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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
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Washington, D.C. 20536



File: WAC 02 105 52596 Office: California Service Center

Date: APR 10 2003

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:



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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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Elizabeth Hayward
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 Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner, a semiconductor manufacturer, seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B), as an outstanding professor or researcher. The petitioner seeks to employ the beneficiary as a "Library Services Representative for [REDACTED] Library's Research and Information Group." In her initial notice of intent to deny, the director found that the beneficiary has been "recognized internationally as outstanding in the academic field." In the denial of the petition, the director concluded that the petitioner had not established that the beneficiary's position meets the requirements set forth in section 203(b)(1)(B)(iii)(III) of the Act.

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.

The regulation at 8 C.F.R. § 204.5(i)(3) states that a petition for an outstanding professor or researcher must be accompanied by:

(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.

As used in this section, the term "academic field" means a body of specialized knowledge offered for study at an accredited United States university or institution of higher education. 8 C.F.R. § 204.5(i)(2).

The issue in this matter is whether the beneficiary's duties at [REDACTED] involve conducting "research" in his academic field, Library Science.

In response to the director's notice of intent to deny, the petitioner submitted a letter from Dr. Daniel Dorner, Director of the Master of Library and Information Studies Program at Victoria University in Wellington, New Zealand. Dr. Dorner states:

From my assessment of his job duties and responsibilities at Intel, [the beneficiary's] current position requires him to undertake in-depth research and draw extensively on the knowledge base that he built up during his studies in his M.A. program here, and from his Ph.D. [in Librarianship from Monash University in Melbourne, Australia].

Also submitted was a letter from Alma Vathis Howell, Manager of the Research and Information Solutions Group at the [REDACTED] library. She states:

Although [REDACTED] Library employs 28 librarians, many of whom are engaged in traditional cataloguing and document delivery responsibilities, [the beneficiary] is one of only fifteen key researchers in the Research and Information Group who engages in strategic research to support [REDACTED] Labs as well as product and manufacturing groups at the company. [The beneficiary's] work does not involve basic library tasks. [The beneficiary] engages in careful applied research in key areas of Intel's business. His research projects include the qualitative and quantitative field study of the information behavior of engineers, empirical studies of individual/business group customer segmentation, idea generation research,

bibliometric analysis of literature growth/author productivity, and similar advanced applied research. The results of this research will form the basis of future Intel projects in many areas including business development, engineering and product/marketing.

[The beneficiary's] position is not simply that of "a special librarian of a corporation" because he does not assist Intel's engineers in performing research but rather he initiates, manages, and conducts his own research projects.

Despite assertions from the petitioner to the contrary, the director found that the beneficiary functions as "a special librarian of a corporation" rather than a scholarly researcher. The director's decision indicated that the petitioner's evidence did not show that the beneficiary was conducting "scholarly or advanced theoretical research."

The director provided a thorough explanation of the deficiencies in the record and we concur with the director that the petitioner's evidence was somewhat ambiguous regarding the beneficiary's job duties. We also concur with the director that the description of the beneficiary's duties and responsibilities provided in response to the notice of intent to deny contained some information that was not "written in layman's terms" or fully explained by the petitioner. That being said, it appears that the petitioner has overcome these deficiencies with further information provided on appeal.

On appeal, counsel argues that the beneficiary's duties at Intel involve far more than "basic library research tasks." Counsel states:

[The beneficiary's] research will examine the information behavior of Intel design, process, and manufacturing engineers, their job-related information needs, and how their work roles influence the use of information for the design and manufacture of integrated circuits. The results of this study will be submitted for consideration for publication. [The beneficiary] is currently spending 80% of his time working on this research at [REDACTED] Library.

Bibliometrics is a research method use in Library and Information Science to describe publication patterns in a given body of literature or subject field. The study that [the beneficiary] will carry out using this research method is to determine the publication productivity of [REDACTED] Engineers. The study will test the applicability of Lotka's Law of Author Productivity [to [REDACTED]]¹

Counsel indicates that the beneficiary will use information from the bibliometric research study to examine the impact of [REDACTED] technological journals in order to see if [REDACTED] research journals are having the appropriate impact in industry and academia.

