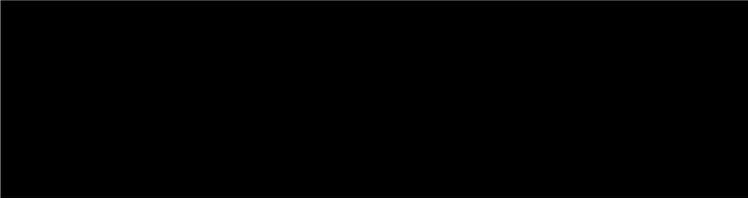


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U.S. Citizenship
and Immigration
Services

B 3



FILE: LIN 03 092 50390 Office: NEBRASKA SERVICE CENTER Date: FEB 25 2005

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

PETITION: Immigrant Petition for Alien Worker as 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:
[Redacted]

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, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a medical school and research institution. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a research assistant professor. The director determined that the petitioner had not established that it had offered the beneficiary a permanent job as defined in the regulations.

On appeal, the petitioner submits a new job offer.

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)(iii) provides that a petition must be accompanied by:

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)(2), provides, in pertinent part:

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.

On Part 6 of the petition, the petitioner indicated that the proposed employment was permanent. The petitioner submitted a letter from [REDACTED] Chairman of the Department of Dermatology and the petitioning institution, asserting that the beneficiary had accepted the position of Research Assistant Professor and that the beneficiary's "term of employment is contingent upon continuous availability of funding." On October 9, 2003, the director requested evidence of a permanent job offer.

In response, the petitioner submitted an October 28, 2003 letter from [REDACTED] Assistant Dean for Faculty Affairs, asserting that the beneficiary's appointment as a Research Assistant Professor "ends August 31, 2005." [REDACTED] further asserted that the appointment could be renewed "[a]t the request of his Department Chair."

The director concluded that the above letters did not evidence a permanent job offer from the petitioner to the beneficiary.

On appeal, the petitioner submits a new letter from [REDACTED] dated March 4, 2004, asserting that the beneficiary's position is "distinct from research staff positions such as postdoctoral fellows." She further asserts that the beneficiary "was initially appointed to the faculty February 1, 2002 and **will continue to be appointed to the faculty in the future.**" (Emphasis in original.) She adds that once the beneficiary becomes a permanent resident, he will be "**eligible for a tenure track position.**" (Emphasis in original.)

The October 28, 2003 letter unambiguously states that the beneficiary was working under a contract with a definite ending date. Thus, the beneficiary's employment could end without cause, as the petitioner could simply fail to renew his contract. Any assertion that, at the time of filing, the beneficiary was working pursuant to an indefinite contract is inconsistent with the plain language of the October 28, 2003 letter. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). If [REDACTED] is now asserting that, as of March 4, 2004, the petitioner is legally obligating itself to renew the beneficiary's contract indefinitely, that offer was not in place at the time of filing. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Therefore, 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 the regulatory requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm. 1998). As the new letter is either inexplicably inconsistent with [REDACTED] prior letter or confirms a permanent job offer that did not exist at the time of filing, it cannot not overcome the director's conclusion that the record lacks evidence of a qualifying job offer in existence at the time of filing.

Beyond the director's decision, 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 petitioner 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 claims to have satisfied the following criteria.¹

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

The petitioner relies on fellowships and stipends from the Dermatology Foundation to meet this criterion. Specifically, the beneficiary received the following funding from the foundation:

1. A 1997 Proctor and Gamble Research Fellowship,
2. A 1998 [REDACTED] Research Fellowship,
3. A 2001 Research Grant, and
4. A 2002 Career Development Award.

The submitted materials from the foundation only address the career development award. These materials confirm that an applicant's track record in research is an extremely important consideration. Ultimately, however, the "award" is designed to fund future research by novice researchers. Specifically, the materials indicate that "applications will be accepted from junior investigators in the early stages of their academic careers." The purpose of the "award" is to "assist in the transition from fellowship to established investigator." The funds are disbursed to the institutional fiscal officer and are designated for the direct costs of the proposed research only.

In his request for additional evidence, the director noted that grants and fellowships are "not necessarily indicative of national or international acclaim." In response, the petitioner submitted a letter from [REDACTED] Executive Director of the Dermatology Foundation providing information similar to that discussed above.

