

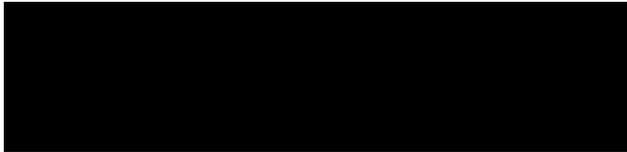
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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536



File: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

DEC 08 2003

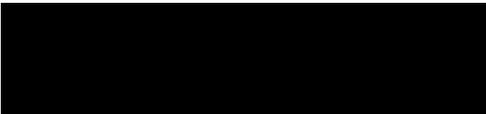
IN RE: Petitioner:
Beneficiary:



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)

ON 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 Citizenship and Immigration Services (CIS) 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 
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, originally approved the petition on September 10, 1996. Subsequently, upon review of the record, the director determined that the petition was approved in error, and after serving due notice of intent, the director revoked the approval on May 1, 1998. The petitioner appealed this revocation to the Administrative Appeals Office (AAO). The AAO twice remanded the matter on procedural grounds. The director's most recent decision is dated November 10, 2001. That decision was certified to the AAO for review. On October 31, 2002, the AAO affirmed the director's decision and upheld the revocation. The matter is now before the AAO on a motion to reopen. The motion will be granted, the AAO's previous decision will be affirmed and the revocation will stand.

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. Because the full procedural history of this exceptionally lengthy proceeding is amply documented in the previous decisions issued by the director and AAO, we will not repeat that history at length here. In its decision of October 31, 2002, the AAO cited three grounds for revocation, any one of which would, by itself, be sufficient to prevent the approval of the petition. Those findings were: (1) the petitioner is not a qualifying research institution with at least three full-time researchers; (2) the petitioner has not documented its ability to pay the wage offered to the beneficiary; and (3) the petitioner has not shown that the beneficiary's field, psychotronic healing, meets the regulatory definition of an academic field.

On motion, the petitioner submits new documents and a brief from Dr. [REDACTED] research director of the petitioning institution. We will consider these materials in relation to the three grounds for revocation stated above.

Section 203(b) of the Act states, in pertinent part:

(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:

* * *

(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 concerns whether the petitioner employs at least three persons full-time in research positions, as required by 8 C.F.R. § 204.5(i)(3)(iii)(C) and section 203(b)(1)(B)(iii)(III) of the Act. The petition must have been amenable to approval as of its filing date, in this case April 12, 1996, and must have remained so amenable since that time.

The AAO noted that the beneficiary was the only employee consistently identified as a "researcher" in the petitioner's federal tax documents, and that other researchers have been paid sporadically or listed as "nonemployees." The AAO concluded:

[t]he 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).

On motion, regarding administrative duties, Dr. [REDACTED] asserts that the petitioning entity is “a small organization” requiring minimal attention to administrative and other non-research duties, and therefore the two officials of the organization qualify as full-time researchers. Dr. [REDACTED] also repeats the earlier claim that another researcher, [REDACTED] worked full-time in 1996 but received a deferred salary owing to funding issues.

The petitioner had previously submitted a copy of its March 4, 1996 letter to [REDACTED] offering her “a full-time position as a research associate . . . beginning April 1, 1996.” This letter listed Ms. [REDACTED] responsibilities, which included research functions but also “workshops and seminars for the public on the [petitioner’s] research” and “fund raising,” neither of which constitute research.

The AAO had already considered these arguments regarding Ms. [REDACTED] and cited evidence such as quarterly reports that did not list Ms. [REDACTED] as an employee until the fourth quarter of 1997, and that prior payments to Ms. [REDACTED] were classified as “nonemployee.” The petitioner has not addressed or overcome this evidence. The materials in the record are, at best, ambiguous on this point. The petitioner, on motion, submits no new documentary evidence to establish that the petitioner has consistently employed at least three full-time researchers since April 12, 1996.

ABILITY TO PAY

The next issue regards the petitioner’s ability to pay. 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.

In order to establish eligibility in this matter, the petitioner must demonstrate its ability to pay the wage offered as of the petition’s filing date, which is April 12, 1996. The beneficiary’s salary was stated as \$30,000 per year.

The AAO previously stated:

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 AAO also noted that much of the petitioner's evidence of ability to pay consisted of pledge letters from various donors, promising to send money at some future time.

