

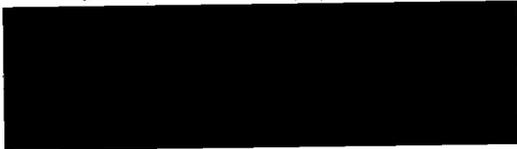


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: WAC 96 138 51298

Office: California Service Center

Date: OCT 31 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 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 petition was initially approved by the Director, California Service Center, and subsequently revoked when the director determined that the beneficiary was not eligible for the benefit sought. The Administrative Appeals Office ("AAO"), on behalf of the Associate Commissioner for Examinations, remanded the matter on procedural grounds. The director subsequently reopened the petition, and again revoked the approval. The petitioner appealed the second revocation and the AAO again remanded the matter on procedural grounds. The director has since notified the petitioner of deficiencies in the record and subsequently denied the petition. Because the petition had already been approved, we will consider the denial to be, in effect, a revocation. The director has certified the latest decision to AAO for review. The director's decision will be affirmed and the approval of the petition revoked.

The petitioner has, through the course of this proceeding, been represented by various attorneys. In this decision, the term "counsel" shall refer only to the present attorney of record.

The petitioner describes itself as a non-profit scientific research and educational corporation. 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 of "psychotronic healing." The director based the most recent decision on the following factors: (1) the petitioner has not shown that it has consistently employed at least three full-time researchers; (2) it is not clear that the work conducted by the beneficiary meets the regulatory definition of an academic field; (3) the petitioner has not established that it has been consistently able to pay the proffered wage to the beneficiary; and (4) the petitioner has not established documented accomplishments in an academic field.

On April 6, 2002, the director reopened the proceeding and informed the petitioner of the Service's intent to deny the petition. In that notice, the director summarized the proceeding from 1996 to the date of the notice and set forth the above reasons why the petition could not be approved. The director issued a decision on November 10, 2001, stating "since the notice of Intent to Deny was issued the Service has not received any communication from the petitioner concerning this matter." The director certified the matter to the AAO for review and allowed the petitioner 30 days to supplement the record.

In response, counsel asserts that the director is incorrect that there was no communication following the notice of intent. Counsel states "two letters were sent, on April 26 and again on June 15." The petitioner submits copies of these letters, although the originals are not in the record. The first letter (dated April 24 rather than April 26) consists entirely of a request for "an additional sixty days" to prepare a response. The subsequent letter of June 15 contains a request for "an additional thirty days." Neither letter contained any substantive response to the grounds cited by the director.

In both letters, counsel requested a response confirming the extensions. There is no evidence that the director responded to either request. Nevertheless, the petitioner's response to the certified decision was submitted in December 2001, eight months after the director issued the notice of intent. Given that this period is substantially longer than the aggregate period of 90 days

requested by counsel, it is clear that the petitioner has had ample time to accumulate supporting evidence. Subsequent to the decision, the petitioner has submitted further materials, which we will consider below.

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 . . .
- (ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. . . ; 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.

EMPLOYMENT

The first issue raised by the director concerns the requirement at 8 C.F.R. 204.5(i)(3)(iii)(C) that the petitioning employer must demonstrate that it employs at least three persons full-time in research positions. The petition was originally filed on April 12, 1996, and therefore the petitioner must demonstrate that it has employed at least three full-time researchers since that date.

The petitioner submits three Forms 1099-MISC from 1996 and quarterly wage reports from 1996 onward. [REDACTED] a research director for the petitioner, states that one of the petitioner's employees, [REDACTED] "began working for us in March 1996" but was not paid until later in the year because of funding issues. [REDACTED] maintains that, although [REDACTED] salary was deferred, the individual was nevertheless an employee of the petitioner, performing work under the petitioner's direction and on the petitioner's behalf.

