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

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

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File: [Redacted]
WAC 02 244 55280

Office: California Service Center

Date:

NOV 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)

IN BEHALF OF PETITIONER:



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

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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner, a biopharmaceutical research and development company, seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B), as an outstanding professor or researcher. The petitioner seeks to employ the beneficiary as a Research Scientist. The director found that the petitioner has not established that the beneficiary is recognized internationally as outstanding in her academic field.

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.

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

(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.

As used in this section, the term "permanent," in reference to a research position, means either tenured, tenure-track, or 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. 8 C.F.R. § 204.5(i)(2).

The regulation at 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 beneficiary 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 submits evidence pertaining to the following criteria.

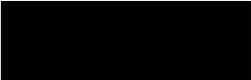
Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field.

The petitioner submitted a letter from Professor K.N. Houck, Graduate Advisor, Department of Chemistry and Biochemistry, University of California, Los Angeles ("UCLA"), informing the beneficiary of her receipt of a "Departmental Award for Distinguished Teaching" (1997). We note here that the beneficiary was pursuing her doctorate at UCLA at that time and was recognized for her efforts as a Teaching Assistant.

A second letter from Professor K.N. Houck (1997) states that that the beneficiary received a \$750 "Prize for Excellence during the first year of [her] graduate study" at UCLA.

A certificate from the California State University at Northridge ("CSUN") Chapter of Sigma Xi states that the beneficiary was awarded "first place in the graduate division of the Student Research Symposium, 1995." We note here that the beneficiary was pursuing her master's degree at CSUN during that time.

The above evidence is reflective of recognition at the local or institutional, rather than the



international, level. Evidence indicating that the beneficiary received recognition at her educational institutions does not satisfy the restrictive nature of this criterion. A student award may place the beneficiary among the top students at her particular university, but it offers no meaningful comparison between the beneficiary and experienced researchers who have long since completed their graduate studies. This criterion requires documentation establishing that the beneficiary's awards enjoy significant international stature. In sum, we find that the evidence presented does not establish the beneficiary's eligibility under this criterion.

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

The petitioner submitted the beneficiary's membership card reflecting her "Associate Member" status in Sigma Xi. Information provided by the petitioner from Sigma Xi's website at www.sigmaxi.org states:

Sigma Xi was founded in 1886 as an honor society for science and engineering.... There are nearly 75,000 Sigma Xi members in over 500 chapters at colleges and universities, industrial research centers and government laboratories.

* * *

Membership in Sigma Xi is by invitation. Those who have shown potential as researchers are invited to join as associate members. Full membership is conferred upon those who have demonstrated noteworthy achievements in research.

* * *

Extract from the Sigma Xi Constitution Concerning Eligibility: Section 3. Requirements for Election or Promotion to Membership.

Member (Full Member): Any individual who has shown noteworthy achievement as an original investigator in a field of pure or applied science is eligible for election or promotion to full membership in the Society by a chapter or the Committee on Qualifications and Membership.

Associate Member: Any individual who has, through initial research achievement in a field of pure or applied science, shown aptitude for research which is expected in due course to lead to the fulfillment of the requirements for full membership, is eligible for election to associate membership by a chapter or the Committee on Qualifications and Membership.

Based on the foregoing, the beneficiary's admission to associate membership in Sigma Xi was contingent upon her "aptitude for research" and "potential as a researcher" rather than outstanding achievement in her field. We further note that, above and beyond the beneficiary's associate

membership status, there exists the more elite category of “full” membership (based on “noteworthy achievement as an original investigator”).

Also submitted was evidence of the beneficiary’s regular membership in the American Chemical Society (“ACS”). Information provided by the petitioner states that regular membership in the ACS requires:

A bachelor’s degree (or higher) from an ACS-approved school in a chemical science or chemical engineering, or three years of employment in a chemical science if the degree is not from an ACS-approved school. Graduate study in a chemical science may be considered as working experience. Or, an associate degree or equivalent in a chemical science or chemical technology and five years of employment in a chemical science.

Simply possessing a bachelor’s degree from an accredited school would be sufficient to gain admission into the ACS. Therefore, it does not appear that the ACS requires outstanding achievement of its members in the same manner as highly exclusive associations such as (for example) the U.S. National Academy of Sciences.

In sum, the evidence presented does not establish that Sigma Xi or the ACS requires outstanding achievement as an essential condition for admission to membership.

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.

Throughout this proceeding, counsel has argued that twenty-five brief citations of the beneficiary’s work would satisfy this criterion.

