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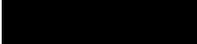
ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 Mass, 3/F

425 Eye Street, N.W.

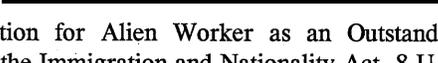
Washington, DC 20536



File: 

Office: Nebraska Service Center

Date: **DEC 24 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:



**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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an education and research institution. 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). According to the petition, the petitioner seeks to employ the beneficiary permanently in the United States in an unspecified permanent position. The director determined that the petitioner had not established that it had offered the beneficiary a permanent job as of the date of filing or that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

On appeal, counsel asserts the director's statement that the evidence "must clearly demonstrate" the beneficiary's eligibility "wrongfully raises the standard of the regulations." Section 291 of the Act provides:

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not inadmissible under any provision of this Act, and, if an alien, that he is entitled to the nonimmigrant; immigrant, special immigrant, immediate relative, or refugee status claimed, as the case may be.

The law goes on to assert that the evidence must establish eligibility "to the satisfaction" of the adjudicating officer. This burden is confirmed in *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). We note that counsel first raised this argument in response to the director's request for additional documentation. In his final decision, the director questioned whether counsel was suggesting that the correct standard should be "ambiguously demonstrated, strongly implied, hinted at, or some other level." On appeal, counsel does not provide an alternative standard of proof other than to reassert: "The director's own standard 'to clearly demonstrate' that the alien is recognized internationally wrongfully raises the standard of the regulations 'recognized internationally.'" (Emphasis in original.)

Counsel appears to be comparing two unrelated concepts, the petitioner's standard of proof<sup>1</sup> with the level of recognition required for eligibility. The regulation quoted by counsel address only the eligibility requirements, and not the standard of proof in meeting those eligibility requirements. Regardless of the classification sought, it has been held that the petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). While the director used the phrase "clearly demonstrate" instead of "preponderance of the evidence," the director appears to be using the common usage of the word "clearly" as opposed

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<sup>1</sup> Standard of proof is defined as follows: "The degree or level of proof demanded in a specific case, such as 'beyond a reasonable doubt,' or 'by a preponderance of the evidence.'" Black's Law Dictionary 1413 (7<sup>th</sup> ed. 1999).

to articulating a higher standard of proof. Regardless of how the director phrased the petitioner's standard of proof, for the reasons discussed below, we find that the petitioner has not established the beneficiary's eligibility by a preponderance of the evidence. Counsel's specific arguments will be discussed 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.

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

An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or

(C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

As stated above, on Part 6 of the petition, the petitioner did not provide the job title or nontechnical description of the job for the proposed employment. In his cover letter, counsel asserts that a letter from the petitioner at Exhibit 36 evidences the job offer. The letter tabbed as Exhibit 36 is a letter from a professor and department chair that makes no reference to a job offer. The document on which "Exhibit 36" is handwritten is a grant application identifying the beneficiary as one of the "key personnel." This document does not constitute a job offer from the petitioner to the beneficiary. None of the remaining exhibits constitute a job offer. On May 21, 2002, the director requested "a copy of [the petitioner's] letter to the beneficiary which offers him a permanent research position at [the petitioning] university in his academic job."

In response, the petitioner submitted a letter dated June 6, 2002 addressed to CIS from Dr. Robert E. Michler, Chief of the Division of Cardiothoracic Surgery at the petitioning institution. Dr. Michler states that the beneficiary is working as a Research Associate 2B/H under a nonimmigrant visa and that the job offer "set forth on the immigrant petition for alien worker (I-140) form is still being offered to him under the same terms and conditions as those set forth on the form." Dr. Michler concludes that the beneficiary "has accepted the terms of employment and he will become a permanent junior faculty member of our academic staff to begin with the approval of his application for permanent residence."

The director stated that the petitioner had not submitted a copy of an employment offer made by the petitioner to the beneficiary and concluded that the petitioner had not met the regulatory evidentiary requirement of submitting a letter offering the beneficiary a permanent research position in his academic field. The director further noted that the letter submitted was dated over three months after the filing date of the petition, and was not evidence of a permanent job offer at the time of filing.

