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NOV 19 2003

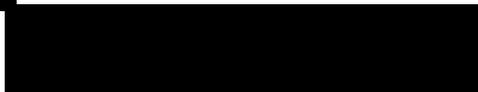
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Office: Texas Service Center

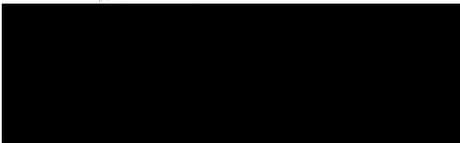
Date:

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:



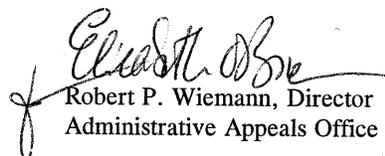
**INSTRUCTIONS:**

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. 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 engaged in the design, development, manufacturing, and marketing of optical transmission equipment and telecommunications systems. 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 the significance of the beneficiary's research, 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 that he will submit a brief and/or additional evidence within 30 days. Counsel dated the appeal November 26, 2002. As of this date, more than 11 months later, this office has received nothing further. In addition, counsel asserts that the director's statement that the petitioner filed the instant petition to avoid the labor certification process is not consistent with the evidence. We find that the petitioner's motivation in filing the instant petition seeking the classification sought is completely irrelevant to the beneficiary's eligibility. Regardless, while the director speculates as to the motivation of the petitioner in filing the petition under the classification sought, it is not the basis of her decision. We will consider counsel's remaining statements 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) 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 January 9, 2002, to classify the beneficiary as an outstanding researcher in the field of optics. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field of optics as of January 9, 2002, and that the beneficiary's work has been recognized internationally within the field of optics as outstanding. The director acknowledged that the petitioner had established that the beneficiary had the necessary three years of experience.

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. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and 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 membership in associations in the academic field which require outstanding achievements of their members*

The petitioner submitted evidence of his membership in the Institute of Electrical and Electronics Engineers (IEEE) and the Korean Institute of Communication Sciences. In her request for additional documentation, the director specifically requested evidence of the membership requirements for these associations. The petitioner did not address this issue in its response. In her final decision, the director concluded that the petitioner had not established that the beneficiary met this criterion. Counsel no longer argues that the beneficiary meets this criterion on appeal. We concur with the director.

*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*

The petitioner submitted evidence that the beneficiary was requested to serve as a reviewer for a paper submitted for inclusion at an ICC conference. The request was at the suggestion of Terek El Bawab. In addition, the petitioner was registered as a reviewer for Globecom 2001. A guest editor, who previously worked with the petitioner at the University of California at Davis, also requested that the petitioner serve as a reviewer for a special issue of the journal of the IEEE. Finally, the petitioner reviewed an article submitted for publication in an ETT special issue.

The director noted that some researchers volunteer as reviewers and concluded that without evidence regarding how the reviewers were selected the petitioner could not establish that the beneficiary meets this criterion. On appeal, counsel reiterates the petitioner's claim that the beneficiary meets this criterion.

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; not every peer reviewer enjoys international recognition. Nor is a request from a former colleague evidence of 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*

The record contains several reference letters attesting to the beneficiary's abilities. Dr. Ljubisa Tancevski, Optical Networking Research Manager at the petitioning research firm, asserts that he has been following the beneficiary's work and that it has been "original, innovative, and novel." Dr. Tancevski further states that he is currently working with the beneficiary "on problems related to wavelength allocation and traffic grooming in WDM packet rings, a subject that is of high importance for the next generation metropolitan networks."

Professor Biswanath Mukherejee, who invited the beneficiary to work in his laboratory at the University of California (UC) at Davis as a visiting scholar, states that the beneficiary "conducted original and innovative research in the important area of WDM optical ring networks."

Another professor at UC Davis, S. J. Ben Yoo, asserts that the beneficiary's work with WDM ring optical networks "is very important in the computer age as we investigate new networking architectures that are capable of handling the explosive growth in the future Internet traffic." Professor Yoo continues that the novel protocols "proposed" by the beneficiary "have applications in cost-effective deployment of WDM optical ring networks." Professor Yoo concludes: "[The beneficiary's] work offers significant potential for WDM optical networking. He produces innovative solutions to important problems in this area."

Professor Debasish Datta, who works at the Indian Institute of Technology but worked with the beneficiary previously at UC Davis, simply recounts the beneficiary's experience, also concluding: "[The beneficiary's] work offers significant potential for WDM optical networking. He produces innovative solutions to important problems in this area."

