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FEB 10 2004

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

WAC 03 049 53620

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 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.

Mari Johnson

for 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 non-profit research laboratory, 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 Associate. 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.

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 two “Certificate[s] of Attendance” from the Sunshine Education and Research Center at the University of South Florida (“USF”) reflecting the beneficiary’s attendance at two “continuing education seminar series” in the spring and fall of 2000. We note here that the beneficiary received her Master of Public Health degree from USF on August 10, 2001. The Certificates of Attendance, indicating that the beneficiary received a few hours of “continuing education credit,” do not constitute major prizes or awards for outstanding achievement. Rather, the certificates simply verify the beneficiary’s attendance at a local educational seminar offered by her university.

Financial Coordinator, University of South Florida, states that the beneficiary “was accepted into the [Environmental and Occupational Health] department’s graduate program in Toxicology and was awarded a scholarship for studying toxicology.” notes that the beneficiary “worked very hard to complete her class work” and “took great pride in her opportunity to be at the University.” Academic scholarships of this kind are, by nature, presented not to established researchers with active professional careers, but, rather, to students pursuing further training and education. Graduate study is not a field of endeavor and therefore we cannot artificially restrict the beneficiary’s field to exclude all those researchers who have finished their education and therefore do not compete for graduate scholarships. Thus, we cannot conclude that earning a local university scholarship constitutes an internationally recognized prize in the beneficiary’s field.

In this case, the petitioner has presented no evidence of the beneficiary’s receipt of major awards of significant international stature.

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

The petitioner submitted a certificate verifying the beneficiary’s “student” membership in the Society of Toxicology. According to the Society of Toxicology’s website at www.toxicology.org, the following are the criteria for student membership:

Must be enrolled in a graduate degree program, post-doctoral fellowship, or be within a 12-month period following completion of the degree program or fellowship

Sponsorship by a Full Member of the Society of Toxicology

Certification by faculty advisor, post-doctoral mentor, or registrar of the applicant's status

The petitioner submitted an on-line membership application showing that, beyond student membership, there exists the more prestigious categories of "Full (based on publication record)" and "Full (based on professional experience)."

On appeal, counsel argues that the Society of Toxicology is a "prestigious organization" with "strict" membership requirements. It should be emphasized, however, that the overall prestige of the Society is not determinative; the issue here is membership requirements rather than the Society's overall reputation. Here, it is not apparent how anything less than "Full" membership would satisfy the plain wording of the criterion. Enrollment in a graduate degree program, sponsorship by a Full Member, and certification by a faculty advisor do not constitute outstanding achievements in the beneficiary's field. According to the Society's website, it is immediately apparent that most capable graduate students would be admitted for student membership in this organization. Based on the evidence presented, the petitioner has not shown that the beneficiary's admission to student membership in the Society of Toxicology required outstanding achievement.

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.

In response to the director's request for evidence, the petitioner submitted incomplete translations of nine published papers that only briefly cite the beneficiary's work. The published materials submitted consisted of seven theses, a doctoral dissertation, and an article appearing in the *Journal of Taiwan Normal University*. The extent to which the publications featuring these nine articles were internationally circulated has not been shown. Furthermore, by regulation, any document containing foreign language submitted to CIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Without complete translations, it cannot be determined that the beneficiary is the main subject of the articles, or that she was featured because of her achievements as an outstanding researcher.

The evidence presented under this criterion consists solely of published research papers that list one of the beneficiary's published papers as one of a number of cited references. In the beneficiary's academic field, 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. Finally, it is noted that the articles citing the beneficiary's work similarly referenced numerous other individuals. For the above reasons, the citations presented would not qualify as "published materials about the alien." The petitioner must demonstrate that the

beneficiary's work was the main subject of the published material. Citations of the beneficiary's work will be further addressed under a separate criterion.

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 her direct acquaintances, but also among academic scholars throughout international scientific community.

██████████ Director, Molecular Biology, Blood Centers of the Pacific, is the beneficiary's current supervisor. He states:

I have known [the beneficiary] for more than ten years. We published several papers together in medical journals in Taiwan when she was in Taiwan.... Three of them were published in *Medicine Today*, which is the most prestigious medical journal in Taiwan....

* * *

Most of the papers in Taiwan did not include her name...since she thought that quantitative PCR [polymerase chain reaction] was first developed in the United States and thus her accomplishments back then could not compare with those in the U.S. However, this was the past and presently her skills have matched and exceeded the skills of those in the U.S.

It is not apparent how papers that "did not include [the beneficiary's] name" constitute qualifying evidence under this criterion. Nevertheless, published work falls under another criterion; to satisfy this criterion, the petitioner must show not only that the beneficiary's work was published, but that it is internationally recognized throughout her field as a significant contribution. The petitioner's witnesses (such as Dr. ██████████) mention the beneficiary's authorship of articles, but their letters do not single out any specific article or explain how it would qualify as an important contribution in the field of toxicology. The beneficiary's authorship of published materials 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 for publication, must offer new and useful information to the pool of knowledge. It does not follow that every researcher whose work is accepted for publication has made an internationally recognized contribution to her field. The beneficiary's authorship of scholarly articles will be further addressed under a separate criterion.

