



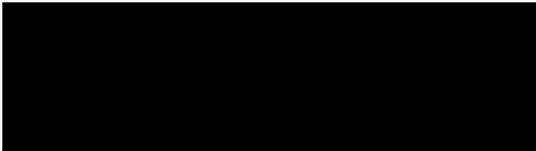
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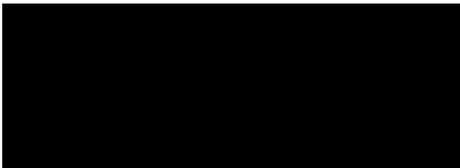
Petitioner:

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 of the Administrative Appeals Office 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.



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 biopharmaceutical 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. The director also stated that the petitioner has not established documented achievements in an academic field.

On appeal, counsel argues that the director failed to consider the evidence fully.

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 first issue in contention is whether the petitioner has established that the beneficiary qualifies for the classification sought, i.e., that the beneficiary has earned international recognition as an outstanding researcher.

Citizenship and Immigration Services (CIS) regulations at 8 C.F.R. § 204.5(i)(3)(i) require evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition.

The petitioner must submit evidence to fulfill at least two of six listed criteria. The petitioner claims to have fulfilled the following criteria:

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

The petitioner did not initially make any claim under this criterion. Counsel has subsequently noted that the beneficiary "was the first recipient of the Array BioPharma Postdoctoral Fellowship presented by Array BioPharma, Inc." There is no evidence in the record that this fellowship is a prize or award, let alone a major one. Contemporaneous documents in the record show that "a generous donation from Array BioPharma" allowed The Scripps Research Institute to hire the beneficiary as a postdoctoral research associate for "a salary of \$26,000 per year plus fringe benefits." Postdoctoral positions of this kind appear to be more or less routine training for scientific researchers, and the fact that this "award" is available only to postdoctoral researchers indicates that only the least experienced researchers are eligible for consideration.

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

The petitioner originally made no claim under this criterion. Following a request for further evidence, the petitioner has documented the beneficiary's membership in (in counsel's words) "the internationally recognized organization, the American Chemical Society" (ACS). Counsel asserts that ACS "is comprised of more than 163,000 international members." Counsel does not explain how an organization can grow to such a substantial size if it requires outstanding achievements of its members.

ACS documentation submitted by the petitioner indicates that the rank of Full Member (the beneficiary's membership class) is available to anyone with "a bachelor's degree in a chemical science from an ACS approved program," or various combinations of education and experience. A bachelor's degree is far from an outstanding achievement. ACS's demonstrably lenient membership requirements account for the organization's very large size. The petitioner has not satisfied this criterion.

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.

Counsel asserts that the beneficiary's "research has been featured and discussed in numerous publications by other professionals in his field." Counsel refers to several citations of the beneficiary's own published work. The articles containing these citations are not "about the alien's work," any more than the beneficiary's own articles are "about" the work of K.B. Sharpless, T. Ramalingam, or any of the other researchers whose work the beneficiary has cited in his own articles. Such citations are useful as a gauge of the impact of the beneficiary's own published work, but in the absence of evidence showing that the beneficiary's work has been specifically singled out for praise or discussion, we cannot find that citation alone satisfies this criterion.

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

Steven Spector, vice president, general counsel, and secretary of the petitioning company, states:

[The beneficiary's] contributions to the field of science over the last decade are well documented in numerous research publications in respected international journals. [The beneficiary] focused on heterocyclic chemistry during the early part of his career making important, internationally recognized contributions to our knowledge of the structure and chemistry surrounding a particular class of heterocycles known as thiazoles. . . . [The beneficiary] is also known internationally for his innovative research into the design and modification of efficient synthetic routes for triptolide (a major active ingredient of medicinal herbs) and its analogues. This research . . . provides scientists with an enhanced insight into the biological activities and processes of these chemical analogues, which is directly relevant in the development of new anti-cancer and immunosuppressive drugs. Additional internationally recognized research . . . led to the development of a novel method for synthesizing chiral compounds in a solid phase, which represents an important breakthrough in the field of combinatorial chemistry.

[The beneficiary's] research conducted at The Scripps Research Institute . . . represented the first successful scientific attempt in completing the total synthesis of Azaspiracid, a naturally occurring chemical compound that exists only in scarce quantities. [The beneficiary's] original insight in this area has significantly furthered the ability of scientists to synthesize a variety of complex molecules and fully understand their biological activities. This new knowledge . . . is important in helping other scientists to unlock the medicinal and therapeutic potential of molecules presently unusable to the pharmaceutical industry.

Dr. [REDACTED] vice president and chief chemical officer at the petitioning company, states that the beneficiary's "outstanding efforts on the design and synthesis of novel regulators of lipid metabolism . . . have already resulted in some biologically active 'hits.' We expect that these efforts will result in US patent applications in the near future for which he will be an inventor."

Professor [REDACTED] who supervised the beneficiary's postdoctoral work at the University of Hong Kong, states that the beneficiary "has made great contribution[s] to the design and modification of the efficient synthetic route for triptolide and its analogues. . . . This protocol has great practical application in general to natural product syntheses."

Dr. [REDACTED] associate director of the Genomics Institute of the Novartis Research Foundation, previously worked with the beneficiary at The Scripps Research Institute. Dr. [REDACTED] states that the beneficiary's "outstanding accomplishments include the expanding application of periodinane reagents and mechanistic studying of periodinane-mediated reactions, and successful synthesis of FGHI ring system of a novel marine toxin, Azaspiracid." Dr. [REDACTED] asserts that the beneficiary's "unique methods have been developed into extremely practical procedures for the preparations of complex molecules with polyether structures and have been benefiting research on the synthesis of natural products with potent biological activities."