The 1996 1099-MISC forms report "nonemployee compensation" to the beneficiary, [REDACTED] and [REDACTED]. The petitioner, therefore, had represented to the federal government that these individuals (including the beneficiary) were "nonemployees" receiving 1099 forms rather than employees with W-2 forms. The record does contain W-2 forms from later years, indicating a change in employment status. The 1099 forms, the only official documentation of compensation paid prior to October 1996, show payments of \$1,000 each to the beneficiary and to [REDACTED] and \$1,250 to [REDACTED]. These amounts are not sufficient to reflect full-time wages for six months in mid-1996, and the petitioner has not claimed that anyone other than Ruth Scott received a deferred salary during that time.

Quarterly wage reports show three or more workers (including the beneficiary) from the fourth quarter of 1996 onward. The reports for the 4th quarter of 1996 and the first quarter of 1997 identify three workers: the beneficiary, [REDACTED] (identified on tax documents as "research director") and [REDACTED] (identified as "secretary director"). The name of [REDACTED] appears beginning with the 4th quarter 1997 report. Some quarterly reports are missing, although the names on the earliest report also appear on later reports.

The petitioner also submits copies of Internal Revenue Service returns from 1998 and 1999. The forms identify nine directors and one researcher (the beneficiary). The only individuals receiving compensation are the beneficiary and the four individuals named above. The only employee designated solely as a researcher in the Internal Revenue Service documents is the beneficiary. The materials in the record do not clarify the extent of the administrative duties (if any) which may prevent the two research directors from conducting full-time research. Position descriptions submitted with the most recent submission indicate that the beneficiary is the only full-time staff member whose duties do not include fund-raising, translation of documents, arranging visits, secretarial duties, or other non-research tasks.

Thus, the incomplete evidence submitted by the petitioner indicates that "nonemployees" received small sums of money at some point during the first three quarters of 1996, and that most of the researchers on the petitioner's payroll divide their time between research and administrative or organizational tasks. The beneficiary appears to be the petitioner's only full-time researcher (as opposed to full-time employee with some research duties).

ABILITY TO PAY

The above documents, indicating that the petitioner paid the beneficiary \$8,500 in 1996 and that [REDACTED] salary was deferred for several months due to lack of funding, caused the director to question the petitioner's ability to pay the proffered wage of \$30,000 per year. 8 C.F.R. 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner has filed a petition for a classification requiring a job offer, and therefore the petitioner must establish its ability to pay the wage offered as of the petition's filing date, April 12, 1996. The petitioner has submitted several letters from various individuals, pledging financial support. Most of these letters are from after the petition's April 1996 filing date, many from 2001. A pledge is not proof of ability to pay, as demonstrated by the deferment of Ruth Scott's compensation (caused by a donor's delay in meeting an earlier pledge). There is no evidence that these voluntary pledges are binding or enforceable.

Pursuant to the above regulation, evidence of ability to pay must take the form of federal tax returns, annual reports, or audited financial statements. While the petitioner may submit other documents in addition to these types, the additional documentation can serve only as a supplement, rather than a substitute, for the required types. The petitioner, a tax-exempt organization, has provided copies of Forms 990 (Return of Organization Exempt From Income

Tax) for 1998 and 1999 but not for the preceding years. The record does not contain tax returns, annual reports, or audited financial statements demonstrating that the petitioner was able to pay the proffered wage as of April 12, 1996. The beneficiary's greatly reduced compensation as a "nonemployee" for much of 1996 reinforces the director's conclusion that the petitioner was not able to pay the proffered wage at that time.

ACADEMIC FIELD

8 C.F.R. 204.5(i)(2) defines "academic field" as "a body of specialized knowledge offered for study at an accredited United States university or institution of higher education." If the beneficiary's work, and/or the work undertaken at the petitioning entity, does not fall within an academic field, then the petition cannot be approved and any prior approval is in error. Even if the petitioner shows that some of its research falls within an academic field, it is clear from the repeated regulatory references to "the alien's academic field" that the beneficiary must work in a qualifying academic field.

The petitioning institution's promotional materials state that the petitioner conducts research in:

- consciousness and conscious intention effects,
- mental healing,
- mental effects on biophoton emission,
- mental effects on random event generators (including unconscious effects),
- orgone energy,
- effects of conscious intention and orgone energy on biophoton emission in seeds and seedlings
- and new paradigms such as the work of [the beneficiary].

