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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-99-178-53132

Office: Vermont Service Center

Date: 9 JUN 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:



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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert J. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Associate Commissioner, Examinations, dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

In the decision issued by the Administrative Appeals Office (AAO) on behalf of the Associate Commissioner, the petitioner was classified as a university. On motion, counsel notes that the petitioner is a hospital. While the record does establish that the petitioner is a university hospital, it must be noted that the petitioner failed to indicate what type of business it is on Part 5 of the petition. Regardless, the petitioner 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 post-doctoral research fellow/scientist. 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. The AAO concurred, also noting that the petitioner had failed to properly document the beneficiary's claimed previous six years of experience.

On motion, counsel argues that the beneficiary's curriculum vitae contains sufficient evidence of the beneficiary's six years of experience and that the beneficiary's receipt of travel expenses to attend a workshop should be considered a prize. The petitioner submits evidence that the beneficiary's article has been cited extensively.

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.***

(Emphasis added.) This petition was filed on May 24, 1999 to classify the beneficiary as an outstanding researcher in the field of statistics. Therefore, as stated in the AAO's decision, the petitioner must establish that the beneficiary had at least three years of research experience in the field of statistics as of May 24, 1999, and that the beneficiary's work has been recognized internationally within the field of statistics as outstanding. On appeal, counsel asserted that the beneficiary's Curriculum Vitae establishes that the beneficiary has two years of teaching experience at Yonsei University, two years of teaching experience at the University of Rochester, seven years of research at the University of Rochester, and three years of experience at Columbia University. In its decision, the AAO stated that the regulations require that evidence of the necessary three years of experience be documented *by a letter from the employer*. On motion, despite the plain language of the regulation and the AAO's reference to it, counsel once again argues that the Service should rely solely on the beneficiary's self-serving C.V. We reject this argument for the same reasons stated in the AAO's decision. Counsel has failed to explain why the petitioner is unable to procure employment verification letters from three major learning institutions still in existence. It remains, the petitioner has only documented 32 months of research experience prior to the date of filing.

The AAO also concluded that there is no evidence that the beneficiary's teaching or research experience acquired while obtaining a degree meets the requirements quoted above in the regulations. Specifically, the record does not establish whether the beneficiary had full responsibility for a class or that the research conducted while a student was recognized by the international community as outstanding. On motion, counsel argues "it defies reality not to recognize the beneficiary's student work as 'research experience.'" Counsel mischaracterizes the AAO's concern. The issue is not whether the beneficiary performed research while a student but whether the research performed while a student was recognized as outstanding as required by the regulation. The regulation makes clear that student research experience does not count towards the three years unless it is recognized as outstanding. Counsel has not addressed this issue.

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

Counsel continues to argue that the approval of the beneficiary's application to attend the North American Association for the Study of Obesity (NAASO) sponsored workshop, all expenses paid, constitutes a major prize or award. In its previous decision, the AAO concluded that the petitioner had paid those expenses and that there was no evidence that the beneficiary competed without outside experts for the reimbursement.

On motion, counsel asserts:

As to the Research Workshop on the Genetics of Obesity, jointly sponsored by the North American Association for the Study of Obesity (NAASO) and the National Institute of Diabetes, Digestive and Kidney Disease (NIDDK), please note that your presumption that the workshop was of little note, or that the petitioner/hospital paid for the beneficiary's attendance, is completely off track. This was a major national event, sponsored by two organizations, which are both, in turn, funded by the National Institutes of Health (NIH) of the Federal Government. It is either NAASO or NIDDK who decide which participants, of the hundreds who attend, are worthy to be sponsored by the organizations themselves, and all costs for such selectees -- fare, lodging, etc. -- are for the account of NAASO.

In support of these broad factual assertions, the petitioner submits a previously submitted flier for the workshop which makes no mention of the requirements for reimbursement and general information on NIDDK which makes no mention of its participation in the selection of individuals for reimbursement.