The petitioner provides rankings from *U.S. News and World Report* naming the University of Illinois

¹ Counsel indicates that Lotka's Law of scientific productivity provides a formula that can predict author productivity or the percentage of authors who will produce more than one scientific publication.

and the University of North Carolina as the top two graduate programs in Library and Information Science. Counsel states that these top-ranked schools have faculty who carry out research projects and programs in areas similar to the work that the beneficiary performs at the ██████ Library. Information provided from the universities' web sites confirms the existence of their research projects and programs.

The petitioner also submits a letter from the co-editor of *Library & Information Science Research* (an academic journal in the beneficiary's field) stating that the beneficiary's research article, entitled "Information-Seeking Behavior of Design, Process, and Manufacturing Engineers," had been accepted for publication. This research article was prepared by the beneficiary while working at ██████

Based on the additional evidence submitted on appeal, we withdraw the director's finding that the beneficiary's position at ██████ did not meet the requirements set forth in section 203(b)(1)(B)(iii)(III) of the Act.

We also withdraw the director's finding that the beneficiary has been "recognized internationally as outstanding in the academic field."

8 C.F.R. § 204.5(i)(3)(i) states 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 beneficiary 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 director's notice of intent to deny found that the beneficiary had satisfied "at least two of the six criteria," but the director's decision did not specify which of the criteria had been met.

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

The petitioner submitted evidence showing that the beneficiary received various research fellowship grants, scholarships, and academic degrees. An advanced degree demonstrates only that the beneficiary has fulfilled certain academic requirements at a particular university and is not evidence of international recognition. The beneficiary's fellowship grants (such as the Mellon Research Fellowship stipend totaling \$375 for a single week) and scholarships were, by nature, presented not to established scholars with active professional careers, but rather to individuals pursuing further training and education. Graduate study is not a field of endeavor; we cannot artificially restrict the beneficiary's field to exclude established researchers who have long since completed their training and therefore do not compete for fellowships and scholarships. We are not persuaded that obtaining educational funding is reflective of international recognition. We note here that, unlike awards (such as, for example, the Nobel Prize) that recognize demonstrated past achievements, fellowship grants are often bestowed in response to applications by prospective recipients, who describe the research that they seek to undertake. In other words,

grants and scholarships generally support future activities rather than recognize prior achievements. We find that the evidence offered by the petitioner reflects institutional, rather than international, recognition. Similarly, being elected to positions such as Student Practicum Supervisor or Student Liaison Co-Chair at a particular educational institution do not qualify as major prizes or awards that demonstrate international recognition.

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

The petitioner submits evidence of the beneficiary's membership in the American Library Association and the Special Library Association of America and general information regarding their organizations. However, no evidence has been provided showing that these associations require outstanding achievement as an essential condition for admission to 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.

In a statement accompanying the petition, counsel argued that sixteen citations of the beneficiary's work would satisfy this criterion. We note here that the articles citing the beneficiary's work similarly referenced many other individuals. Citations, which simply reference an individual's work, do not qualify as "published materials about the alien's work." The petitioner must demonstrate that the beneficiary's work was the main subject of the published material. Citations of the beneficiary's work will be addressed under a separate criterion.

The two newspaper articles mentioning the beneficiary reflect local, rather than international, recognition and further do not qualify as "professional publications" in the academic field.

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.

A petitioner must demonstrate that the alien's international recognition resulted in his selection to serve as a judge of the work of others in his field. Further, the judging must involve other accomplished professionals in the research field and be at the international level.

The petitioner submitted evidence of a four-paragraph book review published by the beneficiary in the *Bibliographical Society of Australia and New Zealand Bulletin*. The petitioner offers no information regarding the basis for the beneficiary's selection to perform the book review. It appears that numerous other book reviews were included in Volume Twenty, Number Four of the *Bulletin* and it has not been shown that the numerous other authors offering similar brief book reviews in that publication all enjoyed international recognition.

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

The petitioner submitted several witness letters from the beneficiary's current and former colleagues. These individuals all have direct ties to institutions where the beneficiary has previously studied or worked. The letters provided detail the beneficiary's education and employment experience and describe him as a distinguished library scholar, but they provide no information regarding how the beneficiary's findings have influenced the academic field at the international level. The issue here is not the past experience or educational qualifications of the beneficiary, but, rather, whether any of his past research accomplishments would qualify as a significant contribution in the field of library science.