The petitioner submitted documentation showing that the beneficiary’s work has been referenced by others. However, a review of the record shows this evidence to consist solely of published research papers that list the beneficiary’s co-authored papers as one of a large number of cited references. It is the nature of research work to build upon work that has gone before. In some instances, prior work is expanded upon or supported. In other instances, prior work is superseded by the findings in current research work. In either case, the current researcher normally cites the work of the prior researchers. Clearly this is not the same thing as published material written about an individual’s work in the field. This type of material does not discuss the merits of an individual’s work, the individual’s standing in the field, or any significant impact that his or her work has had on work in the field.

The director’s decision stated: “An alien cannot satisfy this criterion simply by establishing that his or her name has appeared in print. Citation of the work of others is expected and routine in the scientific community.”

For the above stated reasons, we concur with the director’s finding that citations, which simply

reference an individual's work, would not qualify as published materials "about the alien's work." The evidence presented here does not satisfy the statutory and regulatory demand for evidence showing that the beneficiary is internationally recognized as outstanding in her field. Citations of the beneficiary's work will be further addressed below.

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

The petitioner submitted witness letters from individuals who all have direct ties to the beneficiary. In order to qualify for the classification sought, however, the petitioner must demonstrate that the beneficiary is recognized not only by those institutions where she has studied or worked, but throughout the international research community.

A letter from Dr. Christopher Foote, Professor of Chemistry, UCLA, is devoted entirely to the beneficiary's academic achievements as a student rather than her research contributions. University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. The beneficiary's scholastic achievement may place her among the top students at a particular educational institution, but it offers no meaningful comparison between the beneficiary and experienced professionals in the research field who have long since completed their educational training.

Dr. Ohyun Kwon, Assistant Professor of Chemistry and Biochemistry, UCLA, states:

[The beneficiary] was involved in the synthesis of 2-deoxy-2-amino sugars employing catalytic asymmetric aminohydroxylation.... Although our collaboration lasted only for two months, she played a crucial role in setting up my research laboratory.

[The beneficiary] is an enthusiastic scientist and a very adept one, too. She enjoys synthetic work and is meticulous and highly productive. She came to my group very well trained in synthesis of natural products and expanded her expertise to the field of carbohydrate chemistry.

Dr. Kwon's letter describes the beneficiary's personal attributes and research expertise, but it provides no information regarding how the beneficiary's contributions have already influenced the academic field at the international level. The issue here is not the skill level or experience of the beneficiary, but, rather, whether any of her past research accomplishments would qualify as an internationally recognized contribution to the biochemistry field.

Dr. Michael Jung, Professor of Chemistry, UCLA, supervised the beneficiary's graduate research. Dr. Jung expresses his opinion that the beneficiary "will make extremely important contributions to the development of medicinal agents and drugs for the treatment of disease in the future." A letter from Dr. K.N. Houck, Professor of Chemistry, UCLA, offers the same observation. With regard to the witnesses of record, many of them discuss what may, might, or could one day result from the beneficiary's work, rather than how her past efforts have already had a significant impact beyond the original contributions normally expected of a well-qualified biochemical researcher or a graduate student at a respected university.

Dr. Jung further states:

[The beneficiary] has all the qualities that one hopes for in graduate students... Her project with me involved the development of new methods for the preparation of a new class of strongly biologically active protein phosphatase inhibitors, which may become a new source of medicinally active antitumor agents. In particular, we devised new ways to synthesize one member of this class, the diterpene dysidiolide. Our route was experimentally quite difficult and it was only due to the talent and perseverance of the [the beneficiary] that we achieved our goal. The route that she developed was published as a Communication to the Editor in the *Journal of the American Chemical Society*... Then the total synthesis was published in *Organic Letters*... Thus her graduate career was a huge success.

Many of the individuals offering letters of support, including Dr. Jeffrey Charonnat, who taught the beneficiary at [REDACTED] mention the beneficiary's authorship of articles published in respected journals. The beneficiary's co-authorship of published articles and abstracts may demonstrate that her research efforts yielded some useful and valid results; however, it is apparent that any article, in order to be accepted in a scientific journal for publication, must offer new and useful information to the pool of knowledge. It does not follow that every scientist whose scholarly research is accepted for publication has made a contribution of international significance.

None of the witness letters indicate that the beneficiary's contributions are especially important to her field, nor do the letters even devote much space to the beneficiary's specific activities. The message of the letters instead seems to be that because the beneficiary possesses the required education and skills, she is likely to make future research contributions in the biomedical field. The petitioner seeks a highly restrictive visa classification for the beneficiary, intended for aliens who have already earned international recognition for their contributions, rather than for individuals progressing toward that point at some unspecified future time.