Dr. [REDACTED] states that the beneficiary "was put on the payroll as soon as the petition was approved during the last quarter of [1996]. That is why his name starts appearing [in pay records] on the fourth quarter of 1996 and not before." Regardless of when the petitioner actually hired the beneficiary, the regulations require that the petitioner must have been able to pay that wage beginning on the filing date, April 12, 1996. As the AAO has previously noted, on March 4, 1996, the petitioner informed [REDACTED] that "while it may be some time before we can begin to pay you, as soon as sufficient funds are available you will receive them." This information indicates that, six weeks before the filing date, the petitioner did not have "sufficient funds" to pay Ms. [REDACTED] \$18,000 salary, let alone the beneficiary's \$30,000 salary. Dr. [REDACTED] claim that the petitioner was eventually able to make up the shortfall in salaries does not establish that the petitioner was able to pay the salary on April 12, 1996.

Regarding the lack of copies of annual reports, federal tax returns, or audited financial statements, we refer to the regulation at 8 C.F.R. § 103.2(b)(2)(i), which states:

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

In this instance, the required evidence consists of annual reports, federal tax returns, or audited financial statements. Their unexplained absence creates a presumption of ineligibility.

ACADEMIC FIELD

The final basis for the revocation of the approval concerns the issue of whether the beneficiary's area of endeavor constitutes an academic field. The regulation at 8 C.F.R. § 204.5(i)(2) defines an academic

field as “a body of specialized knowledge offered for study at an accredited United States university or institution of higher education.”

The beneficiary’s field is called “psychotronic healing.” The petitioner’s web site formerly offered a description of this method at <http://www.functionalresearch.org/psychotronichealing.html>:

Psychotronic healing as developed, practiced, and taught by the physicist, healer, and Academician, [the beneficiary], utilizes highly magnified conscious intention to systematically restructure the patient’s so-called “subtle” or “spiritual” bodies. This spontaneously results in changes toward health in the anatomy and physiology of diseased tissue and organs on the physical level. Psychotronic healing is a complex, sophisticated, precise method of healing with the mind that can be utilized to treat most illnesses. The method can be taught to others who are willing to devote several hundred hours in study and practice and have their brains and spiritual bodies “transformed” by [the beneficiary].

The above web page was active as of August 17, 2000. Dr. [redacted] states that the AAO has relied on information from “outdated” brochures and materials. The following passage was available at <http://www.functionalresearch.org/levashovmethod.html> as of November 10, 2003:

The Levashov Method of Psychic Healing as developed, practiced, and taught by the physicist, healer, and Academician, Nicolai Levashov, utilizes highly magnified conscious intention to systematically restructure the patient’s so-called “subtle” or “spiritual” bodies. This spontaneously results in changes toward health in the anatomy and physiology of diseased tissue and organs on the physical level. Psychic healing is a complex, sophisticated, precise method of healing with the mind that can be utilized to treat most illnesses.

Cells, organs, and the physical body as a whole have other bodies or structures that can usually only be seen by healers or “sensitives” with clairvoyant abilities. The spiritual bodies function in unity with the physical body to provide information and energy and act as repositories of thought and emotion. In states of health the physical and spiritual bodies work in balance and harmony to facilitate the development and realization of the potential of man’s soul or spirit: in disease there is imbalance and disharmony and the spirit cannot flourish. . . .

According to Levashov there are many factors that can cause physical disease and disharmony between the various bodies. Depending upon individual makeup, these include karmic (past life), genetic, constitutional, emotional, mental, and environmental factors. Invariably, however, one physical problem affecting nearly all people, are subclinical, chronic, bacterial or viral infections and their toxins in the cerebral spinal fluid of the spine and brain.

The petitioner has repeatedly credited the beneficiary with inventing psychotronic healing (a term which continues to appear on the petitioner’s web site), and has stated that the only way to learn

psychotronic healing is through the beneficiary. The AAO concluded that if the beneficiary himself invented psychotronic healing, and the beneficiary alone teaches it, then it follows that psychotronic healing is not offered for study at any accredited United States universities or institution of higher education. Therefore, psychotronic healing is not an academic field as the regulations define that term.

On motion, Dr. [REDACTED] observes that the beneficiary "does, in fact, hold an advanced degree in theoretical physics from Russia's Kharkov University," and that the beneficiary's work "stems mainly from the standpoint of advanced theoretical physics." Physics is certainly a qualifying academic field, but it does not follow that the beneficiary is employed as a physicist. A mainstream physician must have knowledge in such fields as chemistry, pharmacology, and microbiology, but it does not follow that the physician works in those fields.

Furthermore, the beneficiary claims to treat and cure disease through the power of thought, an activity that does not fall within the generally accepted domain of physics. The petitioner has not shown that theoretical physicists generally accept the principles by which the beneficiary's methods are said to operate. Adopting the language of physics does not place the beneficiary's work in the realm of physics.