██████████ Research Associate, Blood Centers of the Pacific, states:

Eight months ago, [the beneficiary] joined our scientific research group as a volunteer.

* * *

At this current moment, [the beneficiary] is working in the laboratory under the Molecular Biology Department and primarily focusing on real-time PCR. With [the beneficiary's] experience and skill in kinetic PCR "real time," she is able to use the technique successfully in many applications. Real-time PCR can be used in applications in measuring viral load, diagnostic testing, performing allelic

discrimination studies, criminology cases, and optimizing PCR conditions.... [The beneficiary] has the knowledge, skills, and spirit needed at our institution to help us with our ongoing blood research.

M. [REDACTED] Assistant Professor, University of South Florida, College of Public Health, was the beneficiary's professor at USF. Dr [REDACTED] states that she "witness[ed] [the beneficiary's] satisfactory progress as a student." She further states: "Indeed, [the beneficiary's] current research focuses on molecular biology aspects of blood analysis. As a physician-scientist, I can tell you that her uncommon skills remain invaluable and her endeavors represent the cutting edge of science."

[REDACTED] Medical Technologist, Texas Children's Hospital, states she met the beneficiary "in San Francisco at the Golden Gate Church of Christ where [they] attended church services." [REDACTED] further states: "Using the PCR technology in which she is trained, [the beneficiary's] research will provide information about...diseases at the molecular level. Efforts to produce detection and cures for these diseases, no doubt, depend on information produced by [the beneficiary's] research."

With regard to the witnesses of record, they all discuss what may, might, or could one day result from the beneficiary's current research, rather than how her past efforts have already had a significant impact beyond the original contributions that are normally expected of biomedical researchers at a respected institution. The letters presented here describe the beneficiary's skills and research expertise, but they provide no information regarding how her contributions have already influenced the academic field at the international level. The issue here is not the dedication, skill level, or experience of the beneficiary, but, rather, whether any of her past research accomplishments would qualify as an internationally recognized contribution in her academic field.

In this case, the petitioner has not provided sufficient evidence that the beneficiary's research, to date, has attracted significant attention from independent researchers on an international scale. An individual that is recognized internationally as outstanding should be able to produce ample unsolicited materials reflecting such a reputation. If the beneficiary's research achievements are not widely praised outside of individuals with whom she has previously studied, worshiped, or worked, then it cannot be concluded that she enjoys an international reputation. Here, the beneficiary has not demonstrated any specific research contributions that have been unusually influential or renowned within her field. While the witnesses have asserted in general terms that the beneficiary is "dedicated" to her field and "an outstanding researcher," she appears to have earned a reputation only among her personal acquaintances. The absence of substantial independent testimony 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 authorship of five articles published in *Scientific Education*, *Medicine Today*, and *Medical Digest*. The extent of the circulation of these journals, however, has not been provided. Without evidence of their significant international distribution outside of Taiwan, the petitioner has failed to show that the articles presented satisfy this criterion. Vague assertions from the beneficiary attesting to the extent of the journals' distribution carry far less weight than would evidence from the journals themselves or from a published media guide. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

We further note that the very existence of published work by the beneficiary is not automatic evidence of international recognition; we must also consider the academic field's reaction to those articles. When judging the influence and impact that the beneficiary's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. 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 referenced numerous 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 scholars 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 or no 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 the beneficiary's paper entitled "The Content Analysis of Energy Education within Senior High School Textbooks" was cited nine times by researchers in Taiwan. In this case, the limited number of citations presented (nine over a research career spanning almost a decade) would not elevate the beneficiary to a level of international recognition as an outstanding researcher. We further note the absence of evidence showing that the beneficiary's articles have been cited by researchers at the international level (beyond the country of Taiwan).

Beyond the beneficiary's failure to satisfy at least two of the regulatory criteria at 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 the specific terms thereof. The record includes a letter from Dr. [REDACTED] submitted in response to the director's request for evidence), dated April 9, 2003 and addressed "Two Whom It May Concern" which states that the beneficiary has been working as Research Associate at Blood Centers of the Pacific since May 2002. While this letter indicates that the beneficiary is presently employed by the petitioner, the letter is not an offer of employment addressed to the beneficiary; it is a letter to "Two Whom It May Concern" 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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

In this matter, the petitioner has shown that the beneficiary is a capable researcher, who has won the respect of those close to her while possibly securing some minimal degree of national exposure for her work. The

record, however, stops short of elevating the beneficiary to an international reputation as an outstanding researcher. 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.