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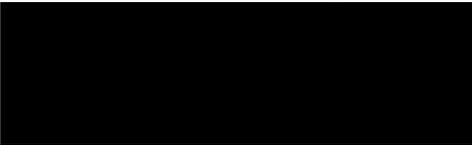


FILE: WAC 02 216 53511 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

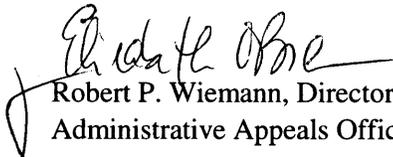
PETITION: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

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.


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 (AAO) on appeal. The appeal will be dismissed.

The petitioner, a biopharmaceutical research and development corporation, 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 II." The director found that the petitioner has not established that the beneficiary is recognized internationally as outstanding in his 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.

Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation.

Throughout this proceeding, counsel has argued that cited references to articles co-authored by the beneficiary would satisfy this criterion. Articles which cite the beneficiary's work are primarily about the author's own work, not the beneficiary's work. As such, they cannot be considered qualifying published material about the beneficiary's work. We cannot ignore that the articles citing the beneficiary's work similarly referenced scores of other authors.

In general, in order for published material to meet this criterion, it must be primarily about the beneficiary's work and, as stated in the regulations, be printed in professional publications. The evidence presented under this criterion consists of published research papers that list a paper co-authored by the beneficiary as one of a number of cited references. In the beneficiary's 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. For example, the beneficiary co-authored an article published in the *Journal of Biological Chemistry* in 2000 entitled “Identification and Characterization of CKIP-1...” This article lists a total of 84 references (citing hundreds of authors). If an article is “about” the beneficiary's work, as counsel contends, simply because it cites that work, then the beneficiary's article cited above is “about” the work of [REDACTED] (citation number 83) and the hundreds of other researchers whom the beneficiary and his coauthors have cited in “Identification and Characterization of CKIP-1...” 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. For these reasons, we find that the citations presented do not constitute qualifying “published materials about the alien's work.” The evidence presented under this criterion does not satisfy the statutory and regulatory demand for evidence showing that

the beneficiary is internationally recognized as outstanding in his field. Citations of the beneficiary's work will be 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's contributions are recognized not only by those institutions where he has studied or worked, but throughout the international research community.

R. [REDACTED] Associate Professor, Department of Biochemistry and Medical Genetics, University of Manitoba, states:

[The beneficiary] was an employee as well as a student...in my laboratory at the University of Manitoba from July 1993 to September 1996. I first met [the beneficiary] as a student in a Molecular Genetics class I taught at the University of Winnipeg in 1992/93. He took the course from me that year and did quite well. He then approached me to see if I would be interested in having him as a graduate student in my laboratory. I had no hesitation taking him on as a student.... [The beneficiary] worked hard for three years and completed his thesis and defended it in September 1996.

Dr. [REDACTED] letter does not identify a single research contribution attributable to the beneficiary. Rather than addressing the beneficiary's original contributions or international renown as a scientist, Dr. [REDACTED] letter instead focuses on the beneficiary's activities as a student. University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. Dr. [REDACTED] observations regarding the beneficiary's timeline of activities as a graduate student offer no meaningful comparison between the beneficiary and experienced researchers in the academic field who have long since completed their educational training.

[REDACTED] Professor and Head, Department of Biochemistry and Medical Genetics, University of Manitoba, states:

I became acquainted with [the beneficiary] while he was student in the Master's program in the Department of Human Genetics.

[The beneficiary] was an essential participant in internationally recognized molecular biology research dealing with cell proliferation. He was trained in methods of yeast genetics by a world-leading researcher in yeast transformation. His specialized skills in the areas of recombinant DNA technology and biochemical techniques have enabled him to contribute to important publications in internationally renowned journals such as the *Journal of Biological Chemistry*. He was co-author on a paper in *Molecular and Cellular Biochemistry* on a two-hybrid system methods paper that is highly recognized in the international research community and has been cited in such journals as *Genes & Development*, *Human Molecular Genetics*, *Blood* and *Molecular Biology of the Cell*.

[The beneficiary] demonstrated an eagerness to contribute to research and worked tirelessly in his pursuit of his Master's degree. His outstanding technical skills, strong academic background and enquiring mind clearly attracted the attention of other labs. Highly qualified personnel in the biotechnology industry are very hard to come by and I believe [the beneficiary] will continue to make major contributions in this area. I would highly recommend him for employment in the biotechnology industry in the United States.