Counsel states that the beneficiary, "in conjunction with Dr. Jung, authored 'Formal Total Asymmetric Synthesis of Dysidiolide,' which was a poster presentation at the 222nd National Meeting of the American Chemical Society" in Chicago (2001). The petitioner, however, has not provided evidence in the form of an event program or published conference proceedings from the meeting to verify the beneficiary's participation.¹ Even if the petitioner were to provide such evidence, it is important to note that numerous other poster presentations were given at this conference. The petitioner's evidence does not reflect the beneficiary's outstanding ability in relation to others in the field. The beneficiary was not, for example, the keynote speaker at the conference. The record includes no response from attendees of the conference to indicate that the beneficiary's presentation attracted significant attention among independent researchers.

Counsel submits a copy of a July 30, 1992 letter from the Acting Assistant Commissioner of

¹ The record contains only documentation of the presentation itself (prepared by the beneficiary and Dr. Jung at UCLA). This documentation does not establish that the beneficiary appeared at the conference.

Adjudications to the Director of the Northern Service Center. The letter states: “[P]eer reviewed presentations at academic symposia... would more than likely be solid pieces of evidence [under the outstanding professor or researcher classification].” The letter further states: “However, please note that the examiner must evaluate the evidence. This is not simply a case of counting pieces of paper.” We note here that the Acting Assistant Commissioner letter refers to “presentations at academic symposia,” rather than a single presentation at one conference, as in the beneficiary’s case. We further note that the letter stresses the importance of evaluating whether the documentation presented is indicative of the beneficiary’s outstanding research accomplishments. In this case, the record contains no evidence showing that the presentation of one’s work is a rarity in the beneficiary’s field, or that participation in the above conference was a privilege extended only to outstanding researchers of international repute.

Also submitted was evidence showing that the beneficiary had “participated in the acquisition of five patents” while working for Hitachi Research Laboratory in the 1980’s. The fact that the beneficiary is named among several inventors on a patent carries little weight. Of far greater importance in this proceeding is the importance to the greater field of the beneficiary’s patented findings. There is no independent evidence to support the conclusion that the beneficiary’s work for Hitachi Research Laboratory was internationally recognized as an influential contribution. Counsel contends that the beneficiary’s participation in the acquisition of several patents represents a significant contribution to the field but offers no documentary evidence to support his claim. 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). As stated by the director, the granting of a patent documents only that an innovation is original. It does not necessarily follow that an approved patent represents an internationally recognized contribution in one’s field. According to statistics released by the U.S. Patent and Trademark Office, which are available on its website at www.uspto.gov, that office has approved over one hundred thousand patents per year since 1991. In 2001, for example, it received 345,732 applications and granted 183,975 patents.

The petitioner has not provided evidence that the beneficiary’s research, to date, has attracted significant attention from independent researchers from throughout the world. In fact, all of the petitioner’s witnesses are from institutions where the beneficiary has studied or worked and do not demonstrate that the beneficiary’s work is “internationally recognized” as outstanding. An individual who is recognized internationally as outstanding should be able to produce ample unsolicited materials reflecting such a reputation. In this case, the beneficiary has not demonstrated any specific scientific or scholarly contributions that have been unusually influential or renowned within her field. While the witnesses have asserted in general terms that the beneficiary is an outstanding researcher, she appears to have earned a reputation only among professors from the universities she attended. The absence of substantial independent evidence raises doubt as to the extent of the beneficiary’s recognition.

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

The petitioner submitted evidence of the beneficiary's co-authorship of several published articles.

In addressing the evidence presented, the director stated: "While the papers are commendable and demonstrated [the beneficiary's] competence in the field of endeavor, they are not considered scholarly articles in the field because they were written for the most part, while pursuing her education." We withdraw this statement from the director's decision. Nothing in the statute or corresponding regulations precludes articles authored by an alien while pursuing an advanced degree (later acquired by the alien) from fulfilling this criterion. That being said, the petitioner must still demonstrate that such articles have been recognized internationally as outstanding in the academic field.

The director's decision further stated:

Moreover, the evidence indicates that the beneficiary was not the primary author... The evidence clearly shows that the beneficiary was one of several authors who collaborated on writing the journal articles. Therefore, her contribution, while notable, was not significant to warrant full and comprehensive authorship.

On appeal, counsel argues: "The fact that the beneficiary co-authored articles is irrelevant and does not constitute a basis upon which to disqualify them as evidence." Counsel cites the wording from a recent unpublished AAO decision, which states:

Regarding sole authorship, the director fails to acknowledge the inherently collaborative nature of modern scientific inquiry, in which researchers rarely labor in isolation. The sciences, in general, have reached such a level of narrow specialization that one scientist rarely possesses the full breadth of expertise (not to mention resources) necessary to execute a research project.