On appeal, counsel states: "Enclosed please find the letter of employment, in accordance with the statutory criteria, from the petitioner . . . offering the beneficiary . . . a permanent position as a Research Associate." Counsel references Exhibit 2. This exhibit includes another copy of the June 6, 2002 letter from Dr. Michler and a letter dated December 20, 2002 addressed to CIS from Dr. Hamdy Hassanain, an assistant professor of surgery at the petitioning institution, containing the same information as Dr. Michler's letter.

We agree with the director that the regulations require an offer of employment from the petitioner to the beneficiary setting forth the title, terms and conditions of the position offered. We cannot conclude that another letter addressed to CIS that does not include the exact terms and conditions of the position offered and is dated after the date of filing overcomes the director's clearly stated and legitimate

concerns. Moreover, the record contains no evidence that the petitioning institution has authorized either Dr. Michler or Dr. Hassanain to make legally binding offers of permanent employment. The lack of a permanent job offer from the petitioner to the beneficiary is sufficient grounds for denial in and of itself.

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

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

This petition was filed on February 12, 2002 to classify the beneficiary as an outstanding researcher in the field of molecular biology. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field of microbiology as of February 12, 2002, and that the beneficiary's work has been recognized internationally within the field of molecular biology as outstanding.

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 petitioner must satisfy at least two. On appeal, counsel asserts that the authors of the regulations did not define "outstanding" and that therefore the only controlling measure for this classification is the six criteria. It is important to note here that the controlling purpose of the regulation is to establish international recognition. Thus, a petitioner cannot meet his burden simply by submitting evidence relating to at least two criteria. Rather, any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. The petitioner claims to have satisfied the following criteria.

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

As evidence to meet this criterion, the petitioner relies on the beneficiary's receipt of a Rockefeller Foundation Fellowship from 1991 to 1993 and NIH research grants. The record contains no information from the Rockefeller Foundation confirming that the petitioner received such a fellowship. To explain the relevance of the alleged fellowship, counsel cites a letter from Dr. Nicanor I. Moldovan of the petitioner's Dorothy M. Davis Heart and Lung Research Institute. Dr. Moldovan states:

[The Rockefeller Foundation Fellowship] is a prestigious award annually given to few third world young prospective scientists by the Rockefeller Foundation of New York, USA. Though it is a non-competitive award but [sic] it is an award exclusively given to people who has [sic] high meritorial qualifications. Normally, three candidates will be selected each year from India to visit a university in [the] U.S.A. The candidate is selected on the basis of recommendations from the supervisors of the candidate's country of origin as well as the institution in which the awardees is [sic] going to take training in higher studies in [the] USA.

Subsequently, Dr. Moldovan states:

I think by submitting such an important and significant research proposal, [the beneficiary] was selected for this Fellowship. Therefore, selection of a candidate is strictly based upon the merit of the research proposal. Also, it is important to note that the selection committee has to be convinced [of] the proposed work's feasibilities and its significant contribution to the field of science. To the best of my knowledge among the numerous applications, [the beneficiary's] application was approved to visit this country [sic] is a great achievement and no doubt his attainment of this prestigious Fellowship is based primarily upon the meritorial [sic] content of his research proposal.

Dr. Moldovan does not indicate that he is an official of the Rockefeller Foundation, or otherwise explain his standing to attest to the mechanism by which fellowships are awarded.

The director concluded that the selection for the fellowship was based on the merit of the proposal and could not be considered an award or prize for an achievement that has already been made.

On appeal, counsel provides general information about the Rockefeller Foundation and states:

The Foundation is a proactive grant-maker, that is, the officers and staff are out after opportunities that will advance the Foundation's long-term goals, rather than reacting to unsolicited proposals. Foundation officers receive more than 12,000 proposals each year, 75 percent of which cannot be considered. Thus, [the beneficiary] is one of the very few in the world that was a recipient of an unsolicited grant. This is by far more difficult to obtain than a competitive grant.

