

PUBLIC COPY

U.S. Department of Homeland Security

Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

BB

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

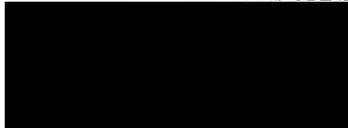


NOV 12 2003

File: WAC 02 235 50917 Office: CALIFORNIA SERVICE CENTER

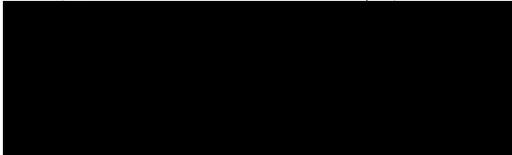
Date:

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.


Robert P. Williams, 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 biopharmaceutical research and development company. 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 as a research associate. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

On appeal, counsel states that a brief is forthcoming within 30 days. To date, over seven months after the filing of the appeal, the record contains no further submission and a decision shall be made based on the record as it now stands. Arguments submitted with the appeal itself will be considered.

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 claims to have satisfied the following criteria set forth at 8 C.F.R. § 204.5(i)(3)(i):

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

The petitioner submits, without comment, documentation of five poster presentations by the beneficiary at various conferences. While these represent "original contributions" in the sense that they represent new information rather than repetition of already-known information, we cannot define the term "original contribution" so broadly as to include every research finding that does more than simply repeat or confirm the findings of others. Indeed, almost all research work is "original" in this respect, simply because the limited resources available to researchers is, generally, better spent on new inquiries rather than replicating already-known findings.

The petitioner has submitted several "letters acknowledging beneficiary as an 'outstanding researcher.'" These letters, without exception, are from officials at companies where the beneficiary has worked in the past; they do not establish a wider reputation. Furthermore, despite the petitioner's use of quotation marks around the phrase "outstanding researcher," that phrase appears in none of the letters. None of the letters reflects accomplishments by the beneficiary that have been implemented outside of the employing companies.

In a subsequent submission, the petitioner has provided an additional letter from Dr. David C. Immke, a postdoctoral fellow at the Vollum Institute at Oregon Health Sciences University. Dr. Immke describes evidence already in the record, and states "[i]n the field of ion channel pharmacology, [the beneficiary] did outstanding research within his area of research in the identification of critical residues in the beta subunit of the high conductance calcium activated potassium channel involve in chaybdotoxin [sic] binding." Dr. Immke observes that one of the beneficiary's former employers is a major pharmaceutical company, and asserts that that company's implementation of the beneficiary's work "is an additional strong indication of the significance and timely importance of his research work." This claim appears to imply that pharmaceutical companies never implement most of their researchers' work, which seems unlikely.

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

The petitioner refers to the beneficiary's "authorship of articles in scientific journals with national circulation." The regulatory standard is international circulation. The petitioner names seven articles, at least two of which appear not to have been published or even accepted for publication as of the petition's filing date. The petitioner refers to these as "submitted for publication." One of the remaining five articles is actually an abstract. Only three articles are submitted in their published form; additional material is in the record in manuscript form.

The beneficiary's publication history must be consistent with international recognition as an outstanding researcher. Such recognition does not automatically result from publication. To establish international recognition of the beneficiary's articles, the petitioner claims eight citations for one of the beneficiary's articles, three citations for another. The petitioner does not claim any citation history for the beneficiary's other articles. For the first article, two of the eight articles are clearly the same article, "A neuronal β subunit (KCNMB4) makes the large conductance, voltage- and Ca^{2+} -activated K^+ channel resistant to charybdotoxin and iberiotoxin," by Pratap Meera, Martin Wallner and Ligia Toro, published in the *Proceedings of the National Academy of Sciences*. The petitioner submits copies of the seven articles that cited his first article, but no documentation of the claimed citations of the second article.

The petitioner has not shown that the beneficiary's published work, or the field's reaction to it, sets the beneficiary apart as an outstanding researcher with international recognition in the academic field. The petitioner has not established that seven citations represent a rare level of citation in the field.

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

The petitioner did not initially claim to have satisfied this criterion. In a subsequent submission, the petitioner has submitted membership documents from two associations.

In a letter dated January 3, 2003, Monica DiBella of the Membership Department of the Society for Neuroscience states:

[The beneficiary] is a Regular member in good standing of the Society for Neuroscience since December 13, 2002.

The Society has different membership categories (Regular, Student, Foreign, Affiliate, Emeritus, etc.). In order for someone to apply for a Regular membership, they must possess a Doctoral Degree from an established University or a minimum of three years working, outside of education, in the related field of Neuroscience.

The qualifications for Regular Membership include research in the field of Neuroscience, submission of curriculum vitae and bibliography, and the sponsorship of two Regular, or Emeritus Society for Neuroscience members.

Experience, advanced degrees, and recommendations are not outstanding achievements. While membership in the Society for Neuroscience is obviously limited to neuroscientists, within the field the membership requirements are not particularly stringent. Society documents in the record indicate that, with over 30,000 members, it “is the world’s largest organization of scientists devoted to the study of the brain.” An organization does not become the largest of its kind through highly restrictive or exclusive membership requirements.