Dr. [REDACTED] states that the petitioner and the beneficiary have accumulated "a growing database of unusual outcomes proven to occur far beyond the bounds of pure chance," and that "the application of the beneficiary's paradigm . . . has yielded empirical evidence that his hypothesis as to the mechanism of action is correct."

The central issue in dispute here is not whether or not psychotronic healing is a viable technique; that issue must be resolved by expert review of the available evidence. The AAO claims no special competence in the evaluation of specific claims, such as whether a spiritual body exists that has lived at least one "past life" (the petitioner's term) and is subject to the laws of quantum physics (although the AAO can evaluate, in a general sense, evidence regarding the degree of acceptance that psychotronic healing appears to have earned in the scientific community). Rather, the fundamental issue is whether the study of psychotronic healing is (and was, as of April 12, 1996) an academic field as the regulations define that term.

Regarding the observation that the beneficiary is the inventor and sole instructor of psychotronic healing, Dr. [REDACTED] asserts "there are many different modalities in energy healing," including the beneficiary's method. This raises the question of whether "energy healing" in general is taught at accredited United States universities and institutions of higher education.

The petitioner had previously asserted that the beneficiary's work falls under the larger heading of "consciousness studies," and submitted several examples that purported to show that accredited universities treat "consciousness studies" as an academic field. The AAO determined that the examples cited were either (1) unaccredited universities, (2) independent facilities with no current university affiliation, (3) non-credit seminars offered outside of degree programs, (4) cognitive studies courses with no particular relevance to psychic or paranormal phenomena, or (5) unsubstantiated claims.

On motion, Dr. [REDACTED] concedes that some of these examples were inappropriate, but he maintains that some of the examples do serve to prove the petitioner's claim. Dr. [REDACTED] refers to documentation from the Center for Consciousness Studies (CCS) at the University of Arizona. The AAO had previously observed that CCS was not established until 1997. Dr. [REDACTED] asserts that the founding date is irrelevant. As noted above, however, the petitioner must show that the beneficiary's field was a recognized academic field as of the petition's filing date. Even if CCS' activities directly pertained to the petitioner's and the beneficiary's work (which the petitioner has not shown), if CCS did not exist in 1996 then its subsequent activities cannot show that CCS' area of interest was a recognized academic field in 1996.

Dr. [REDACTED] refers to a symposium held by the National Institute of Mental Health (NIMH) featuring Dr. Stuart Hameroff. Dr. [REDACTED] cites a 1997 interview in which Dr. Hameroff discusses "quantum nonlocality" (the principle by which subatomic particles appear to remain causally connected independent of distance) and the paradox known as "Schrödinger's cat." Dr. Hameroff's comments appear to address the question of the nature of consciousness itself; these materials have no discernible direct bearing on the claim that the unaided human mind can heal diseased tissue at a distance. Furthermore, NIMH is not a university or institution of higher education.

Dr. [REDACTED] states that the AAO arbitrarily dismissed materials regarding a three-day course at the State University of New York (SUNY) at Stony Brook because it was a continuing education course rather than an undergraduate course. The course in question was a seminar on "complementary and alternative medicine." The brochure contained one mention of "mind/body medicine" without elaboration. The petitioner has not shown that SUNY Stony Brook or other medical authorities rely on a definition of "mind/body medicine" that includes the beneficiary's work; the petitioner has simply underlined that term in the brochure.

An announcement for a conference held by the World Federation for Mental Health, available at <http://www.wfmh.org/confmcs.htm>, includes the following passage, which is highly relevant to the issue at hand:

Behavioral medicine . . . focuses on the interplay between psychosocial factors and medical illness. Colloquially known as "Mind-Body Medicine," it considers the linkage between one's mental state and physical illness. Research has documented that level of disability, impact on well-being, and in some cases morbidity are influenced by psychological factors as well as the degree of disease severity.

Significantly, for individuals seeking further information regarding "Mind-Body Medicine" as described above, the web site provides contact information for a professor at SUNY Stony Brook. This is strong evidence that SUNY Stony Brook, and the World Federation for Mental Health, consider "mind/body medicine" to relate to psychological factors rather than the power of one human mind to heal another human body.

The web site of the Center for Mind-Body Medicine states "[m]ind-body medicine focuses on the interactions between mind and body and the powerful ways in which emotional, mental, social and spiritual factors can directly affect health." The Center lists various techniques including meditation,

self-hypnosis, acupuncture, and prayer, but there is no indication that the Center for Mind-Body Medicine endorses claims that a healer's mental powers can cause physical changes in a patient's tissues. Rather, "participants . . . learn how to use mind body skills and techniques to enhance their well-being." Source: <http://www.cmbm.org/about/WhatIsMBM.htm>.

