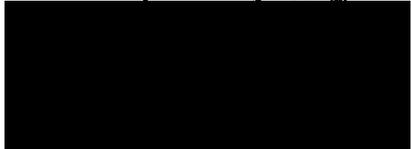




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U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

File: EAC-01-122-50506 Office: Vermont Service Center

Date: JUN 17 2002

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 petitioner claims to be a “programs developing” 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 claims that it is seeking to employ the beneficiary part-time in the United States as a mathematician. The director determined that the petitioner had not established its own accomplishments in the field.

On appeal, the petitioner asserts:

[The director] ignored the facts and materials submitted; the response of INS merely states the status of the petitioning Company, not the talents and abilities of the Beneficiary: he can be hired by any American Company & University dealing with complicated mathematical calculations - he's an award to any of them.

(Emphasis in original.) 8 C.F.R. 204.5(i) provides:

(1) Any United States employer *desiring and intending to employ* a professor or researcher who is outstanding in an academic field under section 203(b)(1)(B) of the Act *may file an I-140 visa petition* for such classification.

(Emphasis added.) The plain language of this regulation requires that the petition be filed by the university or private institution intending to hire the beneficiary permanently. A petitioner cannot rely on a job offer from another university or institution. As such, the petitioner must meet the employer requirements set forth in 8 C.F.R. 204.5(i)(3)(iii). That regulation requires the following evidence:

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.

As stated above, the petitioner is a private company. As such, it must meet the requirements set forth in 8 C.F.R. 204.5(3)(iii)(C) quoted above. That subparagraph requires that the employer/petitioner employs at least three persons in full-time research positions and that it has achieved documented accomplishments. Pursuant to this regulation, on September 1, 2001, the director requested evidence that the petitioner employed at least three full-time researchers and that it had achieved documented accomplishments in the beneficiary's field. In response, the petitioner submitted a letter identifying three full-time researchers and asserting that the petitioner employs other workers in various part-time or full-time positions. The petitioner further stated:

Please, find the samples of our work attached: this work requires changing and developing of diskettes and program of various customers an[d] is connected with tremendously sophisticated mathematical calculations and algorithms [sic]; so, we're in extreme need of a professional mathematician - to make our production more competitive.

The petitioner attached its own brochure which lists the prices of [REDACTED] (includes Digital Proof & Load to Disk)" and "4 Color Film Output and Dupont Waterproof." The petitioner also included materials on [REDACTED]. The director concluded that the petitioner had not documented any accomplishments. Thus, the director concluded that the petition did not include a valid job offer meeting the requirements quoted above.

As stated above, on appeal, the petitioner asserts that the director ignored the beneficiary's accomplishments and other job offers. Regardless of the beneficiary's talents, for this classification the petitioner must establish its own accomplishments. Moreover, as stated above, the petition must be filed by the intending employer. As such, the petitioner must be the intending employer making the qualifying offer.<sup>1</sup> As such, the director did not err by focusing on the petitioner's accomplishments.

On appeal, the petitioner makes the following assertion (quoted as it appears in the original): "The brochure submitted to INS showed the level of tasks to be solved: math calculations and changing programs' algorithms - which require an outstanding level of mathematics." Assuming that the brochure demonstrated the problems to be solved by the beneficiary, a list of problems to be resolved at some point in the future is not evidence of past accomplishments. Moreover, the brochure is actually a price list for printing and graphic arts services performed on equipment developed and manufactured by Dupont. The brochure makes no mention of research projects past,

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<sup>1</sup> Even if we were to consider job offers from other potential employers, the remaining job offers in the record are from high schools or consulting centers and/or are for temporary positions. Therefore, none of the other job offers in the record are qualifying.

present or future. Even if the petitioner performs some type of computer engineering services, software development is not research.

Beyond the decision of the director, 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 March 5, 2001 to classify the beneficiary as an outstanding researcher in the field of mathematics. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching and/or research experience in the field of mathematics as of March 5, 2001, and that the beneficiary's work has been recognized internationally within the field of mathematics 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.

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

The record contains evidence of scholarships, which are not major prizes or awards indicative of international recognition. Only prospective students compete for scholarships.

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

The petitioner submitted evidence that the beneficiary is a member of the [REDACTED]. The petitioner did not submit any evidence regarding the membership requirements of these organizations. Moreover, it is not clear that the debate program is within the beneficiary's field of mathematics.

*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 petitioner submitted an article published in 1993 in the [REDACTED] Sun regarding the beneficiary's visit to a local school. A local newspaper is not a professional mathematics publication and the story is not indicative of international recognition.

*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 reveals that the [REDACTED] retained the beneficiary to provide consulting services for debate training. It does not appear that this consulting involved judging the work of other mathematicians or even other math educators. The record also includes an e-mail from [REDACTED] requesting that the beneficiary serve as on the editorial board of [REDACTED]

the journal *Controversia*, an international journal on debate and democratic renewal. Once again, assuming the beneficiary agreed to serve on the editorial board of this journal, it does not appear that he is reviewing the work of other mathematicians or math educators. The record includes a contract between the beneficiary and [REDACTED] for the following services: "observations of classes in session for in-service teachers and post-observation consultation." The petitioner submitted an unsigned letter from an unknown individual at [REDACTED] providing more details about this consultation. An unsigned letter has limited evidentiary value.

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

The petitioner submitted letters recommending the beneficiary for various teaching positions and an unsigned letter from someone at [REDACTED] addressed "to whom it may concern." The letters mostly provide general praise. The most specifics are in the unsigned letter which has limited evidentiary weight. Letters from one's immediate circle of colleagues can provide important details of the beneficiary's work, but cannot, by themselves, establish that the beneficiary has attained international recognition for his contributions to 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's resume lists five articles published in Russian journals and one published in a United States journal. The petitioner failed to submit any evidence of the international circulation of these journals.

The record stops short of elevating the beneficiary to one with 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.