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

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ADMINISTRATIVE APPEALS OFFICE  
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[Redacted]

NOV 12 2003

File: WAC 02 235 51106 Office: CALIFORNIA SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:

[Redacted]

**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.

*Robert P. Wiemann*  
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 appeal will be dismissed.

The petitioner is a technical systems provider. 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 senior characterization engineer. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in her academic field, as required for classification as an outstanding researcher.

On appeal, counsel maintains that the petitioner has amply demonstrated the beneficiary's eligibility for the classification sought, and that the director has disregarded qualifying evidence.

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. Such evidence shall consist of at least two of the following:

(A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;

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

(C) 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;

(D) 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;

(E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or

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

(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; and

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

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

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

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

The petitioner initially claimed to have satisfied three of the six criteria set forth at 8 C.F.R. § 204.5(i)(3)(i).

*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 asserts that the beneficiary's "original scientific research work has been widely cited by fellow researchers." Citations, bibliographic endnotes identifying the sources used in assembling an article, are not published materials about the alien's work. The petitioner has not shown that any articles are primarily devoted to the beneficiary's work, rather than mentioning such work in passing.

Heavy citation of the beneficiary's work would carry significant weight when evaluating the impact of the beneficiary's own published work, covered under a separate criterion, but we cannot find that the citations themselves constitute published materials about the beneficiary's work.

The director informed the petitioner that the evidence was deficient regarding this criterion. In response, the petitioner claims that the beneficiary's work has been cited 87 times. The director had not indicated that the number of citations was insufficient; rather, citations themselves, regardless of their quantity, are not published materials about the alien.

Furthermore, the petitioner has not submitted the materials themselves. Even if citations counted as published materials, the regulation does not call for evidence that published materials exist. Rather, the regulation states that the "evidence shall consist of . . . [p]ublished material." The regulatory requirement that "[s]uch material shall include . . . any necessary translation" reinforces that the petitioner must submit the actual text of the published material.

The petitioner argues that the citing articles do more than merely acknowledge the existence of the petitioner's articles. The petitioner cites several example articles. All but one of these articles, however, were written by the beneficiary's former professors at the University of Pennsylvania, who had in fact co-authored the very articles they were citing. The only example article not written by the beneficiary's mentors is an article from *Physical Chemistry Chemical Physics*, in which the authors state that their findings are "in good agreement with" findings set forth in two articles, one of which is the beneficiary's. This reference does not establish that the beneficiary is an internationally recognized authority in her field; rather, it suggests that the beneficiary's findings were sufficiently accurate to be confirmed by subsequent observations.

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

The petitioner lists the beneficiary's conference presentations and invited talks, with no further elaboration. The petitioner submits documentation from one of these conferences. While these presentations may be original scholarly research contributions, in the sense that the beneficiary did not simply repeat the findings of other researchers, the petitioner has not shown that these presentations and talks (all of which took place in the United States) are the cause, or result, of international recognition as an outstanding researcher. Dissemination of one's findings is an expected duty of researchers rather than a rare privilege afforded only to outstanding researchers.

The petitioner submits a partial copy of the *Proceedings of the 12<sup>th</sup> International Zeolite Conference*. This documentation shows that the beneficiary's presentation was one of numerous such presentations presented over the course of the six-day conference. The complete *Proceedings* consists of four volumes, each exceeding 700 pages in length. The petitioner submits a fragment of the table of contents, showing 25 presentations between pages 2287 and 2457; each listed presentation generally occupies between six and ten pages, averaging seven pages in length. According to these figures, the conference appears to have included between 300 and 400 presentations, possibly more. The petitioner claims that the beneficiary has participated at 18 such conferences. Clearly, there is a substantial number of research conferences in a given year. If each of these conferences features hundreds of presentations, it is difficult to conclude that participation in such conferences is a rare honor reserved for outstanding researchers. There appear to be many thousands of such conference presentations in the beneficiary's academic field each year.

The petitioner has submitted six witness letters, intended to establish the beneficiary's reputation in the academic field. Two of the witnesses are on the faculty of the University of Pennsylvania, where the beneficiary earned her graduate degrees. Professor David White states "[o]f all the research scientists that I have had the privilege to advise . . . [the beneficiary] is by far one of the most innovative, most productive and successful to date." Regarding her specific contributions, Prof. White states:

At this early stage in her career she has already demonstrated extraordinary expertise in the very important industrial area of zeolite catalysis. Zeolite catalysts are a necessary part of oil refining processes, especially gasoline production. [The beneficiary] provided the critical information on the interaction of adsorbed molecules in zeolites and the various steps that occur in the chemical changes of these molecules. [The beneficiary's] research findings are vital to the design of new materials. Equally important are her innovative contributions to the field of Solid State Nuclear Magnetic Resonance Spectroscopy. . . . Using Solid State NMR [the beneficiary] was able to identify for the first time the primary steps in the catalytic processes in zeolites. This cleared up several long-standing ambiguities in scientific literature concerning reaction intermediates in zeolites that have been a matter of considerable controversy and interest for many years. These new observations by [the beneficiary] have received considerable support in the recent literature and could have an impact in industrial areas other than petroleum refining, such as the production of novel pharmaceuticals.