The petitioner has provided no evidence that the term "mind/body medicine," as generally understood, includes the beneficiary's discipline of psychotronic healing.

Regarding another institution, the AAO had stated:

While Dr. [REDACTED] states that "[m]any colleges" grant credit for coursework at the Rhine Institute, he names only one example (Richland College, a Dallas-area community college) and provides no documentation. Even then, Richland's recognition of courses offered by the Rhine Institute does not satisfy the regulatory definition, which requires that the subject must be offered for study at (rather than merely recognized by) accredited colleges. The Rhine Institute does not appear to be a degree-granting institution at all, let alone an accredited one.

In response, Dr. [REDACTED] states "[w]e were not aware that community colleges . . . would not be acceptable for inclusion in the "academic" category." The AAO, however, never stated that community colleges do not qualify as "academic." As the above quotation shows, the petitioner had not claimed that the course in question was offered for study at Richland College. The course was offered for study at the Rhine Institute, which the petitioner has not shown to be an accredited university or institution of higher education. Even if Richland College subsequently recognizes credit from the Rhine Institute (a claim which remains unsubstantiated), this does not retroactively cause the course to have been offered for study by Richland College.

The AAO had stated "[t]he petitioner notes the existence of the Princeton Engineering Anomalies Research ("PEAR") project at Princeton University, 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." The petitioner, on motion, does not contest the AAO's finding that the petitioner's prior submission "does not indicate that Princeton offers any courses of study in conjunction with [the PEAR] project." AAO's description of the evidence then provided was, therefore, accurate.

The petitioner submits new materials from <http://www.princeton.edu/~pear/7.html>, a PEAR page on Princeton's web site. A list of PEAR's "extended activities" includes an entry that states:

The PEAR laboratory provides a major component of a unique and popular undergraduate course at Princeton University, entitled "Human/Machine Interactions." This course brings together faculty, staff, and students in engineering, computer, science, physics, psychology and philosophy for interdisciplinary study of the role of human cognition, perception, and creativity in a number of contemporary human/machine technologies.

The petitioner does not explain how a course relating to “the role of human cognition, perception, and creativity in a number of contemporary human/machine technologies” relates to the claimed practice of healing diseased human tissue through mental power. Like the other materials and arguments discussed above, the new information from PEAR does not provide persuasive support for the claim that the beneficiary’s discipline constitutes an academic field, and has done so since April 12, 1996.

Dr. [REDACTED] discusses other entities which, he admits, are not accredited. Because these fall outside the regulation, further discussion would be redundant.

In an effort to find support for the petitioner’s claim, the AAO obtained a directory of “alternative medicine schools & colleges” from <http://www.healthy.net/univ/profess/schools/med/index.asp>. The directory offers several categories. The category of “psychotronic healing” is not listed, but one listed category is “energy healing,” a term that has been used to describe the beneficiary’s work. The directory lists 54 schools within the United States. The AAO then compared this list with lists of accredited universities and community colleges provided by the University of Texas at Austin at <http://www.utexas.edu/world/univ/state/> and <http://www.utexas.edu/world/comcol/state/>. None of the “alternative medicine schools & colleges” that offer “energy healing” appear on either list of accredited institutions. While these lists do not appear to be complete and comprehensive, we note nevertheless the complete lack of overlap between the lists of accredited institutions and of “energy healing” institutions. Furthermore, the burden is on the petitioner to establish that the beneficiary’s field is a qualifying academic field; not on the AAO or CIS to establish that it is not an academic field. The regulations contain no presumption of eligibility.

The preponderance of available evidence overwhelmingly favors the conclusion that the petitioner has not shown that the beneficiary’s discipline meets the regulatory definition of an academic field. Efforts to corroborate or clarify the petitioner’s claims via public information available on the world wide web have yielded no support for those claims, and have contradicted some elements of those claims.

Dr. [REDACTED] quoting a passage from the AAO’s decision, states:

[Y]ou state that 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.” We are not claiming that the paranormal inquiries listed above all fall within a single academic field; rather that the items enumerated above are all phenomena that belong to the study of consciousness. If they do not bestride “a single academic field” they nevertheless all deal with some aspect of consciousness, even if they occupy several rather than a single academic field.

Quantum theory and randomness phenomena, for example, play a large role in studies of consciousness, though the former belongs to the academic field of physics and the latter to several academic fields of various designations, for example, statistics and multivariate analysis.

