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U.S. Citizenship  
and Immigration  
Services

23



FILE:



Office: TEXAS SERVICE CENTER

Date: JUL 23 2004

IN RE:

Petitioner:

Beneficiary:



PETITION:

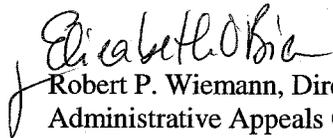
Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is a division of a state university, providing higher education, patient care and research. It seeks to classify the beneficiary as an outstanding professor 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 an associate professor of Radiology. 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.

On appeal, counsel asserts that the director's decision contains numerous factual errors.

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.

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.*

Under this criterion, the burden is on the petitioner to establish that the beneficiary's prizes are *major* prizes or awards. Because the statute and regulations refer to "international recognition," it is clear that the prizes must be considered "major" *at an international level*.

[The beneficiary's] research and scientific presentations have been awarded prizes by the Colombian Congress of Radiology on three occasions, including a First Place Award and two second place awards in the year 2000. [The beneficiary] also serves as an Associate Editor for the [redacted] journal, a prestigious publication in Spanish literature with distribution throughout Latin America and Spain. This is a high honor in the field of radiology and has been bestowed upon [the beneficiary] consistently since 1997.

An associate editorship, regardless of its prestige, is not a major prize or award for outstanding achievement. We will give this position due consideration, but it does not fit under this criterion.

The petitioner's original submission contained no documentary evidence regarding the awards from the [redacted] (CCR). Subsequently, the petitioner has submitted a letter from CCR president [redacted] who confirms the beneficiary's receipt of the three claimed awards and asserts that the awards "constitute the most important recognition of academic work and research advances in our country." This letter, and another letter, submitted later, do not establish *international* recognition, or that the awards are seen as "major" outside of CCR itself. Unlike recognized major awards such as the Nobel Prize, which draw from all research conducted worldwide throughout the course of a given year, the beneficiary's awards appear to be restricted to research presentations at one particular conference or gathering.

The petitioner has since documented the beneficiary's receipt of an award in October 2003, nearly a year and a half after the petition was filed. Leaving aside the absence of evidence to establish the significance of this award, this award cannot establish the beneficiary's eligibility as of the May 2002 filing date. A petitioner must establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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

[redacted] asserts that the beneficiary "is a member of many highly regarded professional societies in the field of radiology. These include the Radiological Society of North America (RSNA), the Society of Cardiovascular and Interventional Radiology (SCVIR), the [redacted] and Endovascular Therapy (ACRITE), the Radiological Society of Colombia and the Iberoamerican Society of Interventional Radiology. . . . All of these societies are recognized for their excellence and the quality of their members." The crucial requirement here is that the associations require outstanding achievements of their members. That a particular association is "highly regarded," and its members respected, is not evidence that the association has stringent membership requirements, even if the petitioner had proven (rather than simply claimed) that the associations are highly regarded.

The petitioner submits documentation, identifying the beneficiary as a member of the Colombian Association of Radiology, a "corresponding member" of RSNA, and a "founding member" of ACRITE. None of these documents establish the requirements that the beneficiary had to meet in order to attain those membership titles.

again notes the beneficiary's position as an associate editor of the Iberoamerican Society of Interventional Radiology, and states "[t]o be elected as an official of a large society, you must have considerable recognition as one of the leaders in the specialty on the basis of your writings or your scientific presentations." This statement is presented as a general assertion, carrying negligible probative value. Also has not shown that an associate editor of a journal is considered to be an "official" of the society that publishes the journal.

Following a request for further evidence, counsel states that the beneficiary "is a member of several organizations that require outstanding achievements of their members. These organizations include: the Radiological Society of the Colombian Association of

Counsel then discusses these memberships individually.

Counsel states that the "has approximately 30,000 members in over 50 countries. However, membership is not open to everyone, and the Society carefully reviews each applicant thoroughly. . . . In order to be a member, an individual must have completed their fellowship in radiology. They must then receive the endorsement by a district Counselor. The application is then reviewed and must be approved by the Membership and Credentials Board before finally going before the entire membership for a vote." Completion of a fellowship is not an outstanding achievement, and the layers of review are passive acts for the person seeking membership. We are not compelled to conclude that the association requires outstanding achievements of its members, simply because there are some restrictions on eligibility. Being qualified to work in one's profession is not an outstanding achievement, but rather a mark of competence.

Other associations, according to counsel, are similar to the one described above, in that the only membership requirement appears to be completion of some level of training, such as completion of a fellowship or attainment of a professional title. Even then, the petitioner did not provide any documentation to substantiate counsel's assertions. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Following a notice of intent to deny issued by the director, counsel maintains that the beneficiary "is a member of several organizations that require outstanding achievements of their members." The petitioner, in this third submission of documents, has provided documentation regarding the membership requirements of some of the associations named. Active membership (the highest-available rank) in the Society of Interventional Radiology is "[f]or individuals who have a special interest and competency in interventional radiology and are certified by the American Board of Radiology or other boards that are deemed of equivalent rank." As we have already noted, "competency" and board certification are not outstanding achievements. Membership in the Radiological Society of North America "is open to radiologists, physicists . . . and other allied scientists who meet certain educational and residency requirements and who practice radiology."