Counsel subsequently quotes extensively from Dr. Moldovan's letter, concluding: "Dr. Moldovan's attestation is offered as a supplement to already submitted evidence, because he is a scientist himself, qualified to assess the importance of the Rockefeller Fellowship [the beneficiary] received."

The petitioner resubmitted the letter from Dr. Moldovan and Internet materials about the Rockefeller Foundation and the grants it issues. While the materials do indicate that the foundation receive more than 12,000 proposals for grants each year and does not consider 75 percent of them, it further states that the 75 percent cannot be considered "because their purposes fall outside the Foundations' program guidelines." Moreover, the materials are discussing grants to organizations, not fellowships for recent graduates. In fact, the materials state that "as a matter of policy, the Foundation does not give money for personal aid to individuals." While such language is ambiguous, it certainly does not support the claim that the Rockefeller Foundation itself was the institution that selected the beneficiary for the fellowship. In fact, as stated above, the record does not include the fellowship confirmation letter or other evidence that it was issued to the beneficiary.

While Dr. Moldovan may be a scientist, counsel has not supported the implication in his appellate brief that every scientist is an expert on the requirements for obtaining Rockefeller Fellowships. Finally, we concur with the director that a fellowship based on a research proposal is not an award or prize recognizing and honoring past achievements as outstanding. Thus, a fellowship cannot meet the plain language requirements of the criterion.

Similarly, the petitioner's NIH grants cannot serve to meet this criterion. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator and, perhaps even other key personnel, are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievements.

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

In his initial brief, counsel asserts that the beneficiary meets this criterion through membership in the American Society for Cell Biology (ASCB) and the American Association for the Advancement of Science (AAAS). The petitioner submitted evidence of the beneficiary's membership in both associations. Counsel stated:

Membership in the [ASCB] is open to scientists who share the Society's purposes to promote and develop the field of cell biology and who have educational or research experience in cell biology or an allied field. *Applicants must be sponsored by a regular or postdoctoral member in good standing and must hold a Ph.D. or M.D. degree.*

(Emphasis in original.) Counsel's description is supported by ASCB's own membership information as posted on their website. Counsel then concluded: "Thus, membership is restricted to outstanding individuals in their field of endeavor as judged by recognized national or international experts in the field." Regarding AAAS, counsel asserted "[t]o become a member

one must be engaged in a scientific research activity.” Counsel concluded: “Thus, membership is restricted to professionals in the field or postdoctoral researchers.” While the Internet materials for AAAS in the record do not specifically address membership requirements, they include an invitation to join the association aimed at “scientists, full-time students, postdoctorals, and residents.”

In his request for additional documentation, the director stated:

[Counsel] wrote that membership in the ASCB “is restricted to outstanding individuals in their field of endeavor as judged by recognized national or international experts in the field,” but [the] evidence indicates that any application who is sponsored by a current ASCB member and who holds a Ph.D., M.D., an equivalent degree, or who has equivalent experience is qualified for membership. Please explain this discrepancy.

[Counsel] wrote that to become a member of the AAAS, “one must be engaged in a scientific research activity.” [Counsel] reported that it is an association which requires outstanding achievements of its members. Please submit evidence of the AAAS’s membership requirements. The evidence submitted indicates that it is open to “scientists, full-time students, postdoctorals, and residents.”

In response, counsel reiterated his prior statements relating to ASCB and concludes:

To meet such ambitious goals the very nature of the task requires outstanding achievers such as [the beneficiary]. His expertise allows him to advance the understanding of science and technology and to use that knowledge to solve societal problems.

Counsel also reiterated his prior claims regarding AAAS membership and asserts: “Only scientists or scientists to be are able to become members, which are de facto reduced to outstanding individuals.” Counsel made the following general conclusion:

The regulations only require outstanding achievements from members such as holding advanced degrees in a field or other academic requirements and not that the membership agreement specifically states “outstanding members” as a qualification for membership. The director is erroneously suggesting that [the beneficiary] belongs to associations with membership requirements comparable to an auto club.

