identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship
and Immigration
Services

B3

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 25 2005
EAC 02 291 52791

IN RE: Petitioner:
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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an institution of higher learning. 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 associate. The director determined that the petitioner had not established the significance of the beneficiary's research, or that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

On appeal, counsel raises several issues and asserts that he will submit a brief and/or additional evidence within 30 days. Counsel dated the appeal October 10, 2003. As of this date, more than 15 months later, this office has received nothing further. Counsel's specific assertions will be discussed below. While the director's decision fails to discuss the evidence in the context of the regulatory criteria claimed, we concur with the director's ultimate conclusion that the record lacks evidence of the beneficiary's international recognition. Moreover, while not raised by the director, the record lacks a permanent job offer (or any job offer at all) as required by the regulations.

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:

> (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.

This petition was filed on September 13, 2002 to classify the beneficiary as an outstanding researcher. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field as of that date, and that the beneficiary's work has been recognized internationally within the field as outstanding.

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.

Before discussing the individual criteria, we note that the assertions of counsel and the references are poorly supported in the record. For example, counsel asserts that the beneficiary has been frequently cited and that a copy of the beneficiary's curriculum vitae (C.V.) is being submitted. The record contains no evidence of citations and the beneficiary's C.V. is not part of the record. In addition, the references imply that the beneficiary has presented his work at conferences. Yet, the record does not contain the proceedings from these conferences or the programs listing the beneficiary as a presenter. Further, one of the beneficiary's references attests to his graduation from Peking Union Medical College. The record does not contain, however, the beneficiary's degree or the transcript of these studies. Finally, several references attest to the beneficiary's 12 publications, but only two appear in the record. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner claims to have satisfied the following criteria.[1]

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

---

[1] The petitioner does not claim to meet and does not submit evidence relating to the criteria not discussed below.

The petitioner submitted evidence of his associate membership in the American Society for Biochemistry and Molecular Biology (ASBMB), the American Association for Cancer Research (AACR) and the Chinese Medical Association. While the director did not specifically address this issue, the record does not reflect that these organizations require outstanding achievements of their membership, let alone their associate members. Specifically, associate membership in ASBMB is "available to individuals sponsored by a Regular member of the Society who can attest to the interest of the candidate in biochemistry and molecular biology." The record does not contain the associate memberships requirements for AACR or the Chinese Medical Association. Sponsorship by a member based on one's interest in the field is not an outstanding achievement.

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

As stated above, counsel references the "frequent citation of [the beneficiary's] research findings by others in their own published work." The record contains no evidence of citations. In fact, while a list of citations from a print or electronic index is the most persuasive evidence of citations, we note that none of the beneficiary's witnesses claim that the beneficiary's work has been cited. Regardless, articles which cite the beneficiary's work are primarily about the author's own work, not the beneficiary. As such, they cannot be considered published material about the beneficiary.

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

The beneficiary's witnesses assert that he has trained graduate students at the petitioning university. We cannot conclude that the typical evaluation responsibilities inherent to academic instruction constitute the type of judging contemplated by this regulation. Specifically, not every researcher who assists with the training of the graduate students in his supervisor's laboratory can be said to enjoy international recognition, the ultimate standard of the classification sought.

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

At the time of filing, the beneficiary was working for the petitioner in the laboratory of [redacted] explains that the beneficiary is investigating how the breast cancer drug adriamycin kills cancer cells and how tumors develop resistance to this drug. In pursuing this goal, the beneficiary is focusing on p53, the most commonly mutated gene in breast cancer. While [redacted] asserts that a manuscript will soon be submitted to the *Journal of Biological Chemistry* reporting the results of this work [redacted] does not explain how this work has already contributed to the field. Another manuscript relating to the beneficiary's work with p53 "is in its early stages of development."

The beneficiary's collaborator on this project, [redacted] asserts that this work "may prove to be a valuable model for breast cancer recurrence in the patient" and expresses confidence that it will, "at a minimum, result in a peer-reviewed publication." Another collaborator [redacted] asserts that this work "will every [sic] likely have important implications for attempts to understand the factors that determine a breast cancer cell's fate following exposure to these effective therapeutic modalities." [redacted] an associate

professor at the University of Pittsburgh, asserts that the beneficiary has made "rapid progress" in this work, but fails to identify any specific contributions.

further asserts that the beneficiary is studying whether the drug Procrit might interfere with the susceptibility of breast tumor cells to drugs, hormones and radiation. asserts that this work suggests that Procrit "should be used with caution in patients treated with antiproliferative agents." however, implies that recent findings by others already suggested the possibility of an interference, which the beneficiary is now investigating.