If the petitioner claims that an association requires outstanding achievements of its members, when in fact that association has far more lenient requirements, then questions of credibility necessarily arise. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

The petitioner's third submission contains a letter from [REDACTED] scientific director of the Iberoamerican Society of Interventional Radiology (SIRI), who asserts that "[t]he Society chooses the most renowned interventional radiologist[s] in each country to participate as members." Although he does not identify himself as such in this letter [REDACTED] along with at least half of the society's leadership, is on the faculty of the petitioning university, making it appear as though the beneficiary's membership owes considerably more to his position at the university than to his international reputation.

*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.*

[REDACTED] mentions here, for the third time, that the beneficiary is an associate editor for what she calls the *Iberoamerican Society of Interventional Radiology Journal*. The actual title of the journal is *Intervencionismo*. She states that, as an editor, the beneficiary judges the work of others by evaluating their submissions and determining which articles shall be published.

An editorial position at an international journal can amount to activity as a judge of the work of others in the field, but we must consider the precise nature of the editor's duties (e.g., a largely honorary title of "editor" may involve no judging at all) and the reputation of the journal.

[REDACTED] an associate professor at the petitioning university as well as "the scientific director of SIRI (Iberoamerican Society of Intervention), and the Editor of the Journal of the Society," states that the beneficiary "is the Colombian Editor of our Journal." [REDACTED] does not elaborate on the beneficiary's responsibilities in that position.<sup>1</sup>

Documents in the record show that the president and two secretaries of SIRI are among the beneficiary's witnesses, and serve on the faculty of the petitioning university. Counsel observes that the beneficiary is the only Colombian associate editor; but the record shows that, overall, the beneficiary is one of 33 individuals holding that title. In another letter, [REDACTED] states that the society "has more than 300 active members." This indicates that roughly one out of every ten SIRI members is an associate editor of the journal.

The record offers almost no information about the beneficiary's exact role at the journal. Given the degree to which the faculty of the petitioning university dominates the journal's leadership, the beneficiary's position at the journal appears more to reflect his reputation among his fellow professors at that university, than within the larger international research community. A list of leading journals submitted by the petitioner does not include *Intervencionismo*, which appears to be a very new and, thus far, obscure journal. As to the newness of the journal, [REDACTED] states that the beneficiary has been an editor "since 1997," but volume 1, number 2 of the

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<sup>1</sup> In an effort to obtain further background information about SIRI, the AAO searched the World Wide Web using the popular search engine <http://www.google.com>. A search for the society's English name yielded only two "hits," both in biographies found on the petitioner's web site. A search for the society's Spanish name, *Sociedad Iberoamericana de Radiologia Intervencionista*, did not yield any results at all. Our inability to locate any site outside of the petitioning university that even mentions the existence of the society, or its journal *Intervencionismo*, does not lead us to conclude that the society or its journal are particularly significant within the international research community.

Journal is dated June 2002, whereas the petition was filed in mid-May of 2002, roughly the time that issue would have gone to press.<sup>2</sup>

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

states that the beneficiary "is widely respected as an expert in Interventional Radiology, particularly noted for his extremely successful gastrointestinal stents for patients with bowel obstruction." To support this claim, the petitioner submits six witness letters. Five of these six witnesses are, or were, on the faculty of the petitioning university. That these individuals are familiar with the beneficiary's work is to be expected, and does not establish the beneficiary's international recognition. We note that all six witnesses are listed as "personal references" on the beneficiary's curriculum vitae.

chair of the Department of Radiology at the petitioning university, states:

[The beneficiary's] main accomplishments lie on the research and development of metallic stents, both covered and uncovered for the management of peripheral vascular disease, endotracheal disease, and gastrointestinal tract malignancies. He has single handedly through his entrepreneurship developed low cost, high quality and safe products in these areas for distribution in South America. This has allowed the use of these devices on indigent patients who otherwise would not be able to afford their cost.

identified earlier, states that the beneficiary's "stents saved the lives of many patients in his country. His inventions in the field of gastrointestinal stents . . . helped to improve the quality of lives of many terminal cancer patients." states that the beneficiary's "gastrointestinal stents for patients with bowel obstruction have been extremely successful, [their] use is becoming popular in other countries."

The only witness with no demonstrated connection to the petitioning university is Professor Frederick S. Keller, director of the Dotter Interventional Institute at Oregon Health Sciences University and former president of SCIVR

I first met [the beneficiary] at an international Brazilian Society of Interventional Radiology and Endovascular Surgery meeting in Sao Paulo, Brazil in 1999. I was immediately impressed with his current work and past accomplishments. . . . [The beneficiary] has become known internationally for research and publications in the field of stenting lesions in the gastrointestinal tract. In particular, he is known for his work in designing a partially covered stent to be placed in the duodenum.

