



B3

U.S. Department of Justice
Immigration and Naturalization Service

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



File: WAC-01-035-52120

Office: California Service Center

Date: OCT 17 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:



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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a biopharmaceutical research and development 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 research associate. 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 her academic field, as required for classification as an outstanding researcher.

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 November 13, 2000 to classify the beneficiary as an outstanding researcher in the field of chemistry. The director did not contest that the beneficiary had at least three years of research experience in the field of chemistry as of November 13, 2000.

8 C.F.R. 204.5(i)(3)(iii) provides that a petition must be accompanied by:

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 director did not contest that the petitioner had submitted a job offer for a permanent position. While the record contains letters from the petitioner to the Service, we note that the record does not contain the original job offer letter from the petitioner to the beneficiary. Counsel states on appeal that the petitioner should be afforded the opportunity to rebut any grounds of ineligibility not addressed by the director. As we concur with the director's basis of denial, however, we need not remand the matter back to the director to afford the petitioner another opportunity to supplement the record regarding this additional ground of ineligibility.

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 petitioner submits a letter from the beneficiary's professor at Beijing Normal University who asserts that the beneficiary received a People's Scholarship in 1986, 1988, and 1991. He further indicates that the beneficiary was recognized as "Most Outstanding Graduate Student," a recognition limited to the top three percent of the university's 700 graduate students. Finally, he indicates that the beneficiary received a "full covered assistantship" to Texas Christian University. In an e-mail message, David Minter of Texas Christian University asserts that while the applicant's records for Fall 1992 no longer exist, he can confirm that the petitioner was one of eight out of 100 applicants accepted as a graduate student that year. In response to the director's request for additional documentation, the petitioner submitted a letter from Li Lianjiang, Director of the Student Administration Office at Beijing Normal University confirming the scholarships and the student award at that institution.

The director concluded that, unlike prizes such as the Nobel Prize, scholarships generally support future research as opposed to recognizing past achievements. On appeal, counsel argues that the beneficiary need not have received an award of the stature of a Nobel Prize. Counsel then discusses the competitive nature of the scholarships received by the beneficiary. Counsel concludes that while the extraordinary ability classification requires evidence that one is at the very top of the field of endeavor, for the outstanding researcher classification, "all that is required is that there be 'documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field.'"

We do not read the director's decision to require a prize of similar stature to the Nobel Prize. Rather, the director's reference to that prize was simply to provide an example of an award for past achievement. Moreover, 8 C.F.R. 204.5(i)(3) provides that the petitioner must submit "evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The criteria that follow are examples of the types of evidence that may show such recognition. As such, the evidence submitted for each criterion must be examined as to whether it demonstrates international recognition.

We concur with the director that academic scholarships, regardless of how competitive, are not prizes or awards for achievements in one's field. In addition to funding future studies, scholarships are generally based on past *academic* achievement, not for accomplishments in a field of endeavor. While 8 C.F.R. 204.5(i)(3)(i)(A) references outstanding achievements in one's academic field, 8 C.F.R. 204.5(i)(2) defines "academic field" as "a body of specialized knowledge offered for study." The definition does not include typical bases for scholarships, such as grade point average and class standing. It remains, academic study is not a field of endeavor, academic or otherwise. Rather, academic study is training for a future career in an academic field. As such, scholarships

are insufficient. In addition, while Beijing Normal University may be one of the top universities in China, it remains that the beneficiary only competed against other students at the university at that time for the scholarship. Scholarships and the beneficiary's student award are simply not evidence of international recognition in the field. Rather, they represent high academic achievements in comparison with her fellow students.

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

Initially, the petitioner submitted the beneficiary's membership card for the American Chemical Society (ACS). In response to the director's request for additional documentation, the petitioner submitted documentation about ACS from its website and portions of an ACS publication. The petitioner submitted only pages 1 through 37 of the publication, while the table of contents indicate that membership categories and dues are discussed on page 41. The website information does not discuss membership requirements.

The director determined that ACS merely requires a degree and experience in the field. As a degree and job experience are not outstanding achievements, the director determined that the beneficiary's membership in ACS could not serve to meet this criterion. On appeal, counsel asserts that ACS is old and prestigious, having been founded in 1876 and having 163,000 members. Counsel asserts that ACS must approve all membership applications.

Counsel's arguments on appeal do not address the relevant issue, which is whether ACS requires outstanding achievements of its members. It is irrelevant when ACS was founded or how many members it has. In fact, the high number of members suggests that ACS is not exclusive. Finally, even if ACS must approve each application, that fact does not indicate that ACS requires outstanding achievements. Specifically, mandatory review of applications to see if they meet the membership requirements does not indicate that the membership requirements themselves include outstanding achievements. As stated above, simply possessing a degree and a number of years of experience are not outstanding achievements.¹

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

The petitioner submitted several reference letters from the beneficiary's professors, colleagues and collaborators. Dr. Nuria Tamayo, a research scientist at the petitioning company, states that the petitioner has "set up an interdisciplinary team of chemists, biochemists and molecules biologists" to develop new obesity drugs. Dr. Tamayo asserts that the beneficiary is at the "heart" of the petitioner's "groundbreaking approach." In a second letter, Dr. Tamayo asserts that she is the beneficiary's supervisor. She continues:

¹ While the record does not include the membership requirements for ACS, the associations' website, center.acs.org/applications/acsmembership/join.cfm, confirms the director's assertion that ACS only requires a degree and a certain number of years of experience for full membership.

