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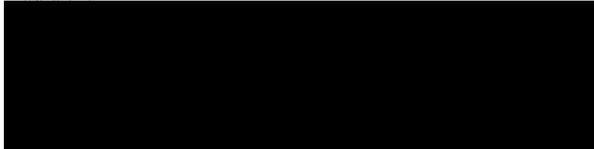
U.S. Department of Homeland Security

Citizenship and Immigration Services

B3

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



File:  Office: TEXAS SERVICE CENTER

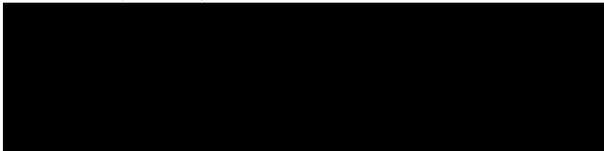
Date: **NOV 19 2003**

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:



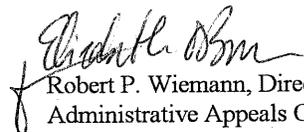
INSTRUCTIONS:

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.


Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a telecommunications 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 permanently in the United States as a research scientist. 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.

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.

Melva Hughes, the petitioner's director of mobility, claims that the petitioner has met the following criteria listed at 8 C.F.R. § 204.5(i)(3)(i):

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.

Ms. Hughes states that the beneficiary "is often invited to give talks at various international technical conferences and to serve as a member of the technical program committee for prestigious international conferences. He has also been invited on numerous occasions to serve as reviewers [sic] of work of fellow scientists in the field."

The documentation regarding the various conferences indicates that hundreds of presentations take place at a given conference, and there is no explanation as to how giving a talk at a conference amounts to acting as a judge of the work of others. Similarly, the petitioner has shown that the beneficiary has served on committees for conferences, but when the record discloses complete lists of committee members, we see several dozen names, sometimes over one hundred. The beneficiary has participated in peer review, such as the kind that routinely precedes the acceptance of pieces for publication or presentation, but the petitioner has not shown that the beneficiary's activities in this regard amount to special recognition rather than more or less routine duties. One can "judge" the work of others by a number of means, from grading undergraduate papers to choosing among nominees for a major international prize. We must, therefore, consider the level of judging when determining whether it reflects international recognition as an outstanding researcher.

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

The petitioner submits letters from several witnesses who attest to the significance of the beneficiary's past research endeavors. Most of the letters are from faculty members at Georgia Tech, where the beneficiary studied for his doctorate, and researchers at the petitioning company and other companies where the beneficiary has worked in the past.

The only witness who does not claim to have worked with the beneficiary is Hikmet Sari, chief scientist at Pacific Broadband Communications, Paris, France. Dr. Sari states:

I know [the beneficiary] because of his exceptional scientific contributions to the field of telecommunications and networking, and I have been to his oral presentations [at the] IEEE Globecom conference in 1999. He was the first to explore the medium access control (MAC) layer fairness issues in wireless local

area networking and to develop probabilistic p-persistent fairness algorithms for these systems. . . . His patented revolutionary algorithms improve the performance of the wireless MAC protocol dramatically. . . .

[The beneficiary's] outstanding mathematical skills in signal processing enabled him to invent another original method that he proposed a revolutionary signal design technique [sic]. . . . His methods were shown to significantly improve the signal-to-noise ratio over classical raised-cosine signals, which are used to transmit bits in data communications. I consider this work a brilliant piece of research, which sets the direction in the field. . . .

His exceptional research work especially on wireless networking has led the field and opened new areas of research.

Dr. Sari states that the beneficiary's "work has been internationally recognized by being presented at several international conferences." The pertinent regulations do not equate international recognition with conference presentations. General claims to the effect that the beneficiary stands at the forefront of his field cannot suffice to establish the level of influence claimed. The petitioner must provide some more tangible, verifiable evidence of international recognition, to show that the beneficiary stands out in his field as an outstanding researcher. The petitioner has not shown, for instance, that the beneficiary's innovations have attracted significantly more attention than most new developments in the rapidly advancing field of wireless networking.

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

Ms. Hughes observes that the beneficiary's "work has been showcased at international conferences. . . . [The beneficiary] boasts an impressive list of scholarly articles that have been published in leading peer-reviewed journals and conference proceedings of international circulation." The petitioner lists 20 articles and presentations. The petitioner also lists six articles and presentations by other researchers, citing the petitioner's published or presented work. The petitioner has not shown that this citation level is commensurate with an unusually significant level of international recognition in the field.

The director denied the petition, acknowledging the petitioner's submissions but finding that the evidence presented does not demonstrate that the beneficiary has earned international recognition as outstanding. On appeal, counsel offers general objections to the director's conclusions, and states that he will submit a brief "to full address the Service's decision" within 30 days. To date, over eleven months after the filing of the appeal, the record contains no further submission and a decision will be rendered based on the record as it now stands. Counsel asserts that the director erred in various ways but fails to demonstrate how these actions constitute error.

Review of the record reveals a disqualifying factor not discussed in the director's decision. 8 C.F.R. § 204.5(i)(3)(iii)(C) requires the petitioner to submit a letter offering the alien a permanent research position in the alien's academic field. 8 C.F.R. § 204.5(i)(2) defines "permanent," with respect to a

research position under a private employer, as “for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination.” The regulations contain no provision for CIS to waive, alter, or disregard the above requirements.

The petitioner’s job offer letter to the beneficiary states that the employment “is not for a specific term and can be terminated by you or the Corporation at any time, with or without cause.” Because the job offer specifies that the petitioner can terminate the beneficiary’s employment without cause, the job offer falls outside the regulatory definition of “permanent” and therefore the petition cannot be approved.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in the field of wireless communications. The petitioner’s job offer is, on its face, non-qualifying because the employment can be terminated without cause and is therefore not permanent. 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.