Beyond the non-qualifying nature of the above membership, we note that the beneficiary joined the Society for Neuroscience only 22 days before the date of Ms. DiBella’s letter. The beneficiary was not yet a member when the petition was filed on July 17, 2002, or even when the director requested further information on October 29, 2002. From the timing of events, it appears that the beneficiary joined the Society for Neuroscience in order to be able to claim such a membership. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998). See also *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (now CIS) held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Judith A. Sjoberg, executive secretary of the Association of Biomolecular Resource Facilities (ABRF), states that the beneficiary joined the association “in 2002”; she specifies no exact date. Association documents list several membership categories, the highest of which is “member.” Documentation in the record indicates “[v]oting members of ABRF are individuals who work in a resource or research laboratory.” Employment in a laboratory is not an outstanding achievement.

The director denied the petition, stating that the evidence of record does not establish that the beneficiary has earned international recognition as an outstanding researcher. On appeal, counsel contends that the petitioner “presented sufficient evidence” to satisfy three of the regulatory criteria.

Counsel contends that the beneficiary “is a member of an association in his academic field that requires outstanding achievements.” Counsel argues “[o]n the basis that membership is only open to those with a graduate degree in the field, who are sponsored by other members who have been approved for membership, based upon their accomplishments, [the beneficiary’s] membership in the Society for Neuroscience satisfies 8 C.F.R. § 204.5(i)(B).” This argument is not persuasive. Counsel fails to explain why a graduate degree, experience, or recommendations constitute outstanding achievements in the academic field. Simply listing the membership requirements, and declaring them to constitute outstanding achievements, cannot suffice.

Counsel argues that the beneficiary’s conference presentations should carry significant weight as original contributions, because “participation in the conferences . . . is an honor bestowed only upon scientific contributions considered to be of sufficient magnitude to receive recognition.” This is a circular statement, indicating in effect that the only researchers allowed to make presentations are those who are selected to make presentations. The petitioner has not shown that poster presentations at scientific conferences are so rarely seen in the field that they are reliable indicators of international

recognition. Counsel's estimation of the importance of these presentations is unreliable, given counsel's contention that merely working in the field of neuroscience for three years amounts to an outstanding achievement.

Counsel notes that the beneficiary's "research has been cited eleven times in research articles published by others." Counsel therefore asserts that the beneficiary's "research has been extensively cited as authoritative in his field." Again, given counsel's demonstrably low threshold for what amounts to an "outstanding achievement," we are not obliged to accept counsel's claim that eleven citations are "extensive" or that they demonstrate widespread acceptance of the beneficiary's work as "authoritative." Citation is routine in scholarly articles; the beneficiary's own articles contain many such citations. If a given article is cited a high number of times, the influence of that article (and thus of its authors) becomes clear, but it does not follow that every article ever cited is "authoritative." The petitioner has produced nothing to corroborate the claim that seven citations of a particular article is a rare achievement, indicative of international recognition.

Counsel's appellate brief consists primarily of similar descriptions of the various documents and letters in the record. These descriptions are, as shown above, so exaggerated as to be of negligible value. 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). The petitioner has not overcome the director's stated grounds for denial.

Beyond the issues raised in the director's decision, the record reveals additional disqualifying information. Section 203(b)(1)(B)(iii)(II) of the Act, 8 U.S.C. § 1153(b)(1)(B)(iii)(II), states that an alien seeking classification as an outstanding researcher must seek to enter the United States "for a comparable [to tenured or tenure-track] position within a university or institution of higher education." 8 C.F.R. § 204.5(i)(3)(iii) requires the petitioner to submit "[a]n offer of employment from a prospective United States employer." The regulation specifies that the offer "shall be in the form of a letter from . . . [a] United States university or institution of higher learning." For research positions, 8 C.F.R. § 204.5(i)(3)(iii)(B) indicates that the job offer letter must offer "the alien a permanent research position in the alien's academic field." 8 C.F.R. § 204.5(i)(2) defines "permanent" as "for a term of unlimited or indefinite duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination."

Yen C. Chong, the petitioner's manager of Human Resources, states "[w]e anticipate the continued employment of [the beneficiary], consistent with our employment at-will policy, for an indefinite time." This remark, in a letter to the immigration authorities, does not constitute a job offer letter to the beneficiary. The letter contains no job offer letter, contract, or other formal, binding documentation establishing the terms of the beneficiary's employment.

Black's Law Dictionary (7th ed. 1999), p. 545, defines "employment at will" as "[e]mployment that is usu. undertaken without a contract and that may be terminated at any time, by either the employer or the employee, without cause." Thus, the definition of "employment at will," which allows termination "without cause," is not consistent with the regulatory definition of "permanent," which requires "good

cause for termination.” The assurance that the petitioner “anticipate[s] the continued employment” of the beneficiary does not convert employment at will to *de facto* permanent employment.

Because the original submission contained no job offer letter, the director instructed the petitioner to submit “an offer of employment in the form of an original, signed letter . . . offering the beneficiary a permanent research position in the beneficiary’s academic field” (emphasis in original). In response, the petitioner has submitted a letter from Ms. Chong, again addressed to the director, confirming the beneficiary’s employment “at-will, on an indefinite basis.” Because employment at will and permanent employment are distinct and mutually exclusive, we cannot conclude that the petitioner has offered the beneficiary a qualifying permanent position as the regulations require.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in the field of neuroscience. Furthermore, the petitioner’s repeated assertion that the employment is “at will” is *prima facie* evidence of ineligibility.

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.