Professor Raymond Gorte states that the beneficiary's "research has been exceptionally creative in establishing new ways to look at the problem of zeolite catalysis," and that a method developed by the beneficiary "is likely to become a standard technique for characterizing catalytic materials."

The remaining four witnesses make similar assertions about various projects that the beneficiary has pursued. All six witnesses have demonstrable ties to the beneficiary. Dr. Michael E. Thomas is a chief technology officer at the petitioning company. Dr. D.J. Schaefer is head of the NMR/MRI facility at the University of California at Santa Barbara, where the beneficiary received postdoctoral training. Dr. Marcel Allavena of Université Pierre et Marie Curie, and Dr. Yolanda del Amo of the Université Bordeaux, both in France, state that they have collaborated with the beneficiary. These letters, therefore, do not establish first-hand that the beneficiary's work has earned her recognition beyond her mentors, employers, and collaborators. The fact that some of these collaborators are outside the United States does not make her reputation "international," any more than her reputation would be "national" if all her collaborators were in the same country.

Following a request for additional evidence, the petitioner has submitted three new letters. Dr. Douglas M. Smith, president of NanoPore Incorporated, and Dr. Steven W. Meeks, chief technical officer of Candela Instruments, discuss their companies' collaborations with the beneficiary and the petitioning company. These letters do nothing to establish that the beneficiary is internationally recognized as an outstanding researcher by anyone other than her own professors and collaborators. Ribka Fox, the petitioner's global human resources manager, describes the beneficiary's job title and responsibilities, in response to queries unrelated to the beneficiary's reputation.

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

The petitioner lists ten published articles by the beneficiary, and submits copies of eight of them. The director concluded, without further comment, that the petitioner had satisfied this criterion.

The petitioner claims that the beneficiary's "work has been widely cited." The petitioner, in the initial submission, listed 27 articles containing citations of the petitioner's work, but submitted documentation to confirm only thirteen of these citations. Of the 13 submitted articles, six were written by the co-authors of the beneficiary's cited articles. Thus, nearly half of the beneficiary's documented citations are actually self-citations by her collaborators. Self-citation is a common and accepted practice, but it is clearly not strong evidence of recognition.

The petitioner submits documentation regarding ISI Journal Citation Reports. The petitioner submits this documentation to show that the journals that have published the beneficiary's articles have high impact factors. According to the documentation, the impact factor is "[t]he measure of the frequency with which the 'average article' in a journal has been cited in a particular year. . . . It is calculated by dividing the number of current citations to articles published in the two previous years by the total number of articles published in the two previous years." The two journals that the petitioner has highlighted, identified by the abbreviated titles *J Phys Chem B* and *J Catal*, rank 11<sup>th</sup> and 15<sup>th</sup>, respectively, out of the 91 journals in the field of physical chemistry. Their respective impact factors are 3.386 and 3.030; the top-ranked journal has an impact factor of 14.952. According to ISI Journal

Citation Reports, citation is directly related to the “relative importance” of the material cited. The petitioner initially claimed that the petitioner has written 10 articles, with an aggregate total of 27 citations, averaging 2.7 citations per article. This average is lower than the impact factors of the above journals, indicating that most articles in those journals are cited more than the beneficiary’s articles are cited. This figure does not take into account the high ratio of self-citation by the beneficiary’s collaborators, which is significant when the goal is to determine not only the frequency, but also the breadth, of those citations.

The ISI Journal Citation Reports information also indicates that thousands of articles appear each year; the top 25 journals published a total of 8,333 articles in 2000. As with the conference presentations, discussed above, the sheer number of articles published annually is not consistent with the contention that the very act of publication is necessarily consistent with international recognition. *J Phys Chem B*, the highest-impact journal to carry the beneficiary’s articles, published 1,507 articles in 2000, more than any other listed journal, indicating that acceptance by this high-impact journal is not a rare event or significant recognition.

In a subsequent submission, the petitioner claims that the beneficiary “has been cited over eighty (80) times by other research professionals in her field.” As noted above, the petitioner has submitted a list of 87 articles said to cite the beneficiary’s work. As with the initial, shorter list, a substantial number of the citations are self-citations by collaborators, primarily Professor Raymond Gorte. The petitioner has not identified the source of this list. Evidence of 87 citations would strengthen claims regarding the beneficiary’s published work, but an undocumented claim of 87 citations is not evidence.

The director denied the petition, stating that the petitioner had failed to demonstrate that the beneficiary has earned international recognition as an outstanding researcher. The director noted that the witness letters were all from individuals who had worked with the beneficiary, and thus the letters did not establish wider recognition.

On appeal, in the “Statement of Facts” section of the appellate brief, counsel states that the initial evidentiary submission included ten of the beneficiary’s articles, and 27 articles citing the beneficiary’s work. As discussed above, the petitioner listed those quantities of articles, but many of the articles named were not actually submitted. The list of articles labeled some, but not all, of the articles as attached exhibits, and all of the numbered exhibits are in the record, thus ruling out accidental misplacement of some submitted articles. Thus, the “Statement of Facts” contains at least two non-factual assertions.