Dr. [REDACTED] notes that the beneficiary was "trained in methods of yeast genetics by a world-leading researcher in yeast transformation," but his letter does not indicate that the beneficiary himself holds a similar standing in the biochemistry field.

[REDACTED] Associate Professor, Department of Biochemistry and Medical Genetics, University of Manitoba, states:

My interactions with [the beneficiary] were during his tenure as a student in the Master's program in the Department of Human Genetics.... As a member of his advisory and examining committees, I was closely involved with his training and education.

[The beneficiary] was an essential participant in internationally recognized biochemical research dealing with cell proliferation. He was trained in methods of yeast genetics by a world-leading researcher in yeast transformation. His specialized skills in the areas of gene manipulation and biochemical techniques have enabled him to contribute to important publications in internationally renowned journals such as the *Journal of Biological Chemistry* (JBC).

[The beneficiary] possesses highly specialized skills for biochemical and molecular biological research. He demonstrates excellent adaptability for recombinant DNA technology methods. He has proven himself to be resourceful and outstanding in his research. I would highly recommend him for employment in the biochemical research field in the United States.

[REDACTED] Associate Professor, Department of Biochemistry, The University of Western Ontario, states:

[The beneficiary] was employed as a Research Technician in my laboratory at the University of Western Ontario from September 1996 until February 1999. During that period of time [the beneficiary] was involved in research aimed at understanding the biochemical mechanisms that control the growth and division of cells. Between his education (M.Sc.) in Genetics from the University of Manitoba) and work experience, [the beneficiary] has acquired specialized skills that make him especially well suited for employment in the biotechnology industry.

In my laboratory, [the beneficiary] demonstrated exceptional and highly specialized skills in the manipulation of recombinant DNA molecules. Furthermore, [the beneficiary] demonstrated versatility in his mastery of a broad range of contemporary biochemical and molecular biological techniques. He acquired experience in the manipulation of a variety of bacterial, yeast and mammalian cell lines for

experimental studies. [The beneficiary's] extensive contributions to our research resulted in important publications in highly respected journals such as the *Journal of Biological Chemistry*, one of the top journals in the field of biochemistry and molecular biology. [The beneficiary] was the first author of one of these publications in the *Journal of Biological Chemistry*. I firmly believe that [the beneficiary's] achievements demonstrate that he has excellent skills and potential for biochemical and molecular biological research.

Dr. [REDACTED] conclusion that the beneficiary possesses "excellent skills and potential for biochemical and molecular biological research" is not adequate to demonstrate that the beneficiary is responsible for past research contributions of international repute.

[REDACTED] Associate Professor, Department of Biochemistry, University of Western Ontario, states:

[The beneficiary] was employed as a Research Technician from September 1996 to January 1999 in the Department of Biochemistry at the University of Western Ontario....

[The beneficiary] participated in internationally recognized biochemical research while at our institution. As a result, he co-authored several papers in the *Journal of Biological Chemistry*, one of the most highly rated scientific journals in the area of biochemistry and molecular biology. [The beneficiary] possesses expert skills in recombinant DNA technology as well as various types of cell culture. I highly recommend that he be accepted for employment in the United States at Amgen Inc., where he will be a major contributor to biochemical research.

Dr. [REDACTED] now Assistant Professor of Biochemistry, Queen's University, was formerly a Ph.D. student in the Department of Biochemistry at the University of Western Ontario and worked with the beneficiary there. Dr. [REDACTED] states:

I found [the beneficiary's] technical knowledge and skills to be exemplary. He demonstrated a mastery of biochemical and molecular biology skills that were a boon to several projects within the department. He has received international recognition as a result of multiple co-authored publications in the *Journal of Biological Chemistry*, a prominent peer-reviewed biochemical journal with international circulation.

[The beneficiary's] expert abilities in biochemistry, recombinant DNA technology and molecular biology will make him an asset to any company.

Rather than identifying a specific scientific discovery or internationally renowned finding directly attributable to the beneficiary, the witnesses instead note that beneficiary's laboratory skills contributed to publications in the *Journal of Biological Chemistry*. The beneficiary's authorship of published materials may demonstrate that his 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 his field. While the above letters describe the beneficiary's laboratory skills and research expertise, they are not adequate to show that his contributions have significantly influenced the academic field

at the international level. The issue here is not the dedication, skill level, employability, or experience of the beneficiary, but, rather, whether his particular research accomplishments would qualify as internationally recognized contributions in his academic field.