[The beneficiary] is currently working on the development of novel drug therapeutics for the treatment of obesity related disorders. She has reviewed for our research group some of the recent developments focused on new anti-obesity agents, such as: [examples omitted]. Her effort helped the group in the breakthrough discovery of a new, potent and selective class of anti-obesity agents. . . .

She has developed the structure-activity-relationship (SAR) of a series of compounds, which she has designed, synthesized and purified for testing. She has used the latest techniques of combinatorial and solid phase synthesis and array purification to accomplish this SAR development in an extremely efficient manner. Her research progress toward breakthroughs in the treatment of obesity will potentially have a significant impact on solving this medical problem that causes millions of Americans health problems, and daily suffering.

Reviewing the work of others, while important to the petitioner, is not evidence that the beneficiary herself has made original contributions to the field. Moreover, progress towards what is believed by a collaborator to be a potential breakthrough is not evidence of international recognition for a completed major contribution in the field.

Dr. Celia Dominguez, Associate Director of Research at the petitioning company, asserts that the beneficiary generated a large number of high quality synthetic molecules and discovered the synthetic ways to efficiently make serials of pyridazine and pyrimidone chemicals. Dr. Dominguez continues:

She has developed the modified Michael cycloaddition reaction that could provide the key intermediate for the total synthesis of these sequences, and she also successfully solved the regioselective problems for the final products. In biology studies, most of her products have shown great *in vitro* potency and promising *in vivo* efficacy. Her pyridazine series not [only] just produced the most potent inhibitors in the program but also provided one of the best candidates for preclinical trials, all her efforts would definitely help to generate the new medicines for inflammation.

As final evidence of the beneficiary's contributions while working for the petitioner, the petitioner submitted an article in *C&EN* discussing obesity. While the article mentions the petitioning company's research with the leptin gene and modified leptin molecules, the petitioner has not established that the beneficiary worked on that project. In fact, the article is from June 1999, before the beneficiary began working for the petitioner.

Dr. Chen Chen, Associate Director of Neurocrine Bioscience, Inc., discusses the beneficiary's projects while working at that company. Dr. Chen states:

[The beneficiary] was a critical participant in our team from 1998 to 1999. She played a key role in synthesis of compounds to develop therapeutics for the treatment of obesity. [The beneficiary] is an excellent synthetic chemist who works independently. She has always been able to produce the compounds needed in a rapid and efficient manner. She has also been very creative in designing and synthesizing new compounds that are very useful for discovery of potential drugs. In addition[,] she has advanced the department[']s ability to do combinatorial synthesis by skillfully introducing and developing the special techniques of solid phase synthesis. [The beneficiary] successfully solved the regioselective problem in the synthesis and prepared several novel compounds that demonstrate extreme significant biological activity in the areas of treating obesity. Because of our significant contributions to our research in this field, the discovery of novel agents for the treatment of obesity has been [sic] made a [sic] remarkable progress.

Dr. David Minter, an associate professor at Texas Christian University, writes:

As a Research Assistant in my group, [the beneficiary] worked on a project that was designed to use a[n] unusual strategy for the laboratory synthesis of Diterpense Reiswigin A and B, which showed potent anti-viral activity against Herpes simplex type A and Hepatitis A virus.

...

This project required not only the ability to carry out some very sophisticated techniques but also the ability to analyze data and use that data for designing new experiments. [The beneficiary] is one of the most important contributors of the scientific progress of this group and is a main active participant in the project. She collaborated with me on the design and successfully conducted a quick and efficient synthesis by using simple rigid bicycle molecule to fix stereochemical centers towards the total synthesis of Reiswigin A. Her contributions have moved the entire project forward in some very important ways and laid the foundation for expansion of the synthesis work. [The beneficiary's] research has developed a[n] efficient syntheses [sic] of a new class of antiviral agents that may be effective against hepatitis and herpes viruses. Part of this work was presented at [the] 26th National Medical Chemistry Symposium in Richmond, Virginia. Based on her discovery, we are in the process of preparing a paper for later publishing.

Counsel refers to the beneficiary's "presentation" at the 26th National Medical Chemistry Symposium in Richmond, Virginia, as evidence of the beneficiary's contributions.

Finally, Wenpu Zhang, a chemistry professor at Beijing Normal University, writes that the beneficiary was a student of his. He asserts that she "carried out research work on a serial of a complex solid superacid catalyst . . . that [is] becoming increasingly important in organic chemistry and chemical industry."