Dr. Young-Chon Kim, a professor at Chonbuk National University who also worked with the beneficiary at UC Davis, also merely recounts the beneficiary's experience, asserting that the beneficiary's projects have "been well funded."

A former Ph.D. student at UC Davis, Jason P. Jue, currently a professor at the University of Texas at Dallas, provides similar information to that discussed above.

Dr. Jifender S. Deogun, a professor at the University of Nebraska, asserts that he "became aware of [the beneficiary's] work since approximately 6 years [ago] when he presented at IEEE Globecom '95 his papers about introducing [a] new protocol and architecture for optical networks." Dr. Deogun then asserts generally that the beneficiary has conducted "important and outstanding research" that "provided original and valuable insights into the design and analysis of optical networks." Dr. Deogun does not provide any examples of how these insights have been applied in the field or indicate that the beneficiary has influenced his own work.

The record also includes two letters from individuals who provide no explanation as to how they became aware of the beneficiary's work. Byrav Ramamurthy, an assistant professor at the University of Nebraska, simply recounts the beneficiary's experience and concludes: "[The beneficiary's] work offers significant potential for optical networks. He produces innovative solutions to important problems in this area." Dr. Sudhir S. Dixit, Site Manager and Senior Research Manager at the Nokia Research Center, states:

[The beneficiary's] main contribution is to propose new architectures and their protocols for the optical networks. He has also introduced new methods to analyze the performance of the proposed systems by analytical methods and computer simulations.

Dr. Dixit does not indicate that the beneficiary's architectures or protocols have been adopted in the industry or otherwise explain how they are influential. Dr. Dixit does not assert that the beneficiary has influenced his own work.

Finally, the petitioner submitted evidence that the beneficiary is a listed inventor on three U.S. patent applications. The petitioner submits its own letter indicating that it only files patent applications after a patent committee "decides whether a patent on the invention could have sufficient value to justify the investment of funds as required to file and obtain a patent on the invention."

The director noted that many of the letters contain "boiler plate" or "canned language." Citing *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988), the director concluded that the letters were not credible and warranted a reevaluation of the remaining evidence.

On appeal, counsel asserts that the director misapplied that precedent decision and should have accorded more weight to the letters. The letters are all signed by the references, indicating that they are attesting to the letters' contents. Thus, we find that the director's reliance on the language in *Matter of Ho* relating to evidence lacking credibility is somewhat misplaced. Nevertheless, the use of "boiler plate" language suggests that the language in the letters is not the author's own language. As such, the weight accorded these letters is somewhat diminished.

In addition, most of the letters are from the beneficiary's immediate circle of colleagues. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's influence over the field as a whole. Even these letters from those who know the beneficiary best do not provide examples of how his work is considered a contribution of sufficient significance such that it is indicative of international recognition. The remaining letters are extremely vague and do not explain how the authors became aware of the beneficiary's work. Simply obtaining an independent review of the beneficiary's credentials from an expert who had previously never heard of the beneficiary is not evidence that the beneficiary enjoys international recognition. Moreover, the letters do not explain the significance of the beneficiary's work and explain how it has changed the field.

Regarding the petitioner's patent, this office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. See *Matter of New York State Dep't. of Transp.*, *supra*, at 221 n. 7. Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* The petitioner does not indicate that they have licensed or marketed the beneficiary's patent pending device or that it has generated unusual interest in the field. Thus, the impact of the device is not documented in the record.

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

The beneficiary authored two books, *Introduction to Computer Science and Practice*, which sold 150 copies; and *Unix for Administrator*, which sold 3,000 copies. The beneficiary also authored 16 articles and presented his work at 19 conferences. The director questioned whether the books constituted scholarly work in the beneficiary's academic field or were more akin to computer tutorials. The director also noted the lack of evidence regarding whether the books were purchased widely in the field or as the required text for the beneficiary's courses. Finally, the director concluded that nothing about the beneficiary's publication record set him apart from other researchers in the field, who routinely publish their results. On appeal, counsel merely reiterates the petitioner's claim that the beneficiary meets this criterion.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, sets forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or

scholarship during the period of the appointment.” Thus, this national organization considers publication of one’s work to be “expected,” even among researchers who have not yet begun “a full-time academic and/or research career.” This report reinforces CIS’s position that publication of scholarly articles is not automatically evidence of international recognition; we must consider the research community’s reaction to those articles. The record contains no evidence that any independent researchers have cited the beneficiary’s work. Thus, we concur with the director’s conclusion regarding this criterion.

The petitioner has shown that the beneficiary is a talented and prolific researcher, who has won the respect of his collaborators, employers, and mentors, while securing some degree of international exposure for his work. The record, however, stops 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.