appeal.

We note that the record is also devoid of evidence that the petitioning entity has achieved documented research achievements in an academic field, as required both in the regulations and in the underlying statute. Ms. Kolotov describes the work of the petitioning company:

Our Company is specializing on selection and supplies of medical equipment to the republics of the former USSR: we attach invoices and booklets of medical equipment about our deliveries. For this purpose, we are constantly in need of a researcher with practical experience of control of sophisticated medical equipment and arranging necessary tests, before delivery.

There is no evidence that the petitioning entity conducts research; rather, it exports medical equipment. There is no evidence that the company designs this medical equipment, or is otherwise involved in conducting research contributing to the development of such equipment. The record contains catalogs, manuals, and other documentation from other companies, reinforcing the conclusion that the petitioner merely acts as a distributor and does not, itself, engage in any activity that could reasonably be called "research." The petitioner, on appeal, indicates that the beneficiary's principal duty at the petitioning company would be "testing medical equipment." Such tests do not constitute research.

Because the record does not show that the petitioner conducts any research (as opposed to product evaluation, calibration, and quality control), we cannot find that the petitioner employs any full-time researchers, let alone the statutory minimum of three. We also cannot conclude that the petitioner seeks to employ the

beneficiary in a research position. Thus, for a variety of reasons, the petitioner has not satisfied the requirements set forth at 8 C.F.R. 204.5(i)(3)(iii)(C) and the petition cannot be approved.

While the above finding is, by itself, sufficient to warrant denial of the petition and dismissal of the appeal, we shall also address the director's other stated reasons for denial.

The next issue we shall address is the requirement of at least three years of qualifying research experience. The petition, in its final, acceptable form, was filed on November 7, 2000. The beneficiary defended her Ph.D. dissertation less than two years before this date, in late December 1998. There is no evidence that the beneficiary (who was born in 1969) had worked in a non-student capacity as a researcher at any time before 1999. Therefore, we must consider the beneficiary's student work.

8 C.F.R. 204.5(i)(3)(ii) requires that experience in research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the research conducted toward the degree has been recognized within the academic field as outstanding. The director found that the beneficiary's student research work had not been so recognized. We will discuss this issue in greater depth when discussing whether the beneficiary has earned international recognition as an outstanding researcher. If none of the beneficiary's research has been so recognized, then logically the beneficiary's student work has not earned such recognition.

On appeal, the petitioner argues that the beneficiary "has about 6 years of permanent research [experience] (since 1993 - she was a laboratory specialist, paid for her work, not for work on her doctorate degree - it was always considered an additional after-work program."

The petitioner's argument is not persuasive. Any research that the petitioner conducted before completing her doctorate in late 1998, she conducted "while working on an advanced degree." We note that the petitioner earned her degree at the Georgian Academy of Sciences, the same institution that employed her during her doctoral studies. It is common for graduate students to work as laboratory assistants at the universities where they are studying. The petitioner offers no persuasive support for the assertion that the beneficiary was, first and foremost, a researcher who merely happened to be working on a doctoral degree. The beneficiary herself, in a statement prepared before this petitioner became involved, describes her pre-doctoral employment in this way:

While studying in the Tbilisi State University, I started working, as a laboratory clerk, in the Physiology Institute of

the Georgian Academy of Sciences. After graduation from the University [with a master's degree], I was working in the same Institute and defended my dissertation there. After the defence, I was promoted to a position of a Researcher, and then to a Senior Researcher.

The beneficiary's own statement indicates that she was, in essence, a graduate student "working as a laboratory clerk" rather than a professional researcher working "after hours" on a degree. This statement conflicts with the petitioner's later characterization of the nature of the beneficiary's work.

Also, even if the above were not an issue, the petitioner has not shown that the beneficiary's paid work at the Georgian Academy of Sciences was entirely separate from the research at the same institution that formed the foundation of her doctoral dissertation. If the beneficiary's paid work had any bearing on her doctoral studies, then the petitioner cannot reasonably claim that the beneficiary's work was unrelated to her graduate studies.

The final issue we shall address is whether the beneficiary has earned international recognition as an outstanding researcher.

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 receipt of major prizes or awards for outstanding achievement in the academic field.*

The record shows that, in 1995, the beneficiary was "selected and named as a SOROS STUDENT" by the International Soros Science Education Program, "in recognition and appreciation of outstanding achievements in the study of science at the university level."