In his final decision, the director concluded that the regulations require membership in organizations that have membership requirements more stringent than academic attainments. On appeal, counsel reiterates prior arguments. The petitioner submits more materials regarding ASCB and AAAS that confirm the membership requirements discussed above.

Counsel's arguments are unpersuasive and mischaracterize the director's concerns. CIS does not, and the director did not, require membership in an organization that uses the exact phrase "outstanding achievements" in its description of membership requirements. In fact, CIS would not rely on such a subjective and nonspecific statement of membership requirements. The plain language of the regulation, however, requires membership in an organization whose membership requirements include, at a minimum, achievements that would normally be considered outstanding by experts in the field. Moreover, statutory construction includes looking at the plain meaning of the words used. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987). The regulation requires membership in an organization where membership is limited to those with "outstanding achievements." The common usage of "outstanding" is instructive. "Outstanding" is defined as "a: standing out from a group: CONSPICUOUS b: marked by eminence and distinction." Webster's Ninth New Collegiate Dictionary 839 (1990). We cannot conclude that the director imposed his own "subjective" understanding of the regulations by insisting on evidence that meets the unambiguous and plain language of the regulation or by relying on the common usage of the word "outstanding."

Consistent with the relatively exclusive nature of the classification sought, most professional associations do not require outstanding achievement as a condition of membership; instead, their requirements are simpler and more readily met; such as payment of dues, a minimum level of education and/or experience in a given field, etc. While perhaps more strict than an "auto club," the unambiguous membership requirements for ASCB and AAAS do not clearly, or even remotely, support counsel's characterizations of those requirements as highly exclusive. Attainment of a doctoral degree is not an "outstanding achievement" by any rational definition of "outstanding." A doctoral degree, while requiring concerted and prolonged effort, is nevertheless the expected and predictable outcome of a course of study.

Similarly, endorsement by existing members is not an outstanding achievement, and there is no indication that a prospective member's sponsors must themselves be nationally or internationally recognized. Counsel acknowledges that "ASCB has grown to more than 10,000 members," but does not explain how an association with such a narrow focus can grow to such size while admitting only those with distinction in the field.

Eligibility for AAAS appears contingent on career choice rather than on achievement within that career. By definition, every scientific researcher is "engaged in a scientific research activity." Counsel offers no explanation for his claim: "Only scientists or scientists to be are able to become members, which are de facto reduced to outstanding individuals." If counsel is claiming that all scientists are outstanding, such an interpretation would render the classification meaningless. If counsel is suggesting that AAAS does not officially designate specific membership requirements but, in reality, only accepts "outstanding individuals," the record contains no support for such an assertion. Nor does counsel explain why AAAS would advertise open membership when, in fact, it actually adheres to undisclosed strict membership requirements.

The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Unfounded

assertions are especially unpersuasive given the false claim on the instant petition that no petition has previously been filed in behalf of the beneficiary. In fact, the beneficiary filed a petition in his own behalf seeking classification as an alien of extraordinary ability, receipt number LIN-01-132-54787, on March 22, 2001. This error at best reflects a failure on the part of those who signed the petition to inquire about the information to which they were attesting from those with knowledge of such information.

*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*

The petitioner never claimed that the beneficiary met this criterion prior to the appeal. In his final decision, the director concluded that the citations of the beneficiary's work could not serve to meet this criterion. On appeal, counsel asserts for the first time that the beneficiary does meet this criterion. Counsel lists all of the articles that have cited the beneficiary's work and states:

The Director erred by requiring that the work of the [beneficiary] must be cited to an unusually high degree when he referred, "articles which the beneficiary first authored were cited fewer than ten times" whereas the regulations state that the alien be "cited by others" and does not specify the number of citations.

The pertinent regulation, 8 C.F.R. § 204.5(i)(3)(i)(C), makes absolutely no reference to citations and does not include the phrase "cited by others." Counsel does not provide a citation for the regulation he asserts contains the phrase "cited by others." The regulation for the classification sought requires published material written by others "about the alien's work." Articles that cite the beneficiary's work in one of numerous footnotes are not "about" the beneficiary. Rather, they are primarily about the author's own research. Thus, we concur with the director that the beneficiary does not meet this criterion.

