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U.S. Citizenship
and Immigration
Services

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FEB 20 2004

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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.

For Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a university. 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 in the United States as a postdoctoral research associate. The director determined that the petitioner had not established that it had offered the beneficiary a permanent position, or that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

Citizenship and Immigration Services (CIS) 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 concerns the nature of the job offer. Pursuant to CIS regulations at 8 C.F.R. § 204.5(i)(2), "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.

In a letter addressed to the Immigration and Naturalization Service (precursor agency to CIS [REDACTED]) [REDACTED] associate professor at the petitioning university, states that the petitioner "is providing a job offer for non-temporary position to [the beneficiary] as a postdoctoral research associate. The position offered is

deemed to be of non-temporary duration [REDACTED] does not define "non-temporary." This letter, addressed to immigration authorities rather than to the beneficiary, is not a job offer letter.

The record also contains a copy of a job offer letter from [REDACTED] addressed to the beneficiary. The job offer letter does not indicate that the position is permanent. Rather, [REDACTED] states "[t]he position is limited term as described in the rules and regulations that apply to employees in Regents Unclassified positions. . . . The position will end not later than Jan. 31, 2004 and may be extended if grant funds are available at that time." The beneficiary's signature appears at the bottom of the letter, indicating that the beneficiary accepted the terms of employment set forth in the job offer letter. The job offer letter is dated December 17, 2002, a month and a half prior to the petition's January 31, 2003 filing date.

On February 20, 2003, the director informed the petitioner that the job offer, as described in the above letter, does not qualify as an offer of permanent employment. The director stated that, unless the petitioner had extended a superseding offer of permanent employment between December 17, 2002, and January 31, 2003, "it does not appear that [the] petition can be approved."

In response, the petitioner has submitted what counsel describes as an "[a]mended offer of employment." In a new letter dated March 3, 2003, [REDACTED] states:

[The beneficiary's] job offer is of permanent duration so long as she can obtain permanent residence in the US and is able to reside in the US on a permanent basis. Presently, [the beneficiary] is holding a position as a postdoctoral research associate since she only has a temporary non-immigrant visa and can not remain in the US indefinitely.

We are confident that upon approval of her immigrant petition by your agency and obtaining a permanent residence status, our organization can continue to employ [the beneficiary] on a permanent basis.

The above letter is not a job offer letter, and it does not establish that the petitioner had offered a permanent position to the beneficiary before the petition's filing date. The director had clearly stated that the offer of permanent employment must predate the filing date. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), which require that a petition must be amenable to approval based on conditions as of the filing date of the visa petition.

We note that [REDACTED] does not indicate what position the beneficiary would occupy after becoming a permanent resident. The statute and regulations plainly require an offer of permanent employment as a condition of eligibility for the classification. The vague assertion that the petitioner will, at some future time, offer the beneficiary some kind of permanent employment cannot suffice. Approval of the petition is contingent on the job offer, rather than the other way around.

The director denied the petition, stating that the job offer letter clearly lists a termination date and that the petitioner's subsequent efforts to amend the job offer do not establish eligibility. The director also noted "there is no evidence that the petitioner has given authorization to the beneficiary's mentor [REDACTED] to offer permanent employment."

On appeal, counsel refers to yet another “updated offer of employment.” In a letter dated June 16, 2003, [REDACTED] states that the petitioner has offered the beneficiary a position “of permanent duration so long as she can obtain permanent residence in the US. [REDACTED] states that this “job offer existed as of December 7, 2002.” This assertion, over seven months after the fact, is not persuasive. [REDACTED] new letter contains no reference to the original assertion, in the December 17, 2002 letter, that the “position will end not later than Jan. 31, 2004.”

Pursuant to *Matter of Izummi, supra*, the petitioner cannot overcome this ground of denial simply by repeatedly changing the purported terms of the job offer. The record contains no credible evidence that the petitioner had extended an offer of permanent employment on or before the petition’s filing date. The assertion that the petitioner is “confident that . . . our organization can continue to employ” the beneficiary cannot suffice.

Regarding the director’s finding that the petitioner has not established [REDACTED] authority to extend offers of permanent employment on the university’s behalf, the only response on appeal is [REDACTED] own assertion that he has such authority.

The record shows that the petitioner had originally offered the beneficiary a short-term appointment rather than a permanent position. The petitioner’s option to renew this appointment does not make the position permanent; a succession of temporary assignments does not amount to a single, permanent appointment. The available evidence indicates that the beneficiary’s appointment, like most postdoctoral appointments, is temporary.