Counsel provides “an extensive listing of citations of [the beneficiary’s] original research work, complete copies of which were submitted with the . . . petition.” The list reproduces the original list of 27 citing articles, of which 13 actual articles were submitted. Counsel then asserts that the beneficiary’s “work has been cited over eighty (80) times by other research professionals.” Repetition of a claim is not corroboration.

In addition to repeating the above citation list, counsel essentially repeats several arguments advanced with the initial filing or in response to the request for evidence. We have already addressed these arguments.

Counsel contends “the Bureau failed to properly consider the evidence presented to it regarding the beneficiary’s original contributions through conference presentations. The beneficiary’s oral presentations of original scientific research work and the publications of these conference proceedings can hardly be characterized as mere ‘attendance’ at a conference.” It remains that the only piece of actual evidence that the petitioner has provided regarding these conferences indicates that several hundred such presentations were made at one single conference. Each of those presentations had several co-authors, often as many as five or six. Nothing in the record distinguishes the beneficiary’s presentation at that conference from the hundreds of others made there. Therefore, to claim that presentation at the conference confers international recognition is to claim that several thousand researchers earned such recognition at that one conference, and countless thousands more do so at many other conferences each year. Clearly, to take this position requires a usage of the term “international recognition” that is so diluted as to be nearly meaningless.

Counsel argues:

[T]he Bureau erred in disregarding the strong testimonial evidence of noted experts in the field by simply holding that the letters were written by persons with whom the beneficiary has collaborated. . . . The fact that the beneficiary has worked with such a varied and preeminent group of research professionals and academics from the United States and abroad is in fact an indication of her international repute, rather than a diminishing factor.

Counsel quotes passages from two unpublished appellate decisions. The first quoted passage is irrelevant; the AAO had merely observed that “most modern scientific research is collaborative by nature,” in response to the director’s finding that co-authored publications carry less weight than articles with only one author.

In the other cited passage, the AAO afforded substantial weight to letters from collaborators because the petitioner had established the significance of a massive multinational scientific collaboration. Counsel has not shown that the facts of the present proceeding closely match those of the cited decision. Counsel’s unsubstantiated declaration that the beneficiary’s witnesses are “preeminent” carries no weight. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel claims that the initial petition included evidence that the beneficiary had acted as a judge of the work of others, thereby satisfying 8 C.F.R. § 204.5(i)(3)(i)(D). Counsel does not elaborate on this claim, and we can find no corresponding claim in the initial submission. The petitioner had submitted a list of the claimed criteria, and acting as a judge was not among the criteria claimed.

With regard to the beneficiary’s newly-claimed work as a judge, counsel quotes a previously-submitted letter from Professor Dieter J. Schaefer of the University of California, Santa Barbara, indicating that the beneficiary “was . . . responsible for directing and advising graduate students in diverse research areas.” Counsel cites a 1992 memorandum from the then-acting Assistant Commissioner for

Adjudications, indicating “[w]e are . . . inclined to believe that thesis direction (particularly of a Ph.D. thesis) would demonstrate an alien’s outstanding ability as the judge of the work of others.”

The Acting Assistant Commissioner’s “inclination” is clearly not a binding and inflexible policy. The same memorandum cautions that the evidence must be evaluated on its own merits, rather than uncritically pigeonholed into the various regulatory criteria. “[T]he examiner must evaluate the evidence presented. This is not simply a case of counting pieces of paper.”

In terms of this specific proceeding, there is no evidence that the beneficiary has ever served as any student’s Ph.D. thesis director. Prof. Schaefer stated only that the beneficiary “direct[ed] and advis[ed] graduate students.” The act of supervising or advising graduate students does not automatically cause international recognition, because such duties could be assigned locally by the head of the laboratory. Similarly, the petitioner has not shown that one must already have an international reputation in order to be put in charge of graduate students. Given the sheer number of such students in the United States, it would appear to be impossible to assign internationally recognized researchers to oversee all of them. The beneficiary’s duties in this regard appear to be no more noteworthy than the commonplace practice of utilizing graduate students as teacher’s assistants in undergraduate classes. Indeed, many graduate students actually teach university courses, which necessarily implies oversight and direction of students.

The petitioner submits a new letter from Dr. Raymond Stark, the petitioner’s vice president of Technology, who asserts that the beneficiary “was selected . . . as one of the top researchers in her field.” Dr. Stark states that the beneficiary’s “work first caught my attention when she initiated a collaboration between [the petitioner] and Candela Instruments.” This indicates that Dr. Stark was unaware of the beneficiary and her work until she began the collaboration with Dr. Stark’s company. We do not dispute the sincerity of Dr. Stark’s opinions regarding the beneficiary’s talents, but the petitioner cannot satisfy the statutory and regulatory standards for this highly restrictive immigrant classification simply by being confident that the beneficiary is highly qualified for her position.

Upon careful consideration, we find that the record shows the beneficiary to be a successful and productive researcher, but not one who has earned international recognition as outstanding in her academic field. 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.