In its first remand order, the AAO stated:

Materials in the record indicate that the petitioner's research is in the field of orgonomy, founded by the late [REDACTED]. Orgonomists believe, to quote the petitioner's pamphlet, "that there is a specific life energy (orgone) in the cosmos and in the atmosphere, and that this energy is closely coupled with consciousness. The petitioner's documents reflect attempts to manipulate orgone to treat cancer and affect the weather "using the Reich cloudbuster." The same documentation refers to the beneficiary as a "psychic healer." . . .

The Service is under no obligation to presume without proof that orgonomy is an academic field. . . . The director must allow the petitioner an opportunity to establish that its field of research is an academic field as that term is defined in the pertinent regulations. The petition cannot be approved absent such evidence.

The petitioner has since asserted that "orgonomy . . . was not [the petitioner's] only field of investigation." The petitioner argues that it conducts research in the broader field of

“consciousness research,” which “is now being seriously conducted and taught at many accredited academic institutions in the United States.” In the most recent submission, the petitioner repeats its earlier claim that one of the universities offering a course of study in “consciousness research” is the University of California at Santa Cruz (“UCSC”). The AAO has already concluded, in a previous remand order, that UCSC’s “History of Consciousness” program has no discernible connection to the kind of work carried out by the petitioner. The AAO had previously quoted from UCSC’s own description of the History of Consciousness program (contained in an earlier submission):

Although history of consciousness does not have formal tracks, it does emphasize certain topics and approaches in its seminars and research groups. These include comparative cultural studies, ethnographic methods, feminist theory, theory of contemporary visual culture, the historical analysis of social movements, political and economic analyses of late capitalism, historical and cultural studies of race and ethnicity, psychoanalysis, lesbian and gay theory, semiotics, theory and history of religions, and social studies of science and technology.

Clearly, UCSC and the petitioner use the word “consciousness” in significantly different contexts, UCSC focusing on the humanities while the petitioner explores the hypothesis that the human mind, through processes not yet understood, is able to manipulate matter and energy. Although the AAO had already addressed the petitioner’s failed attempt to compare its own work with UCSC’s program, the petitioner now repeats the same claim without any reference to AAO’s rebuttal of that claim.

██████████ writing on behalf of the petitioner, states that there is a “profusion of relating academic courses” offered at accredited colleges and universities. The director had instructed the petitioner to submit course catalogs showing that the beneficiary’s field was offered for study. In response, the petitioner has submitted several letters from faculty members at various accredited universities. These individuals express their individual opinions about the validity of the petitioner’s research. For example, ██████████ states “[i]t is my personal opinion that these are appropriate topics for scientific research in an academic environment.” These letters, however, do not establish that the universities actually offer courses in the petitioner’s field.

The petitioner notes the existence of the ██████████ project at ██████████ and the petitioner submits a PEAR brochure. The brochure is not a course catalog, and it does not indicate that Princeton offers any courses of study in conjunction with this project.

██████████ states that “subtle energy is part of the curriculum of accredited institutions, such as ██████████ (which characterizes “orgone energy” as a field of study with great potential)

██████████ also repeats earlier claims about comparable programs at the University of Arizona. The record contains nothing regarding

several of the named universities. An earlier submission contains a brochure for a three-day seminar on complementary and alternative medicine, sponsored by the Office of Continuing [REDACTED] but there is no evidence that the university offers such courses to its own degree-seeking students as opposed to as part of continuing education requirements for already-practicing physicians.

A bulletin from the Director of [REDACTED] offers no evidence that the program relates to paranormal activities; it contains references to neurons, emotions, and cognitive neuroscience, but not the claimed ability of the unaided mind to affect matter or energy at a distance. The bulletin also contains no reference to courses being offered; the bulletin instead discusses symposia and presentations and other "activities and events." The bulletin indicates that funding to create the Center for [REDACTED] was provided in December 1997, nearly two years after the petition was filed. The center did not exist at the time of filing and thus could not under any circumstances show that consciousness studies represented an academic field in April 1996.