In a subsequent submission, the petitioner has provided additional letters. Once again, the writers of these letters all have demonstrable connections to the beneficiary, either through the petitioning university or through other universities where the beneficiary has worked and studied. To say that these letters demonstrate international recognition, because the witnesses are in different countries, is to trivialize the term to such a degree that every international exchange student can be said to have "international recognition."

<sup>2</sup> We note that, in late 2002, the petitioner submitted a partial photocopy of volume 1, number 2 of *Intervencionismo*. In November 2003, the petitioner submitted a complete original journal, also volume 1, number 2. There is no clear evidence that a third issue had appeared in the meantime.

The record contains no direct evidence to show that the beneficiary's improved stent is, in fact, widely used, or generally regarded as a significant improvement over previous designs. Statements from acquaintances, not supported by objective, documentary evidence, carry limited weight.

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

asserts that the beneficiary "has achieved recognition for his extensive publications and lectures, both national and international, on many topics in radiology." The petitioner lists several of the beneficiary's publications and conference presentations. The petitioner submits a copy of a 2001 article from *Reviews in Cardiovascular Medicine*, which cited 31 articles, including an article co-authored by the beneficiary. The citation does not appear to strongly distinguish the beneficiary from others in his field; the citation follows the sentence "[t]hrombolytic therapy combined with balloon dilation or primary stent placement in an attempt to avoid embolic complications has been proposed but requires further investigation." There is no other evidence of citation of the beneficiary's published work. Many of the beneficiary's conference presentations have been either poster presentations, or oral presentations of very limited length (some of them restricted to eight or eleven minutes).

The last submission before the denial shows that eight of the beneficiary's articles have been cited a total of 48 times (including self-citations), with the most-cited article having been cited 14 times (including at least two self-citations). At least 18 of these citations appeared in articles published after the petition's May 2002 filing date (the list of citing articles is incomplete). The citation record of the beneficiary's publications appears to be marginal at best, and does not support the assertion that the beneficiary's publications have won him international recognition as an outstanding researcher.

After two requests for evidence and a notice of intent to deny, the director denied the petition on January 9, 2004. On appeal, counsel protests several claimed factual errors in the director's decision. Some of these are inconsequential, such as the director's finding that the beneficiary is not board-certified. Counsel protests that the beneficiary has not practiced long enough in the United States to qualify for such certification, but that the beneficiary is so certified in Colombia. Board certification is not *prima facie* evidence of international recognition, and thus the director's failure to consider the beneficiary's Colombian certification did not prejudice the outcome of the decision. Counsel also faults the director for not considering awards that the beneficiary had not yet won as of the petition's filing date, even though to do otherwise would have clearly been contrary to established case law.

Counsel is correct in that the director's emphasis on the beneficiary's salary, combined with the director's inaccurate portrayal of the beneficiary as a surgeon rather than as a professor, had no place in the decision. Nevertheless, this does not change the fundamental finding that the petitioner has not met the regulatory requirements pertaining to outstanding professors and researchers.

Counsel maintains that the beneficiary is a member of associations that require outstanding achievements of their members, and faults the director for not naming two of those associations in the decision. It remains that the petitioner has not submitted any objective documentation showing that *any* of these associations have the necessary membership requirements; and documents in the record prove that several of the associations do *not* have such requirements, despite counsel's claims to the contrary. The assertion that SIRI "chooses the most renowned interventional radiologist in each country" derives from a professor at the petitioning university. The record contains very little documentation about SIRI apart from letters created specifically for the purposes of this petition. The more documentation that the petitioner has submitted about SIRI, the more that association appears

to be essentially an offshoot of the petitioner itself. The petitioner's faculty dominates SIRI's leadership, and a very substantial percentage of SIRI's total membership sits on the editorial board of a journal which has apparently published two issues in the seven years of its existence. We are not persuaded that the evidence pertaining to SIRI carries significant weight.

Counsel states that the beneficiary's position on "the faculty at the Center for Minimally Invasive Surgery in Caceres, Spain," deserves consideration under membership in a qualifying association. The center, however, is not an association, and a faculty position there is not a "membership."

Several documents accompany the appeal. For the most part, these documents are either copies of previous submissions, or else they address tangential issues such as the beneficiary's salary and job duties.

The petitioner has shown that the beneficiary is a successful researcher who has won the respect of his collaborators, mentors and employers in several nations where he has worked and studied. The record, however, lacks persuasive corroboration of key claims, such as the assertion that devices that he has invented or improved are now widely used internationally. The petitioner's credibility has suffered from repeated claims that certain professional associations require outstanding achievements of their members, when it is clear that they do not do so; and we have been unable to find any independent corroboration of the importance of SIRI, which appears to be largely run from the petitioner's campus. The petitioner has submitted nothing from any SIRI official who is not also a professor at the petitioning university. These statements are, in effect, self-serving claims by the petitioner, rather than assertions from sources independent of the petitioner.

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