While the non-binding case cited by counsel addresses a case in which the issue in dispute was "sole authorship" rather than "co-authorship," we find any suggestion by the director that co-authorship alone would disqualify the petitioner's evidence to be erroneous. The AAO has long acknowledged the collaborative nature of modern scientific research and therefore we concur with counsel that co-authorship is not an automatic disqualifying factor under this criterion. However, contrary to the opinion expressed by counsel, the fact that the beneficiary has not been the primary author or lead scientist for any published articles is not entirely irrelevant either. The lack of primary authorship does not automatically prevent fulfillment of this criterion, but it certainly does not strengthen the petitioner's claim that the beneficiary is recognized internationally as an outstanding researcher. It is reasonable to conclude that evidence showing the beneficiary played the primary or leading (rather than a subordinate or secondary) role in her published research would carry greater weight.

We find the following portion of the director's analysis to be sound and correct:

Typically, graduate students in scientific fields are required to conduct research, under the supervision of academic advisors who are conducting ongoing research. Additionally, they are required to document their research as part of the requirements of their graduate program. As such, virtually all individuals who have done graduate work in a scientific field will be able to

present evidence of authorship of scientific articles.

The director's decision indicates that the very existence of published work by the beneficiary is not dispositive. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were 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 automatic evidence of international recognition; we must also consider the academic field's reaction to those articles.

Publication, by itself, is not a strong indication of impact, because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the beneficiary's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the beneficiary herself has cited sources in her own articles. This is a universally accepted practice among academic scholars and researchers. Numerous independent citations would provide firm evidence that other researchers have been influenced by the beneficiary's work. Their citation of her published articles would demonstrate their familiarity with her work. If, on the other hand, there are few citations of an alien's work, suggesting that that work has gone largely unnoticed by the international research community, then it is reasonable to question how widely that alien's work is viewed as being outstanding. It is also reasonable to question how much impact - and international recognition - a researcher's work would have, if that research does not influence the direction of future research.

The petitioner submitted evidence showing that an article in *Organic Letters* (2001) was cited three times, an article in the *Journal of the American Chemical Society* (1999) was independently cited ten times, an article in *Synthetic Letters* was cited two times, an article in the *Journal of Fermentation Technology* (1988) was cited seven times, and another article in that journal (1987) was cited three times.² In this case, the limited number of independent citations provided (twenty-five over a research career spanning almost two decades) does not elevate the beneficiary to a level of international recognition.

The director's decision concluded by stating that it is important to compare "the limited authorship of graduate students such as the beneficiary to that of professionals of long standing in the field."³ In this

² Some of the citations presented were self-citations by the beneficiary or her collaborators. While self-citation is a normal, expected practice, it does not demonstrate the response of independent researchers.

³ We acknowledge that the beneficiary is no longer a graduate student, but it remains that the work she produced at UCLA and CSUN related to her graduate studies.

case, a simple comparison of the beneficiary's publication record (seven publications from 1985 to 2002 are listed on her resume) with that of Professor Jung, for example, indicates that his level of achievement far exceeds that of the beneficiary.

Beyond the beneficiary's failure to satisfy at least two of the regulatory criteria 8 C.F.R. § 204.5(i)(3)(i), we note that the record contains no formal job offer letter, i.e., a letter from the petitioner addressed to the beneficiary that sets forth a binding offer of employment, including specific terms thereof. The initial submission includes a letter from Yen Chong, Human Resources Manager, Amgen, Inc., dated July 11, 2002 and addressed to the California Service Center which, over the course of seven pages, discusses the beneficiary's education, research background, duties at Amgen, and eligibility under the regulatory criteria. This letter indicates that the beneficiary is employed by Amgen, but the letter is not an offer of employment addressed to the beneficiary. Rather, it is a letter to the California Service Center which discusses (among other things) the petitioner's intention to continue employing the beneficiary in a research position. The letter does not constitute a formal offer of employment; indeed, it implies that the beneficiary has already accepted an offer made earlier. The record does not contain any documentation, pre-dating the petition's filing date, that initiated an employer-employee relationship between the petitioner and the beneficiary or otherwise extended a job offer from the petitioner to the beneficiary.

In this case, the petitioner has shown that the beneficiary is a talented research scientist, who has won the respect of individuals from the institutions where she has studied and worked, while possibly securing some minimal degree of international exposure for her 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 visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.