The director noted that publishing and printing one's work is part of a researcher's professional obligation. The director concluded that the above evidence simply demonstrated that the beneficiary had the respect of her colleagues. On appeal, the petitioner submits evidence that the National Medicinal Chemistry Symposium is a "leading international meeting" with international attendance. Counsel argues that the beneficiary's presentation at this meeting constitutes more than a professional obligation.

The evidence submitted in response to the director's request for additional documentation reveals that the beneficiary's "presentation" at the conference consisted of one of at least 25 poster displays. The petitioner has failed to submit any letters from international experts who took notice of the beneficiary's poster and have been influenced by the information contained in the display. While counsel asserts that the beneficiary's abstract based on her poster was published, the record contains no evidence that even one scientist has cited this abstract. Without evidence that the beneficiary's poster attracted any attention at the conference, the petitioner cannot establish that this poster display at a single conference constitutes evidence of the beneficiary's international recognition.

Regarding the reference letters submitted, they are all from the petitioner's collaborators and immediate colleagues. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's contributions of major significance to the field as recognized internationally. None of these letters claim that the beneficiary has attained international recognition as a result of her "contributions" to the field. We note that international recognition goes beyond having reference letters from collaborators in both the United States and the beneficiary's native country where she studied. While we concur with counsel that the director's use of the phrase "pinnacle of her field," suggests a higher standard than what is required for this classification, the director's conclusion that the letters reflect only that the beneficiary is viewed as an asset by her professors and supervisors is sound. It remains, the letters fail to establish that the beneficiary enjoys international recognition for her original scientific or scholarly research to the academic field.

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

The petitioner submitted a section entitled "evidence of authorship of articles in scientific journals with national circulation." We note that 8 C.F.R. 204.5(i)(3)(i)(F) requires publication in journals with an international, not merely national, circulation. Within the section is a single abstract published in what appears to be the 26th *National Medical Chemistry Symposium*. The abstract appears to have been downloaded from the Internet as opposed to having been copied out of a published journal.

In response to the director's request for additional documentation, counsel asserted:

By virtue of her original scholarly presentation at the 26th National Medicinal Chemistry Symposium, entitled "A New Approach to the Synthesis of Reischwigin A[.]" [the beneficiary] has been published in the *Journal of Medicinal Chemistry Research*, a journal for Rapid communications on Design and mechanism of Action of Biologically Active Agents. "The 26th National Medicinal Chemistry Symposium and the A.C.S. Division of Medicinal Chemistry have made arrangements with *Medicinal Chemistry Research*, edited by Richard A. Glennon, to publish the proceedings of the Symposium[.]"

The petitioner submitted information from the Virginia Commonwealth University's website confirming arrangements for publication of the proceedings in the *Journal of Medicinal Chemistry Research*. Counsel continues that the *Journal of Medicinal Chemistry Research* is a peer-reviewed, internationally circulated journal.

The director noted that the beneficiary's published abstract was based on research conducted while a student and that students are normally required to document their research. Thus, the director concluded that the beneficiary's abstract could not be considered a scholarly article for purposes of this criterion.

On appeal, counsel notes that the regulations permit a beneficiary to include experience while a student. As such, concludes counsel, the director erred in dismissing the beneficiary's abstract solely on the basis that it reports work while performed as a student.

While student work can, on a case-by-case basis, reflect outstanding ability and international recognition, all evidence submitted for each criterion must be evaluated as to whether it demonstrates or is indicative of 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 no letters from independent researchers explaining how the beneficiary's abstract has influenced their work. Nor has the petitioner submitted any evidence that the beneficiary's abstract has been cited.

Further, regarding counsel's statement that the *Journal of Medicinal Chemistry Research* has an international circulation, the assertions of counsel do not constitute evidence. Matter of Obaighbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503,

506 (BIA 1980). While the petitioner submitted some documentation regarding the journal, none of the information addresses its circulation. Moreover, the petitioner did not submit any evidence that this journal had already published the proceedings, including the beneficiary's abstract, prior to the date of filing. A petitioner must establish the beneficiary's eligibility at the time of filing the petition. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971).

In addition, while a student *article* can be considered a scholarly article and can serve to meet this criterion if evidence exists of its recognition or influence, we cannot conclude that a one-paragraph abstract of a poster presentation constitutes an article, scholarly or otherwise.

Finally, Dr. Celia Dominguez, the Associate Director for Research at the petitioning company, asserts that "although most of [the beneficiary's] work cannot be published at present time for business reasons, I am in the process of writing several papers and patents on her work." We acknowledge that there may be legitimate business reasons for delaying the publication of one's research. Nevertheless, the regulations require international recognition. Even if it were more than mere speculation that the beneficiary's work will eventually be published in internationally circulated journals such that the beneficiary gains international recognition, the petition was, at best, filed prematurely.

The petitioner has shown that the beneficiary is a talented researcher who has won the respect of her collaborators, employers, and mentors. The record, however, stops far short of establishing that the beneficiary has 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.