The petitioner submits documentation relating to [REDACTED] at [REDACTED] in [REDACTED] which is an office of an unaccredited correspondence school based on an island off the Australian coast. The petitioner submits a course catalog from the [REDACTED] which [REDACTED] describes as "a state-approved [REDACTED]. The course catalog lists courses including [REDACTED] and [REDACTED] CIHS, however, is not an accredited United States university or institute of higher learning; state approval is a status accorded to non-accredited institutions.¹

The petitioner submits materials from the [REDACTED] which [REDACTED] describes as the "successor to the world famous [REDACTED] and continues its work, although no longer affiliated. Many colleges and universities grant academic credit to its own students who attend courses there and several colleges offer courses using the [REDACTED] materials." The petitioner thus admits that the [REDACTED] is not affiliated with [REDACTED] and the petitioner submits no evidence that [REDACTED] offers courses relating to the petitioner's work. While [REDACTED] states that "[m]any colleges" grant credit for coursework at the [REDACTED] he names only one example [REDACTED] a [REDACTED] area community college) and provides no documentation. Even then, [REDACTED] recognition of courses offered by the [REDACTED] does not satisfy the regulatory definition, which requires that the subject must be offered for study at (rather than merely recognized by) accredited colleges. [REDACTED] does not appear to be a degree-granting institution at all, let alone an accredited one.

¹ The Western Association of Schools and Colleges, responsible for regional accreditation of institutions in the western U.S., does not list CIHS or Greenwich University among its accredited institutions of higher education (listings are available via the Internet at www.wascweb.org). The California Postsecondary Education Commission (www.cpec.ca.gov) lists CIHS as a "state-approved" institution, but the commission makes no claim that approval constitutes accreditation. Rather, it indicates that accreditation exempts a school from requiring approval.

The petitioner also submits an advertisement for a National Institute of Mental Health symposium entitled "Scientific Approaches to Consciousness: Reductionism Debated." Reductionism is the theory that complex entities can be explained through examination of their constituent parts. In the context of cognitive science, reductionism holds that consciousness (in the sense of awareness and perception) is entirely rooted in the physical operation of the brain, and thus can be "reduced" to a biological function, rather than being the product of a wholly immaterial and separate "mind." Nothing in this advertisement mentions or implies paranormal phenomena; there are references, instead, to cognitive science, psychology, and dreaming.

It remains that the beneficiary's claimed area of expertise is not in general studies of "consciousness," but rather in psychotronic healing, which the beneficiary is said to have invented on his own. Even if the petitioner were to show that some accredited universities offer coursework touching on the paranormal, it is unacceptably broad to declare that all paranormal inquiries, from attempting to predict the outcome of coin tosses or influence random number generators, to clairvoyantly diagnosing and then psychically healing disease, all fall within a single academic field.

In the Internal Revenue Service documentation mentioned above, the petitioner indicated that it conducts "scientific research on non-invasive healing techniques – 4 researchers contribute to a database documenting medical health studies of human subjects undergoing alternative healing treatments." As the AAO has previously observed, the petitioner has claimed that psychotronic healing was invented by the beneficiary and can only be learned through intensive study under the beneficiary, which amounts to a stipulation that the method is not taught at accredited colleges or universities. The petitioner has not shown that any accredited university offers course work in psychotronic healing, or in any comparable use of mental or psychic energy to effect healing in human tissue. Even the materials from unaccredited sources do not address the beneficiary's area of endeavor.

The final ground named in the director's notice of intent, concerning the petitioner's documented research accomplishments in an academic field, is tied to the issue of whether the petitioner's research takes place within an academic field. Because we cannot conclude from the evidence presented that the petitioner conducts research in an academic field, we likewise cannot conclude that the petitioner's documented research accomplishments (such as articles and presentations) are in an academic field.