On appeal, counsel cites the beneficiary's published articles as evidence of his original contributions. Published work, however, falls under the next criterion, a criterion that we find the evidence in this case adequately satisfies. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for published work and contributions, Citizenship and Immigration Services (CIS) clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least two criteria would be meaningless. We will fully address the beneficiary's published works and citations under the next criterion.

The overall tone of the witness letters in this case clearly shows that the beneficiary acted in a subordinate role rather than as the primary or lead researcher (aside from his primary authorship of one article). As a "research associate" and "research technician" the beneficiary's duties generally involved assisting a professor or more senior researcher with research which, in many cases, had been underway long before the beneficiary arrived in the laboratory. We acknowledge the beneficiary's contribution of technical knowledge and laboratory skills to various research projects, but the petitioner has not shown that the beneficiary's individual contribution to various projects rises to a level of outstanding achievement or international recognition. While the AAO has long acknowledged the collaborative nature of modern scientific research, it is certainly reasonable to require evidence showing that the beneficiary has often taken on a primary or lead role in various research projects.

██████████, Senior Director, Department of Protein Sciences, Amgen, Inc., states:

[The beneficiary] is an invaluable member of the Department of Protein Science at Amgen.... Even before joining our staff, [the beneficiary] had a proven reputation and had already received wide acclaim for his technical skills in biochemical methods and cell culture. His technical skills and expertise, in addition to his dedication to excellence, continue to make him an important staff member in our department.

[The beneficiary] is currently an integral member of several project teams that are dedicated towards discovering and developing new protein therapeutics for the treatment of human disease. He has contributed significantly in the filing of patents on novel proteins and has assisted in regulatory filings with the FDA.

His research efforts have been internationally recognized by publication in peer-reviewed journals such as the prestigious *Journal of Biological Chemistry*. His excellent efforts continue to this day, albeit in an industry that does not easily allow public recognition due to competitive advantage and intellectual property issues.

Dr. ██████████ Associate Director, Department of Protein Sciences, Amgen, Inc., states:

Before joining us, [the beneficiary's] work had been published in peer-reviewed journals including the *Journal of Biological Chemistry*, and he had received very positive recommendations from his academic mentors as a promising young scientist. It has not been possible for [the beneficiary's] work to be published immediately in our current industrial setting, but he has contributed to more than one therapeutic protein patent of potentially enormous importance to the treatment of disease and of economic importance to our company. In addition, he has written sections of documents for crucial filings with the FDA. He continues to participate in several early stage therapeutic projects and I feel [he] will play an important role in their eventual chance for success.

Drs. [REDACTED] and [REDACTED] assert that the beneficiary has "contributed" to patent development at Amgen. The extent of his contribution, however, has not been adequately documented. For example, the record does not show that the beneficiary was the primary contributor to the patents mentioned above, nor does it show that the patents already enjoy international recognition as outstanding achievements in biochemistry. Assertions regarding the "potential" impact of the patents are not adequate to demonstrate eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (legacy INS) held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. While the record contains vague assertions from two Amgen employees indicating that the beneficiary has contributed to various company patents, there is no evidence showing that the beneficiary is named as an inventor on a patent held by Amgen.

The director's decision stated: "The record contains no evidence to establish that the beneficiary is the inventor of an **approved** patent." [emphasis added] The director cited *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972), in which the legacy INS held that going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in visa petition proceedings. On appeal, counsel maintains that "two scientists at Amgen made statements crediting [the beneficiary] for his meaningful contribution to more than one patent acquisition." Counsel argues that *Matter of Treasure Craft of California, supra*, is not applicable in the present case because statements from the two preceding witnesses constitute evidence. The record does not support counsel's argument, however, as the petitioner has yet to provide evidence of the patent filings naming the beneficiary as a primary inventor. Other than the assertions of Drs. [REDACTED] and [REDACTED] (both employees of the petitioning entity) the record contains no evidence documenting the existence of an approved patent. If such evidence were to exist, it is noted that the petitioner could have refuted the director's observation simply by providing evidence of the beneficiary's approved patents on appeal.