First, at no point did the AAO presume that the workshop was of little note. The AAO made no conclusion as to the importance of the workshop at all. In addition, counsel's description of the beneficiary's selection is completely unsupported by the record. 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). The evidence in the record supports the AAO's conclusion that the petitioner both selected the beneficiary to attend the workshop and for reimbursement. The letter advising the beneficiary of his selection is from Dr. David B. Allison of the petitioner hospital. The attachment advises the beneficiary to submit all receipts to Dr. Allison. The only information from NAASO is a certificate confirming his attendance. The record simply contains no evidence whatsoever that NAASO or NIDDK selected the beneficiary to attend (let alone present a poster) at the workshop or that they paid his costs. As such, we will not disturb the AAO's conclusion that the evidence reflects an incidence of an employer paying to send an employee to a workshop, and not a prize (major or otherwise) for which the beneficiary competed with outside experts.

Even if NAASO did select the beneficiary for reimbursement, we do not concur with counsel that such a selection constitutes a "prize or award" which is generally awarded for a specific accomplishment or a history of achievements. The record contains no evidence of NAASO's selection criteria for deciding who receives a reimbursement.

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

The AAO's decision also concluded that the beneficiary had not established his claimed membership in NAASO or that NAASO required outstanding achievements of its members. Counsel does not challenge this conclusion on motion other than to assert that the AAO incorrectly

presumed a NAASO workshop was of little note. Whether or not NAASO is a prestigious, government funded organization, and the AAO's decision never implied otherwise, it is the petitioner's burden to demonstrate that the organization requires outstanding achievements of its general membership. The petitioner submitted no new information regarding NAASO on motion. The new information regarding NIDDK does not indicate that the beneficiary is a member or that NIDDK requires outstanding achievements of its general membership.

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

On motion, counsel does not challenge the AAO's conclusion that the editorials about the beneficiary's articles did not constitute evidence to 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

On motion, counsel does not challenge the AAO's conclusion that the record did not establish that the beneficiary had been selected to review journal articles based on his international recognition.

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

The AAO's decision further concluded that the record did not include evidence that the beneficiary's statistical methods had been adopted or that they were otherwise influential. While the AAO noted the absence of evidence that the beneficiary's article had been cited, the AAO also noted the absence of letters from disinterested experts in statistics affirming that the beneficiary's contributions to the statistical evaluation of obesity has brought him international recognition.

On motion, the petitioner submits evidence that, as of the date of filing, the beneficiary's article, "Improved Survival with an Implanted Defibrillator in Patients with Coronary Disease at High Risk for Ventricular Arrhythmia," had been cited 190 times, including 35 overseas citations. The article, however, is primarily about the results of a cardiology study. The beneficiary is a statistician. While it is acknowledged that the beneficiary played an important role in the presentation and interpretation of the results of the study, it is not clear that the attention paid to the article results from the article's contribution to the field of statistics. Stated another way, the record does not establish that what was significant about the cardiology study was its use of statistics to reach its conclusions. All of the articles citing the beneficiary's article are in medical journals and relate to cardiology. As such, the petitioner has only overcome one of the concerns expressed by the AAO on this issue. Without evidence from disinterested statisticians, we cannot conclude that the beneficiary has contributed to the field of statistics or even the use of statistics in medical studies.

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with

international circulation) in the academic field

Finally, the AAO concluded that while the beneficiary had authored scholarly articles, the publication of articles was insufficient to meet this criterion in the absence of evidence that the articles had been widely cited. As stated above, the petitioner has now submitted evidence that one of the beneficiary's articles has been extensively cited. While we have some reservation as to whether a cardiology article constitutes an article in the beneficiary's "academic field" as required by the regulation, the petitioner has overcome the only concern expressed by the AAO on this issue. Even if we conclude that the beneficiary meets this criterion, however, it is only one criterion.

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 previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

ORDER: The Associate Commissioner's decision of November 6, 2001, is affirmed. The petition is denied.