While not argued by counsel or the petitioner, we note that the record contains a letter indicating that the beneficiary was interviewed on a local television channel after the date of filing. The petitioner has not demonstrated that appearing on a local television news program is indicative of or consistent with international recognition. Regardless, the event occurred after the date of filing and is not evidence of the beneficiary's eligibility as of that date.

*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*

Counsel initially claimed that the beneficiary met this criterion but the petitioner submitted no evidence to support that claim. In response to the director's observation that no such evidence had been submitted initially, the petitioner submitted a letter from Dr. Hamdy Hassanain, an assistant professor at the petitioning institution. Dr. Hassanain asserts that he was requested to review manuscripts by journal editorial committees and that he forwarded those requests to the beneficiary, his collaborator.

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The director noted the lack of evidence that the editors of the journals specifically requested that the beneficiary review the articles and concluded that the petitioner had not established that the beneficiary meets this criterion. On appeal, counsel asserts:

The Director erred by not finding that the beneficiary has judged the work of others in the same or allied academic field. Dr. Hamdy Hassanain is undoubtedly a leading expert with years of experience in his field of endeavor. The Director failed to recognize that [the beneficiary] was entrusted to peer review the articles by such a leading and experienced authority in the beneficiary's academic field. The Director erred by asserting that Dr. Hamdy Hassanain was merely "the beneficiary's mentor" who had given him a paper to review without giving due respect to the authority and experience of Dr. Hassanain and also his views on the review job done by the beneficiary.

Regardless of any expertise Dr. Hassanain has in the beneficiary's field, it remains that he is the beneficiary's supervisor and collaborator. While evidence submitted for each criterion need not establish international recognition on its own, the criteria would be meaningless as evidentiary standards for demonstrating international recognition if CIS did not evaluate whether the evidence submitted for each criterion was even remotely indicative of or consistent with international recognition. We simply cannot accept counsel's implication that the assignment of a review request specifically addressed to the beneficiary's supervisor is any way indicative of or consistent with the beneficiary's own international recognition. The issue is not whether Dr. Hassanain has an international reputation. The petitioner must demonstrate the beneficiary's own international recognition independent of Dr. Hassanain. The beneficiary does not attain international recognition simply by working for someone who receives requests to review articles and assisting with that responsibility.

Finally, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; most peer reviewers do not enjoy international recognition. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the beneficiary meets this criterion.

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

In his initial cover letter, counsel listed several alleged contributions made by the beneficiary relating to lymphoma, breast cancer and kidney transplants. As stated above, the assertions of counsel do not constitute evidence. Counsel asserted that his assertions are supported by letters from "leading individuals in his field, as well as recognized individuals in the field as described below." The letters, however, are all from researchers and professors at the petitioning institution and a collaborator from the University of Maryland on research presented at the Third International Conference on Sodium Calcium Exchanger, New York Academy of Sciences, in 1995.