We acknowledge the interrelations between different fields. The field of medicine, for instance, relates to biology, microbiology, chemistry, pharmacology, and so on. It remains, however, that medicine is an academic field in its own right, rather than an offshoot of another field such as biology. The petitioner's assertion that the beneficiary's work relates to the overall study of "consciousness" is not persuasive. Of the programs offered at accredited universities for which specific information is available, the discussion of "consciousness" centers around the phenomenon of cognition, and inquiry as to how collections of individual cells, themselves composed of inanimate molecules, are able to become self-aware. Materials regarding "mind-body medicine" focus on the mental state of the patient, rather than on healing effects that somehow radiate from the mind of the healer.

Furthermore, we note that physics, cognitive studies, statistics, and so on are readily shown to be academic fields; major universities have entire departments dedicated to these fields. One need not pursue circuitous logic in an effort to establish that these subjects are offered for study at accredited colleges and universities. In contrast, the petitioner has not identified a single course at a single accredited institution that demonstrably relates to psychotronic healing or any practice that reasonably resembles it. Having claimed that training in psychotronic healing is available only from the beneficiary, the petitioner cannot credibly make the contradictory claim that the discipline is an academic field offered for study at accredited universities and institutions.

Dr. [REDACTED] then attempts an alternative definition of "academic," stating "the term 'academic' basically denotes an established institution of erudition and serious, scientific pursuit." The regulations already include a definition of the term "academic field," and the petitioner cannot arbitrarily substitute a different definition that might be construed as being more favorable to the petitioner's claim.

To establish that the beneficiary's work meets the petitioner's definition of "academic," Dr. Blasband notes that "[o]ne of the most conservative and traditional medical journals in the field, *Annals of Internal Medicine*," published an article about "healing projects," "The Efficacy of 'Distant Healing': A Systematic Review of Randomized Trials," in its June 6, 2000 issue.

The authors of that article did not perform their own distant healing experiments; rather, they reviewed existing publications on the subject. The authors "found more than 100 clinical trials of distant healing," but rejected most of these articles for methodological reasons, and concluded "[t]he methodologic limitations of several studies make it difficult to draw definitive conclusions about the efficacy of distant healing." They did, however, consider the matter suitable for further inquiry. Given the nature of these findings, the *Annals of Internal Medicine* article is not strong evidence that "distant healing" has gained broad acceptance as an academic field, or that a scientific consensus exists as to the validity of the field's basic tenets. The article discusses various forms of "distant healing" but does not mention the beneficiary's method. The materials presented on motion do not overcome the AAO's previous finding that the "mainstream" academic and scientific communities appear, at this point, to regard work such as the beneficiary's as being on the "fringe" of scientific research. Dr. Blasband maintains that the beneficiary works in "the arena of Einstein, Planck, Heisenberg and Schroedinger, the titans of their field . . . and not of gurus in sandals," but references to "spiritual bodies" and "karmic (past life) . . . factors" appear to have considerably more in common with religious mysticism than with quantum physics.

For the above reasons, we are not persuaded by efforts to link the beneficiary's claimed use of "highly magnified conscious intention to systematically restructure the patient's so-called 'subtle' or 'spiritual' bodies" to recognized academic fields such as physics and cognitive studies.

The petitioner then turns to the issue of the beneficiary's recognition in the field. The statute and regulations require a showing that the beneficiary is internationally recognized as outstanding in the academic field. The AAO did not discuss this issue at length, because if the beneficiary's field does not qualify as an academic field, then the question of recognition is moot. The AAO also noted that much of the petitioner's evidence in this regard dates from several years after the filing date. Beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Therefore, we need not discuss this issue at length. We will observe only that the petitioner, on motion, has made several claims regarding the beneficiary's recognition, but offers no new evidence to support those claims. For instance, Dr. Blasband asserts that the beneficiary was nominated for a Nobel Prize and that "Hubble data . . . support his position" (referring, apparently, to the Hubble Space Telescope).

The evidence regarding the petitioner's employment of three full-time researchers since April 12, 1996 is not persuasive. The petitioner has failed to establish its ability to pay the proffered wage; the documentation submitted does not conform to 8 C.F.R. § 204.5(g)(2), and on its face shows a serious financial shortfall as of that time. The petitioner has not provided persuasive evidence to show that the beneficiary's field of endeavor (and thus the field studied by the petitioner) qualifies as an academic field as the regulations define that term.

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. The petition was approved in error, and the director acted properly in revoking that approval. Accordingly, the previous decision of the AAO will be affirmed.

ORDER: The AAO's decision of October 31, 2002 is affirmed. The revocation of the approval stands.