While the petitioner has submitted letters from several individuals who are sincerely dedicated to the pursuit of paranormal claims, it appears that from the perspective of the academic community as a whole, the petitioner and the beneficiary engage in "fringe" research that is not accepted by the vast majority of academic or scientific researchers. The beneficiary's work relies upon assumptions (such as the power of the human mind to operate at a distance, and the very existence of orgone and subtle energy) which are generally regarded as, at best, unproven by the usual empirical standards of scientific inquiry. The beneficiary's field does not appear to have won widespread acceptance in the same way that, for instance, molecular biology or particle physics have done, producing replicable results and fruitful theories with documented

explanatory and predictive powers. This is not to say that the beneficiary's field may not one day gain greater acceptance if the beneficiary and the petitioner are able to document significant new findings that only the beneficiary's paradigm can reliably explain. Nevertheless, given the absence of such findings, and mainstream academia's evident reluctance or refusal to embrace the petitioner's and the beneficiary's work, we cannot find that the petitioner or the beneficiary engage in work that falls within a qualifying academic field.

The petitioner submits evidence of the beneficiary's recognition. This evidence is immaterial because the director did not raise the issue of recognition in the notice of intent or in the final decision. We note that much of this evidence dates from several years after the 1996 filing date and thus could not establish eligibility. See Matter of Katigbak, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

██████████ states that the petitioner "has been elected to full membership in two scientific academies, one of which has many Nobelists as members and is an **advisory body to the United Nations**." The two academies are the ██████████ (sometimes spelled "██████████") and the International Informatization Academy. The membership documents are dated, respectively, 1999 and 1998, and thus do not reflect the beneficiary's membership as of the petition's filing date in April 1996. Thus, these memberships cannot render the petition approvable, even if the director's stated grounds for deniability included the beneficiary's lack of memberships (which they did not).

██████████ refers to the beneficiary's "recent nomination . . . for what is the Russian equivalent of a Nobel prize in physics as a result of the Russian publication of his first book on the biophysics of energy and matter." Given that the Nobel Prize is an international award, which Russians have received in the past, it is not clear what ██████████ means by "the Russian equivalent of a Nobel prize." ██████████ cites "Attachment 23" in relation to this nomination. Attachment 23 is a June 13, 2000 letter which states, in part (grammar, spelling and capitalization as in original):

DECISION

██████████ of energoinformative sciences

About scientific works of ██████████ [the beneficiary's name] (USA, San-Francisco), are edited in USA and Russia and are represented in Senat IES and reviewed by Academicians of ██████████

Exequitive Senat dedced:

1. To note the original and exclusive character of the scientific books of [the beneficiary] "Spirit and Mind" and other.
3. [sic] To recommend the works of [the beneficiary] on promote to the recognition on the higher prestige premium as a National (USA), as a international range.

The petitioner submits no evidence that prizes awarded by the International Academy of Energyinformative Sciences are generally considered comparable to the Nobel Prize, in Russia or elsewhere. The numerous grammatical and spelling errors on this document are not consistent with the level of quality one could reasonably expect from an official document issued by a major national or international organization. The document bears signatures of officials and the seal of the [REDACTED] and is on the academy's letterhead, indicating that the document is from the academy itself, rather than simply a carelessly prepared third-party translation.

Furthermore, [REDACTED] discussion of these materials contains a number of unsubstantiated claims such as the assertion comparing prizes from the International Academy of Energyinformative Sciences to the Nobel Prize. Given the inaccuracy of some of [REDACTED] other assertions, such as his inclusion of the unaccredited California Institute of Human Sciences and [REDACTED] in a list of "accredited institutions," we cannot rely on unsubstantiated claims of this kind. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

For the above reasons, we conclude that the petitioner has not established that it has consistently been able to pay the beneficiary's proffered wage from April 12, 1996 onward, or that it has continuously employed at least three persons in full-time research positions since that date. The type of work conducted by the petitioner, and particularly by the beneficiary, has not yet won acceptance as an academic field, and therefore the petitioner cannot meet any of the regulatory requirements that involve an academic field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(B) of the Act and the petition should not have been approved. The revocation of that approval is justified by a thorough review of the record.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The director's decision is affirmed. The approval of the petition is revoked and the petition is denied.