Finally, the beneficiary is working with a graduate student studying whether vitamin D3 might enhance the effectiveness of radiation therapy for breast cancer. does not indicate that this project has produced results. asserts that the beneficiary observed, "that vitamin D3 analogs, which confer susceptibility to apoptosis in response to both adriamycin and radiation, suppress MAP kinase activity," which has an "a profound radiosensitizing effect in breast cancer cells." concludes that this observation is important to understanding the entire DNA-damage response pathway in breast cancer, is "potentially a critical breakthrough in breast cancer research" and "may ultimately have a significant impact on the prevention and treatment of breast cancer."

a professor at the petitioning university and a collaborator with provides more detail regarding the beneficiary's results. Specifically, the beneficiary determined that, in response to drugs or radiation, breast tumor cells do not undergo classic apoptosis (cell death), but simply cease to proliferate. explains that these results may provide a basis for why breast cancer recurs in patients. concludes:

> These findings serve to identify specific elements of the growth regulatory-growth arrest pathway in the breast tumor cell. It should now be possible to focus therapeutic approaches directly towards this pathway -- with the ultimate result that therapies which are more selective towards breast cancer and less toxic towards normal tissue will be developed.

an Invention Analyst at Flanders Interuniversity Institute for Biotechnology in Belgium, asserts that he became aware of the beneficiary's work from a review of literature in the field and has contemplated collaborations with the beneficiary. He provides similar information to that discussed above.

The petitioner also submitted a letter from the beneficiary's supervisor at the Institute of Basic Medical Sciences in China. discusses the beneficiary's work at the institute, the beneficiary's only published work as of the date of filing. The beneficiary "was involved in cloning, expression and regulation of stem cell factors in E. [C]oli and mechanistic studies on the influence of point mutation of CCAAC box on activity of δ-globin gene in human leukaemia [sic] cells." While asserts how impressed he was with the beneficiary's work, he does not explain its significance or impact on the field. another professor at the Institute of Basic Medical Sciences, explains that this work relates to sickle cell disease. Specifically, the beneficiary used a novel technique "to find a new gene therapy strategy to cure sick cell disease and osteoporosis for the future."

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."

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. It does not follow that every researcher who performs original research that adds to the general pool of knowledge enjoys international recognition. Most of the beneficiary's references focus on the importance of his cancer research. The record, however, contains no evidence that the beneficiary had authored manuscripts on his cancer research published as of the date of filing or that he had presented this work at conferences. The breast cancer research community cannot evaluate or apply the beneficiary's work in this area until it is published or at least presented. While the beneficiary's research at the Institute of Basic Medical Sciences was published, the record contains little evidence of its impact, such as citations or letters from independent sick cell or osteoporosis researchers who have incorporated this work in their own studies.

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

While some of the beneficiary's witnesses assert that he had published 12 articles and presented his work at "numerous" national and international conferences, the record establishes only that the beneficiary had authored two published articles. It is insufficient merely to submit evidence relating to a criterion; the evidence must be indicative of or consistent with not merely international exposure, but international recognition. 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 Citizenship and Immigration Services' position that publication of scholarly articles is not automatically evidence of international recognition; we must consider the international research community's reaction to those articles. As stated above, the record contains no evidence that the beneficiary has been cited at all. As his publication record is not indicative of international recognition, we cannot conclude that the beneficiary meets this criterion.

The petitioner has shown that the beneficiary is a productive researcher, who has won the respect of his collaborators, employers, and mentors. 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.

Beyond the decision of the director, 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 a permanent position as a research associate. The regulations, however, require an offer of employment in the form of a letter. None of the letters from faculty at the petitioning university constitute a job offer. In addition to not being addressed to the beneficiary, they do not discuss an offer of employment or the terms of that employment. The lack of a permanent job offer from the petitioner to the beneficiary is sufficient grounds for denial.

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.