The remaining issue is whether the beneficiary qualifies as an outstanding researcher. 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 all six criteria.

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

Counsel states:

“Mechanism of monocyte-mediated immunosuppression in patient with pulmonary tuberculosis” was awarded as a best published presentation among young scientists which was presented at the annual conference, number XII organized by Novosibirsk Institute of Clinical Immunology, Siberian Region of the Medical Science.

The above awards [sic] provide that only those scientists that make unique contributions in order to obtain an award given by their peers as provided above [sic].

The director requested “evidence of the significance of the award . . . and a copy of the criteria used to select the recipient.” The petitioner’s response included no further evidence regarding the award (apart from a witness letter which contained a passing mention of an unidentified award).

The petitioner has not established that the above award is a major award on an international scale. The term “Siberian Region” in the name of the awarding entity suggests regional rather than international scope. The petitioner has not shown that this award is widely viewed as significant, even among scientists who did not

participate in that particular conference. For the above reasons, the petitioner has not established the beneficiary's receipt of a major award for outstanding achievement in her academic field.

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

Counsel cites only one membership, in the Russian Society of Clinical Immunology. As proof of this membership, counsel cites a document described only as "Exhibit 5." We can find no document in the record that confirms the beneficiary's membership in this association.

On February 20, 2003, the director instructed the petitioner to submit "copies of the membership criteria of the associations to which the beneficiary belongs." In response, the petitioner has submitted a blank membership application form from the American Society for Cell Biology (ASCB). The application states "[m]embership in the Society is open to scientists who share the Society's purposes to promote and develop the field of cell biology and who have educational or research experience in cell biology or an allied field." Education and experience are not outstanding achievements. Membership in ASCB appears to be open to every qualified professional in the field.

The petitioner also submits a receipt, showing that the beneficiary applied to ASCB for membership on February 28, 2003, eight days after the director requested evidence of membership in associations. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. See *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), which require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. In this instance, the beneficiary applied for ASCB membership immediately after the petitioner received the director's notice, and even then the receipt proves only that the beneficiary applied for membership. It does not document acceptance into the society. Thus, even if ASCB were a qualifying association (which it is not), the petitioner has submitted no evidence of the beneficiary's membership in ASCB. The beneficiary was clearly not an ASCB member at the time of filing.

The petitioner has not documented the beneficiary's membership in associations in the academic field which require outstanding achievements of their members.

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.

The initial submission contained nothing regarding this criterion. In response to the director's request for additional evidence, the petitioner has submitted a copy of an article from *Byulleten Eksperimental'noi Biologii i Meditsiny*.¹ The article includes a footnote that reads "[w]e thank [the beneficiary] and A. Turov for critical comments and technical assistance." A fleeting mention of this kind does not constitute published material about the beneficiary's work.

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.

¹ We note that one of the co-authors of this article is named M.N. Norkin. It is not clear whether M.N. Norkin is the same individual as the beneficiary's spouse, Maxim Norkin.

Counsel states that the beneficiary “[s]erved as a reviewer of the prestigious scientific journals” but the initial submission contains no evidence of this activity. The director requested evidence in this regard. In response, the petitioner has submitted a letter to the beneficiary from [REDACTED] of the Idea Trust Foundation, requesting that the beneficiary review a research proposal. The letter is dated February 17, 2003, several weeks after the petition’s January 31, 2003 filing date. The letter does not establish that, as of the filing date, the beneficiary had already judged the work of others. The beneficiary must be eligible as of the filing date. *See Matter of Katigbak, supra.*

Even then, we note that the Idea Trust Foundation is based in the Kansas City suburb of Gladstone, Missouri, only a few miles from the petitioning university. This review request, therefore, does not establish recognition outside of the immediate vicinity of the university where the beneficiary works. Furthermore, the petitioner has not shown that reviewing grant proposals in this manner is an exclusive activity, restricted to top scientists.

Because the letter refers to a research proposal, it does nothing to corroborate counsel’s unsubstantiated claim that the petitioner has [s]erved as a reviewer of the prestigious scientific journals.” Even then, occasional peer review of manuscripts submitted to journals is commonplace in the scientific community, more akin to a duty than a privilege. Obviously, if the beneficiary had received a very heavy volume of review requests, this would serve to demonstrate that her opinion is in demand, but the record does not show this.