We acknowledge that the correct standard for the classification sought is international recognition, not acclaim. Nevertheless, the beneficiary's "awards" simply funded his work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, research grants, especially those designed for junior investigators, are principally designed to fund future research, and not to honor or recognize past outstanding achievements.

¹ This decision only discusses the criteria claimed or for which the petitioner submitted relating documents.

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

While counsel did not assert that the beneficiary meets this criterion, the petitioner submitted evidence of the beneficiary's membership in the Society of Investigative Dermatology and the Association for Research in Vision and Ophthalmology (ARVO). The materials from these organizations reflect that the Society of Investigative Dermatology is open to "any scientist whose work has relation to investigative dermatology or cutaneous biology and any physician with an interest in skin diseases or allied subjects." Regular members of ARVO must demonstrate "a serious interest in or making significant contributions to visual science."

In his request for additional evidence, the director advised that neither the society nor ARVO require outstanding achievements of their members. The petitioner's response does not directly address this criterion.

The record does not reflect that either the society or ARVO require outstanding achievements of their general membership.

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

As evidence to meet this criterion, the petitioner submitted a single article that cites the beneficiary's work, mostly in an attempt to explain the discrepancies between the author's results and those reported by the beneficiary. In general, articles which cite a researcher's work are primarily about the author's own work, not the author of the cited article. As such, they cannot be considered published material about the beneficiary's work in the field.

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

██████████, Chair of the Dermatology Department at the petitioning university, discusses the importance of the beneficiary's area of research and its potential to augment our skin's protection from infectious agents. While ██████████ asserts that the beneficiary has contributed to the field of investigative dermatology and that his work will lead to new treatments for gram negative and positive bacterial infections, ██████████ does not identify any specific contributions. ██████████, a professor at the petitioning university, provides similar information.

██████████, Chair of the Dermatology Department at Emory University, asserts that the beneficiary was a fellow there. While ██████████ attests to the potential benefits and importance of the beneficiary's current work and asserts generally that the beneficiary has made past contributions, he does not identify any of those contributions or explain their significance and influence in the field. ██████████ Director of Ophthalmic Research at Emory University asserts that the beneficiary provided "the molecular basis of understanding the inflammatory cascade that occurs from gram-negative bacterial infections." ██████████ however, does not provide any examples of how these results have influenced the field in such a manner as to be indicative of international recognition.

In his request for additional evidence, the director found the above letters insufficient evidence of the beneficiary's original contributions to the field. In response, the petitioner submitted two more letters from

faculty at the petitioning university. [REDACTED] asserts that the beneficiary provided molecular proof of how neuropeptides, released by nerves, affect the function of skin cells and, thus, relate to inflammatory skin diseases. She further attests to the beneficiary's focus on how bacteria signal the immune system in the skin and eyes. She affirms that his work has impacted her own work on multiple sclerosis. [REDACTED] asserts that the funding awards issued to the beneficiary demonstrate the significance of his past contributions.

The beneficiary's references all attest to his innovation and the originality of his work. Obviously, the petitioner cannot satisfy this criterion simply by listing the beneficiary's past projects, and demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research. Research work that is unoriginal would be unlikely to secure the beneficiary a master's degree, let alone classification as an outstanding researcher. Because the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher, it stands to reason that the beneficiary's research contributions have won comparable recognition. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

All of the beneficiary's references are from his immediate circle of colleagues. While all of them provide general statements about the importance of his work and potential benefits, they provide little discussion of his past accomplishments and provide no examples of how this work has impacted the field of dermatology as a whole. The record shows that the beneficiary is respected by his colleagues and has made useful contributions in his field of endeavor. It can be argued, however, that most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a grant has international recognition. Letters from one's immediate circle of colleagues, while important in documenting the nature of the beneficiary's role on various projects, cannot demonstrate any recognition beyond his colleagues.

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 that the beneficiary has authored 17 published articles. The director's request for additional evidence appears to accept this evidence as sufficient to meet this criterion. We disagree. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces CIS's position that publication of scholarly articles is not automatically evidence of international recognition; we must consider the research community's reaction to those articles. As stated above, the record includes only a single citation. This single citation is not indicative of or consistent with international recognition.

The petitioner has shown that the beneficiary is a talented and prolific researcher, who has won the respect of his collaborators, employers, and mentors, while securing some degree of international exposure for his work. The record, however, stops short of elevating the beneficiary to an international reputation as an outstanding

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researcher or professor. 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.