



U.S. Citizenship
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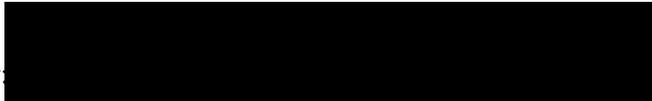
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FILE: WAC 03 098 53467 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



JAN 24 2005

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:



PHOTOCOPY

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 preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a software development for photoimaging related technology firm. It seeks classification of 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 scientist. The director determined that the petitioner had not established that the beneficiary has attained the outstanding level of achievement required for the category of outstanding professor or researcher. While we find that the petitioner has overcome this determination on appeal, the matter will be remanded to the director for a determination as to whether the petitioner had made a permanent job offer to the beneficiary as of the date of filing.

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.

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.

The sole issue to be considered in this proceeding is whether the beneficiary's scientific accomplishments are internationally recognized as those of an outstanding researcher in his field. Service regulations at 8 C.F.R. § 204.5(i)(3)(i) state 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 petitioner must meet at least two of six stated criteria. The petitioner claims to have met the following criteria:

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

Initially, the petitioner asserted that the beneficiary had contributed to texture analysis, relying on a letter from [REDACTED] an associate professor at the Massachusetts Institute of Technology (MIT). In response to the director's request for additional documentation, the petitioner quoted from several references asserting that the beneficiary had also contributed to face detection and recognition technology, image segmentation and natural materials modeling. Counsel reiterates these claims on appeal.

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 not original 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 not original. To establish the significance of the beneficiary's work, we turn to experts in his field, whose letters we discuss below.

[REDACTED] the beneficiary's Ph.D. advisor at the University of California, Berkeley (UC Berkeley), asserts that the beneficiary's Ph.D. dissertation developed the "texton model" for visual material recognition based on surface relief. [REDACTED] further asserts that this model "has been studied and applied by researchers in both the US and Europe." In addition, the beneficiary "played a major role in an effort to build a universal image segmentation engine by combining different visual signals in the *normalized cut* framework." (Emphasis in original.) According to [REDACTED] while working on this project, the beneficiary "successfully segmented thousands of images," resulting in "the first large-scale demonstration of results of image segmentation in computer vision." Finally, [REDACTED] explains that the beneficiary's model for texture synthesis "is by far the most famous technique in texture synthesis."

Prior to entering UC Berkeley, the beneficiary was an undergraduate at the California Institute of Technology. [REDACTED] a professor at Caltech, asserts that the beneficiary's undergraduate thesis "proposed a new idea for modeling objects, which we call the 'constellation model.'" In a second letter, Dr. [REDACTED] asserts that he has "taught classes based on [the beneficiary's] research at Caltech."

The petitioner submitted more independent letters attesting to the beneficiary's contributions to the field. Dr. [REDACTED] asserts that he has "presented a short history of texture synthesis research work featuring [the beneficiary's] texture synthesis work as a milestone that caused a shift in the research directions." [REDACTED] explains that other researchers built on this work, including [REDACTED]. In addition, [REDACTED] asserts that the beneficiary developed a segmentation algorithm for image analysis and [REDACTED] indicates that he personally uses the publicly available software resulting from this work. In a second letter, [REDACTED] adds that "researchers from around the world either use [the beneficiary's] algorithm or compare their results against his."

[REDACTED] an associate professor at the Georgia Institute of Technology, explains that prior segmentation systems evaluated simple images such as indoor scenes and man-made objects. The beneficiary's segmentation method, however, "is based on an ingenious combination of texture and contour cues, and has been tested on extremely challenging natural images containing grass, foliage, animals, etc." In addition, a recent prestigious conference contained "3 to 4 papers which can be traced directly based to" the beneficiary's texture synthesis model that bears his name. On appeal, the petitioner submits these articles, one of which describes the beneficiary's work as "pioneering."

The director concluded that letters are not "evidence" of contributions of major significance. On appeal, the petitioner submits course schedules from several universities in the United States, Canada and Israel reflecting that the beneficiary's work is required reading for those courses.

This office consistently states that the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of international recognition. Rather, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with international recognition should be able to produce unsolicited materials reflecting that recognition. We reject, however, the director's implication that reference letters are not "evidence." Rather, we find that such letters are more persuasive when supported by other evidence.

We find that the record, including the course materials submitted on appeal, adequately demonstrate that the beneficiary's work on textual synthesis is highly cited and required reading at universities around the world. This additional evidence sufficiently supports the claims made by the beneficiary's references. Thus, we find that the beneficiary meets this criterion.

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

The director concluded that the beneficiary had only authored two articles and that such a publication record was too limited to meet this criterion. On appeal, counsel notes that the beneficiary had, in fact, authored more articles, 12 as of the date of filing. The petitioner resubmits the articles on appeal. While several of the articles are published in conference proceedings, they are full-length articles, not abstracts. The beneficiary had also authored a textbook chapter.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, sets 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.

Prior to appeal, the record contained a list of 93 articles that allegedly cite the beneficiary’s work. The list, however, is not printed from a citation index and is self-serving. On appeal, the petitioner submits several of these articles, demonstrating that the beneficiary has, in fact, been widely cited.¹ Thus, we find that the petitioner has demonstrated that the beneficiary meets this criterion.

Upon careful consideration of the evidence offered with the initial petition, and later on appeal, we conclude that the petitioner has satisfactorily established that the beneficiary enjoys international recognition by meeting two criteria. Thus, the petitioner has overcome the objections set forth in the director’s notice of denial and we need not address counsel’s less persuasive arguments regarding the other regulatory criteria or the director’s questionable determination that the beneficiary meets 8 C.F.R. § 204.5(i)(3)(i)(D).

While the petitioner has overcome the director’s bases of denial, however, 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 did not provide the nontechnical description of the job for the proposed employment. Rather, the petitioner submitted a cover letter that described the beneficiary’s duties but does not

_____ a professor at the University of California, Berkeley, asserts that the beneficiary’s article on synthesizing texture from examples has been cited more than 50 times according to “Citeseer.” A review of www.citeseer.ist.psu.edu confirms that this article has now been cited 88 times.

offer the beneficiary a permanent job or indicate that such an offer had been extended. The petitioner has not submitted the original job offer letter or the contract under which the beneficiary was working at the time of filing.

The regulations require an offer of employment from the petitioner to the beneficiary setting forth the title, terms and conditions of the position offered. We note that the permanent job offer must have been issued prior to the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Therefore, this matter will be remanded for consideration of whether, as of the date of filing, the petitioner had made a legally binding permanent job offer to the beneficiary. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.