Dr. [REDACTED] who supervised the beneficiary's postdoctoral work at The Scripps Research Institute, states "[p]articularly significant are [the beneficiary's] achievements in the mechanistic studies of periodinane-mediated reactions of anilides and other systems. Mechanistic understanding is expected to lead to the design of new reactions for the construction of novel molecular diversity, and to enrich the enabling technologies for combinatorial chemistry, chemical biology and medicine." Dr. [REDACTED] credits the petitioner with "the construction of the ABCD and FGHI ring systems of the [azaspiracid] molecule."

All of the above witnesses have worked with or supervised the beneficiary. Their assertions, while of value in establishing the specific nature of the beneficiary's accomplishments, cannot establish first-hand that the beneficiary's original contributions have won him international recognition as an outstanding researcher.

The director requested additional evidence to establish the significance of the beneficiary's original contributions. In response, the petitioner has submitted two further letters. Dr. [REDACTED] is an assistant professor at The Scripps Research Institute, where the beneficiary conducted some of his postdoctoral research. Dr. [REDACTED] now an associate professor at the University of California, San Diego (UCSD), was a post-doctoral research associate under Dr. [REDACTED] at The Scripps Research Institute. (Dr. [REDACTED] is also on the UCSD faculty.) Thus, these new witnesses, like the initial witnesses, have demonstrable ties to the beneficiary and the laboratories where he has worked. The letters do not constitute direct evidence that the beneficiary has earned any significant recognition outside of The Scripps Research Institute and other institutions where he has worked and studied.

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

The petitioner submits copies of seven articles co-authored by the beneficiary. A "citation index" submitted with the initial filing lists 35 articles that contain citations of the beneficiary's work. Of these 35 citations, 17 are self-citations by the beneficiary and/or his co-authors, averaging between two and three independent citations per article. The beneficiary's most heavily cited article has 12 citations, but ten of those are self-citations by the beneficiary's mentor, Dr. [REDACTED]

The director denied the petition, stating that the petitioner satisfied only one criterion (pertaining to the beneficiary's authorship of articles). On appeal, counsel argues that the director "did not properly consider all of the submitted evidence," and most of the appellate brief consists of variations on this basic assertion. For instance, counsel asserts that the director "did not properly consider" the evidence relating to the beneficiary's membership in the ACS. Counsel states "the membership criteria for the American Chemical Society consist of more than simply having the required degree and payment of a fee. The American Chemical Society has set up rigid standards including requiring significant achievement in the field for membership." The documentation from ACS indicates that an individual can become a member by meeting *any one* of the following requirements: (1) a bachelor's degree in a chemical science from an ACS approved program, (2) a bachelor's degree in a chemical science from a non-approved ACS program and three years work experience, (3) an earned doctor's or master's degree in a chemical science, (4) or less formal training than indicated above but having significant achievement in a chemical science.

Leaving aside the fact that an achievement can be "significant" (i.e., not insignificant) without being "outstanding," the ACS documentation shows that an individual can, indeed, become a member simply by having the required degree and paying the membership fee, thus directly contradicting counsel's claim to the contrary. The experience and achievement clauses take effect only under certain conditions. Furthermore, three years of work experience can hardly be called an outstanding achievement, unless we presume a very substantial attrition rate among chemists during their first three years of employment. The record offers nothing to justify such a presumption.

Counsel offers general observations about the reputation of ACS. These observations are entirely irrelevant, because the regulatory standard concerns the membership standards of an organization, not its prestige. Counsel maintains "[t]he fact that the Beneficiary is a member of such an organization . . . is evidence of his prominence in the field." Counsel had earlier quoted figures indicating that ACS has over 163,000 members worldwide. The

implication is that every one of these 163,000 chemists is also prominent in the field, an untenable assumption but one that inevitably arises from counsel's logic. The repeated contention that ACS membership is a sign of international recognition indicates that counsel and the petitioner have an unrealistically low threshold regarding what qualifies as "outstanding."

Regarding the witness letters in the record, counsel acknowledges that the witnesses are closely linked to the beneficiary, but counsel maintains that these individuals "are still able to provide an objective assessment of [the beneficiary's] significant scientific contributions." Still, we cannot disregard the utter absence of comparable assessments from individuals with no such ties to the beneficiary. A reputation that is confined to universities and institutions where the beneficiary has personally worked is not international recognition as an outstanding researcher.

The second issue in the director's decision concerns whether or not the petitioner has achieved documented accomplishments in an academic field, as required by 8 C.F.R. § 204.5(i)(3)(iii)(C). The director's concern appears to stem from company official Steven Spector's description of the petitioner as "an emerging biopharmaceutical company." Counsel notes, on appeal, that the petitioner held several approved United States patents prior to the petition's filing date. We concur that the director failed to take this information into account, (partly because of a lack of independent corroboration) and appears to have taken isolated comments out of context. We withdraw the director's finding that the petitioner has not achieved documented accomplishments in an academic field. The other ground for denial, however, still stands.

Beyond the above grounds, we note that the regulation at 8 C.F.R. § 204.5(i)(3)(iii)(C) requires that evidence of a job offer must be in the form of a letter from a private employer offering the alien a permanent research position in the alien's academic field. We can find no such letter in the record of proceeding. A letter to immigration authorities, describing the position, is not a letter offering the alien the position. Even then, Dr. [REDACTED] letter refers to the position as "regular" and "full-time" but not "permanent."

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in the field of chemistry. 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.