The petitioner repeatedly refers to the beneficiary's receipt of a "Soros Grant." In denying the petition, the director stated "the size and scope of the awarding organization has not been established. Evidence submitted does not indicate the criteria used to grant the award or the size of the pool of candidates."

On appeal, the petitioner states "only dozens in the scientific world become laureates of this prize, no matter the size and scope

- it can't be measured by money, so the INS' notice is groundless." Regarding the petitioner's assertion that the grant "can't be measured by money," a grant is, by definition, monetary in nature, and therefore its monetary value can be definitively established. In any event, the director's decision made no reference to the grant's monetary value.

The petitioner's assertion that the "size and scope" of the granting organization are irrelevant, because "only dozens of laureates" receive the grants, is not persuasive. A rural high school selects only one valedictorian for each graduating class, but it does not follow that the valedictorian has therefore won an internationally significant prize. The relatively small number of Soros Grant recipients does not in any way relieve the petitioner of its burden to establish that the grant itself is internationally significant. The record also does not clarify whether the grant recognizes the petitioner's research accomplishments, as opposed to scholastic accomplishments. A scholarship based on a high grade point average does not recognize outstanding research.

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

The petitioner asserts that the beneficiary is a member of the Georgian Academy of Sciences. There is no evidence that the academy is an association (as is the case with, for example, the U.S. National Academy of Sciences). Rather, the academy is an educational institution where the beneficiary studied for her doctorate. Neither graduate study nor employment are akin to membership in an association, and the record contains no evidence to establish that the academy requires outstanding achievements as a condition for employment or study.

*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 record contains no published material by others about the beneficiary's work. On appeal, the petitioner states "[the b]eneficiary had published materials in professional publications," omitting the critical "by others." Published material by (rather than about) the beneficiary are covered by a separate criterion, further below.

*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."

The petitioner argues on appeal that "[the b]eneficiary's Thesis for Doctorate's Degree [sic] is her original scientific contribution to her academic field." The petitioner offers no elaboration on this point. The beneficiary's Ph.D. thesis surely contains original work, but this does not mark her thesis as outstanding unless we presume that most doctoral theses are unoriginal. While doctoral theses are surely the result of years of arduous work, such theses are not so rare or so highly regarded that their very existence brings international recognition to their authors.

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

The petitioner has submitted copies of published articles by the beneficiary, but there is no evidence of international circulation as the regulation requires.

Several letters accompanied the initial submission. Four researchers, all based at various universities and research facilities in New York City, attest that the beneficiary is a competent physiologist who has contributed to several projects. While some of these witnesses refer to the beneficiary's potential for making future contributions, they do not indicate that the beneficiary is already internationally recognized as an outstanding researcher. Because all of these witnesses are in the same city, the letters do not demonstrate that the beneficiary is internationally known. The letters are, essentially, brief employment reference letters that do not, as the petitioner claims, "prov[e] her extraordinary abilities in the research field."

The petitioner, both before and after the denial of the petition, has put considerable emphasis on the beneficiary's participation at the Ninth Conference on Cosmic Biology and Aviacosmic Medicine held in Moscow in 1998. The petitioner contends that the beneficiary's participation in this conference is proof of the beneficiary's international recognition because the conference was international in scope, and took place outside of the republic of Georgia where

the beneficiary was studying at the time. The petitioner has not established the significance of the beneficiary's presentation, or indeed of the conference overall. Involvement with an international conference does not demonstrate or imply that the beneficiary is recognized as outstanding by the international research community.

In summary, the petitioner has failed to meet the regulatory requirements set forth at 8 C.F.R. 204.5(i)(3)(i), (ii), and (iii). These regulations set forth several requirements which must be met to establish eligibility, and the petitioner has met none of them. The petitioner has not shown that the beneficiary is internationally recognized as an outstanding researcher, or that the beneficiary has the required research experience, or even that the petitioning employer even conducts any "research" as that term is generally understood. Because the petitioner has not satisfied any of the basic, essential regulatory requirements, the petition cannot be approved and the director acted properly in denying it.

We note that, subsequent to the filing of this appeal, another prospective employer has filed a new Form I-140 petition on the beneficiary's behalf. That filing strongly undermines the contention that the beneficiary seeks permanent employment with the petitioning entity in this proceeding.

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.