Moreover, none of the letters submitted initially mention any work performed by the beneficiary relating to lymphoma, breast cancer, or kidney transplants. Rather, the beneficiary's work appears to have focused on fertility, cardiology, and gastrology. Most recently, the beneficiary has focused on a receptor active during kidney inflammation, but the evidence submitted initially did not support counsel's assertion that this work has applications in kidney transplantation. In response to the director's specific request for additional documentation of the beneficiary's work in the areas specified by counsel, counsel asserts that none of the references discussed the cancer and kidney research because it had yet to be published. The petitioner submitted a new letter from Dr. Altaf Wani, a professor at the petitioning institution, discussing these areas of research. Dr. Wani asserts that the beneficiary's gastrology work "has helped to improve the diagnostic recognition of many malignant neoplasm, including Basal cell carcinoma, Trichoblastic carcinoma, Melanoma, Squamous cell carcinoma, granular cell tumor (which has malignant variants), cutaneous lymphoma, and actinic keratosis (a precancerous lesion)." Dr. Wani further states that the beneficiary performed some basic research modifying the technique for isolating kidney mesangial cells that provide critical information about the suitability of the kidney for transplant. Dr. Wani concedes, however, that the above results have yet to be published. Thus, this work is not evidence indicative of the beneficiary's international recognition as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The remaining reference letters mostly provide general praise of the beneficiary and attest to the importance of his area of research with little discussion of any specific contributions or explanation of the significance of those contributions. Dr. Fievos Christofi, Director of the Laser Confocal Imaging Facility at the petitioning institution, asserts that the beneficiary prepared the first comprehensive report on protein and steroid hormones in the plasma and steroid hormone receptors in guinea pigs. This research was aimed at preventing pregnancy in the animals and "could be very useful in developing a suitable abortifacient drug for humans without many side effects." Dr. Christofi further asserts that, at the University of Pennsylvania, the beneficiary "identified for the first time" a receptor involved in the transport of lipids from blood to the placenta. According to Dr. Christofi, at the University of Maryland, the beneficiary demonstrated that various tissues express differently spliced forms of the gene (NCX1), relevant to the expression of different isoforms that "may sub-serve different roles in normal and diseased states." Finally, Dr. Christofi asserts that the beneficiary's work with a rabbit model has provided insight into our understanding of the mechanisms of Na<sup>+</sup> co-transporters during normal and chronic gut inflammation. Dr. Christofi does not assert or provide examples of how any of this work is considered significant at the international level. Dr. Hamdy Hassanain, the beneficiary's collaborator for his intestinal research asserts only that it is his belief that "this research will directly contribute to the diagnosis and treatment of Inflammatory Bowel Diseases (IBM) or Crohn's Diseases in patients."

In his final decision, the director noted that the cancer research on which counsel focuses had yet to be published and concluded that such work could not be considered a contribution to the field. On page four of his appellate brief, counsel states that the director's conclusion on this criterion is "particularly errant," but fails to specifically address the director's concerns other than to assert in conclusion that

the beneficiary "has contributed greatly to the field of biochemistry through extensive writings, developments, reviews and mostly through research."

While the beneficiary's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that obtaining a Ph.D. or working with a government grant inherently is indicative of international recognition. The record does not establish that the beneficiary's work represented a groundbreaking advance in microbiology. While letters from supervisors and collaborators are important in providing details about the beneficiary's role in various projects, they cannot by themselves establish the beneficiary's international recognition.

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

Initially, the petitioner submitted evidence of fourteen published articles authored by the beneficiary, including those published in the proceedings of various conferences. The petitioner also submitted some citation evidence. In his request for additional documentation, the director requested evidence regarding how the publication of these articles constitutes an outstanding accomplishment in comparison with other researchers.

In response, counsel challenges the director's implication that the beneficiary's accomplishments must be outstanding in comparison to others in the field. Counsel notes that, unlike aliens of extraordinary ability, outstanding researchers need not demonstrate that they are one of the small percentage that has risen to the top of the field. Counsel concludes that the beneficiary meets this criterion because he has published articles in journals with an international circulation.

In his final decision, the director asserted that CIS will not find that every researcher who has published his results meets this criterion and concludes that the quantity of published articles authored by the beneficiary cannot be considered outstanding for a medical researcher.

On appeal, counsel reiterates the beneficiary's publication history and asserts that the director created a higher standard than that mandated by the regulations by not accepting the articles as evidence to meet this criterion.

We do not agree with counsel that CIS cannot evaluate the significance of the evidence submitted to meet a criterion. That said, the director's focus on his own standard of what constitutes sufficient quantity to be "outstanding" is somewhat limited. As stated in the regulations, the ultimate standard for this classification is "international recognition." Evidence other than the number of articles can demonstrate whether those articles are indicative of international recognition. The director did not consider the beneficiary's citation history under this criterion. Even if we concluded that the beneficiary's moderate citation history was indicative of minimal international recognition, however,



the beneficiary would meet no more than one criterion. For the reasons discussed above, the beneficiary falls far short of meeting any other criteria.

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

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.