Of even greater relevance than the existence of an approved patent is the importance to the greater field of the patented innovation. The granting of a patent documents only that an innovation is original; it does not necessarily follow that an approved patent represents an internationally recognized contribution in one's field. According to statistics released by the United States Patent and Trademark Office (USPTO), which are available on its website at www.uspto.gov, that office has approved over one hundred thousand patents per year since 1991. In 2001, for example, USPTO received 345,732 applications and granted 183,975 patents. In this case, the petitioner must show not only that the beneficiary's innovation is important to his immediate employer, but throughout the greater scientific community or biotechnology industry.

The general message of the letters in this case seems to be that because the beneficiary possesses the required technological skills and research expertise, he is likely to make future research contributions in the biotechnology field. The petitioner, however, seeks a highly restrictive visa classification for the beneficiary, intended for aliens who have already earned international recognition for their contributions, rather than for individuals progressing toward that point at some unspecified future time. It is noted that all of the petitioner's witnesses are from institutions where the beneficiary has studied or worked and therefore they fail to demonstrate that his work is "internationally recognized" as outstanding. An individual who is recognized internationally as outstanding should be able to produce ample unsolicited materials reflecting such a reputation. The absence of substantial independent testimony raises doubt as to the extent of the beneficiary's recognition. In conclusion, we find that the evidence presented under this criterion is not adequate to demonstrate that the beneficiary is directly responsible for specific scientific or scholarly contributions that have been unusually influential or renowned within his field.

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

The petitioner submitted evidence of the beneficiary's co-authorship of five articles appearing in *The Journal of Biological Chemistry* and *Molecular and Cellular Biochemistry*.

In addressing the evidence presented, the director stated: "While the papers are commendable and demonstrate [the beneficiary's] competence in the field of endeavor, they are not considered evidence of scholarly articles in the field because they were written for the most part, while pursuing his education." We withdraw this statement from the director's decision noting that the beneficiary received his Master of Science degree in 1996. At least two of the beneficiary's publications resulted from his work in Dr. [REDACTED] laboratory subsequent to completion of his master's degree. In regard to the remaining publications, nothing in the statute or corresponding regulations specifically precludes articles authored by an alien while pursuing an advanced degree (later acquired by the alien) from fulfilling this criterion. Nevertheless, the petitioner must still demonstrate that such articles have been recognized throughout the academic field. To that end, the petitioner submitted evidence showing that articles co-authored by the beneficiary have garnered numerous independent citations.

When judging the influence and impact that the beneficiary's published work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the beneficiary's findings. In this case, however, the number of citations presented demonstrates a significant degree of interest in, and reliance on, articles authored by the beneficiary and his mentors. These citations show that many other scientists have acknowledged their work and found it to be influential. Therefore, we withdraw the director's finding that the petitioner's evidence does not satisfy this criterion.

The director's decision further stated:

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

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

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

While the non-binding case cited by counsel addresses a case in which the issue in dispute was "sole authorship" rather than "co-authorship," we find any suggestion by the director that co-authorship alone would disqualify the petitioner's evidence to be erroneous. The AAO has long acknowledged the collaborative nature of modern scientific research and therefore we concur with counsel that co-authorship is not an automatic disqualifying factor under this criterion. However, contrary to the opinion expressed by counsel, the fact that the beneficiary has only once been the primary author or lead scientist on a research project is not entirely irrelevant either. The lack of primary authorship does not automatically prevent fulfillment of this criterion, but it certainly does not strengthen the claim that the beneficiary himself (who acted in a subordinate role to more senior, established researchers) is recognized internationally as an outstanding researcher (in the same manner as his former laboratory supervisors, Drs [REDACTED] and [REDACTED] for example). It is reasonable to conclude that evidence showing the beneficiary has often played the primary or leading (rather than a subordinate or secondary) role in various research projects is of greater weight in this proceeding.

The petitioner in this case has submitted evidence under three of the regulatory criteria at 8 C.F.R. § 204.5(i)(3)(i); however, based on the preceding discussion of the evidence, we find that only one of those criteria have been fulfilled.

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

initiated an employer-employee relationship between the petitioner and the beneficiary or otherwise extended a job offer from the petitioner to the beneficiary.

In this case, the petitioner has shown that the beneficiary is a skilled research scientist, who has won the respect of individuals from the institutions where he has studied and worked, while securing some degree of international exposure for his published work. The record, however, stops short of elevating the beneficiary to an international reputation as an outstanding researcher or professor. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.