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

The beneficiary’s *curriculum vitae* contains a description of her work, excerpted below:

My scientific work is primarily focused on the research of cystic fibrosis pathogenesis in the gastrointestinal system. . . . Our research team . . . discovered previously unknown abnormal proteins that play a significant role in the pathogenesis of cystic fibrosis. . . . Our data show that one of these proteins, called **muclin**, has a crucial role in the development of gastrointestinal insufficiency during cystic fibrosis progression. We made a great progress analyzing the role of abnormal **muclin** transporting and packaging in the development of pancreatic and intestinal insufficiency in laboratory animals with cystic fibrosis. . . . We have already obtained some very promising data that demonstrate the ability to extend a life span and to improve quality of living in the laboratory animals with human-like cystic fibrosis by affecting abnormal protein transport and biosynthesis.

The petitioner submits several witness letters discussing the beneficiary’s work. These witnesses praise the beneficiary’s technical skills as a researcher, and attest that her work is very promising, but the witnesses do not identify any specific contributions that have won the beneficiary international recognition as an outstanding researcher. Participation in an ongoing project is not inherently an original contribution, nor is possession of a particular skill or range of skills. Furthermore, all of the witnesses are the beneficiary’s current or former supervisors, professors, or collaborators. The assertions of these witnesses do not establish that the beneficiary has won international recognition through original contributions to her academic field. A reputation that is largely limited to one’s own collaborators and superiors is not international recognition.

The director informed the petitioner that the initial letters do not satisfy this criterion. In response, the petitioner has submitted additional letters. All of the letters are, again, from faculty members of the petitioning university

and one of the beneficiary's former supervisors. The witnesses with the petitioning institution observe that the beneficiary has written published articles. Because published articles fall under a separate category, discussed below, we cannot automatically equate such articles with contributions to the field. Otherwise, there would be no reason for both of the criteria to exist.

Professor Elena R. Chernykh of the Institute of Clinical Immunology, Novosibirsk, Russia, was the beneficiary's supervisor at that institution. Prof. Chernykh states that the beneficiary "was a critical member of the team in the development of the patent-pending technology of cytokine-mediated desensitization of negatively activated monocytes in patients with pulmonary tuberculosis." The record does not show that this achievement has garnered international recognition.

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 several of the beneficiary's published articles and abstracts. Counsel claims that these works have "been cited by other scientists in the field over many times," but the record contains no evidence of such citations. 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).

The director, in denying the petition, concluded that the petitioner has not satisfied any of the six regulatory criteria listed above. On appeal, counsel refers to the beneficiary's previously claimed award, and states "[t]he petitioner will include a copy of the award's criteria as specified by the Russian Academy of Medical Sciences." The director had previously issued a very specific request for this information, which the petitioner had disregarded. Counsel offers no explanation for the delay in submitting these materials. Because the petitioner had failed to submit this material in response to a specific request prior to the denial, the AAO is not obligated to review this evidence on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988), which states that evidence submitted under such circumstances "shall not be considered for any purpose." We note that the evidence submitted, specifically a letter from Professor A.K. Golmenko of the Russian Academy of Medical Sciences, does not establish that the beneficiary's award is internationally recognized as a major award in the field.

Counsel refers to one exhibit on appeal as a "Medline Citation for Article authored by the beneficiary on Tuberculosis." The document itself, a printout from "Ovid: Bibliographic Records," consists of a bibliographic listing of one of the beneficiary's articles. The listing identifies the article's title, author, subject, and other facts, but there is nothing in this document to show that any other researchers have ever cited this article. The document shows only that the beneficiary's article is listed in a bibliographic database. This material cannot suffice to show that the beneficiary has earned international recognition through her published work. We note that many of the beneficiary's witnesses include their own *curricula vitae* with their letters. These witnesses claim publication records that dwarf that of the beneficiary. Absent evidence that the very act of writing a published article is rare in the academic field, we cannot conclude that publication is *prima facie* evidence of international recognition as an outstanding researcher.

Most of the remaining materials submitted on appeal concern presentations that took place well after the petition's filing date. Counsel's appellate brief discusses this evidence but contains no rebuttal of the director's main findings regarding the materials previously submitted.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in her academic field. The petitioner has also failed to demonstrate that it had offered the beneficiary a qualifying permanent position as of the petition's filing date. Therefore, the petitioner has not met mandatory requirements and the petition cannot be approved.

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.