An individual that is recognized internationally as outstanding should be able to produce ample unsolicited materials reflecting such a reputation. If the beneficiary's scholarly achievements are not widely praised outside of his current and former colleagues, then it cannot be concluded that he enjoys an international reputation. In this case, the beneficiary has not demonstrated any specific scientific or scholarly contributions that have been unusually influential and renowned within the field of library science. While the witnesses have asserted in general terms that the beneficiary is "an internationally known scholar in the field of library science," he appears to have earned a reputation only among individuals from institutions where he has studied or worked. The absence of substantial independent testimony raises doubt as to the extent of the beneficiary's recognition.

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

The petitioner submits evidence of the beneficiary's authorship of published journal articles and a book. Independent evidence showing the extent of the circulation of the publications (in terms of copies distributed beyond the country of publication) featuring the beneficiary's work has not been provided. Counsel contends that the beneficiary's published works are internationally circulated but offers no evidence except for statements from witnesses selected by the petitioner. These statements cannot establish, first-hand, that the beneficiary's publications enjoy significant international distribution. Without evidence of their significant international distribution from independent sources such as media guides or the publishers themselves, the petitioner has failed to show that the beneficiary's published works satisfy this criterion. The petitioner has submitted general information about the publications printed from www.publist.com, but the information provided does not establish proof of significant international distribution outside of the country where the work was published.

We further note that the publication of scholarly articles is not automatic evidence of international recognition; we must also consider the academic field's reaction to those articles. Publication, by itself, is not a strong indication of impact, because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the beneficiary's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work. This is a universally accepted practice among

academic scholars and researchers. Numerous independent citations would provide firm evidence that other researchers have been influenced by the beneficiary's work. Their citation of his published articles would demonstrate their familiarity with his work. If, on the other hand, there are few citations of an alien's work, suggesting that that work has gone largely unnoticed by the larger research community, then it is reasonable to question how widely that alien's work is viewed as being noteworthy. It is also reasonable to question how much impact - and international recognition - a researcher's work would have, if that research does not influence the direction of future research. In this case, the limited number of independent citations provided (sixteen) would not elevate the beneficiary to a level of international recognition, particularly since the beneficiary has authored at least eleven papers.

Beyond the issue of whether the beneficiary meets at least two of the regulatory criteria 8 C.F.R. § 204.5(i)(3)(i), we note that the record contains no formal job offer letter, i.e., a letter from the petitioner addressed to the beneficiary that sets forth a binding offer of employment, including specific terms thereof. The initial submission includes a letter (dated December 7, 2001) addressed to the "Immigration and Naturalization Service" which, over the course of six pages, discusses Intel's research achievements, the beneficiary's duties at Intel, and the beneficiary's qualifications.

This letter indicates that the beneficiary is employed by Intel, but the letter is not an offer of employment addressed to the beneficiary; it is a letter to the "Immigration and Naturalization Service" which discusses (among other things) the petitioner's intention to employ the beneficiary in a permanent research position. The letter does not constitute a formal offer of employment; indeed, it implies that the beneficiary has already accepted an offer made earlier. The record does not contain any documentation, pre-dating the petition's filing date, that initiated an employer-employee relationship between the petitioner and the beneficiary or otherwise extended a job offer from the petitioner to the beneficiary.

In this case, the petitioner has shown that the beneficiary is a skilled Library Services Representative, who has won the respect of individuals from the institutions where he has studied and worked, while possibly securing some minimal degree of international exposure for his work. The record, however, stops short of elevating the beneficiary to an international reputation as an outstanding researcher or professor. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

On appeal, the petitioner has overcome the grounds for denial cited in the director's decision, but a complete review of the record reveals numerous deficiencies in the petitioner's evidence not addressed in the director's notice of intent to deny and final decision. In light of the preceding analysis, the record as it is presently constituted does not warrant approval of the petition.

Accordingly, we remand this matter for the purpose of a new decision. The petitioner in this matter was not given an adequate opportunity to address the evidentiary deficiencies cited above. The director shall notify the petitioner of the above deficiencies and afford the petitioner reasonable time to obtain any further evidence which the director may deem necessary. The evidence submitted in response to the director's request, however, must demonstrate the beneficiary's eligibility at the

time of filing. *See Matter of Katigbak*, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. The director shall then render a new decision based on the evidence of record. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.