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U.S. Citizenship
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Services

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FILE: WAC 02 161 50648. Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:

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:

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 on appeal. The appeal will be dismissed.

The petitioner is a higher educational institution. 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 assistant professor. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in her academic field, as required for classification as an outstanding professor.

On appeal, counsel asserts that three of the director's conclusions were in error.

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.

This petition was filed on April 15, 2002 to classify the beneficiary as an outstanding professor in the field of elementary education. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching experience in the field of elementary education as of that date. The petitioner submitted a letter from [REDACTED] Director of the College of Education, School of Teaching and Learning at The Ohio State University (OSU), indicating that the beneficiary had full responsibility for teaching courses during three academic years while pursuing her Ph.D.

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.

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

Counsel does not challenge the director's determination that the beneficiary's student awards and academic scholarships fall short of meeting this criterion.

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

Counsel does not challenge the director's determination that the beneficiary's professional memberships cannot serve to meet this criterion.

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

Initially, the petitioner submitted a 1993 three-page article in *India Today* on trends in children's theater that includes a paragraph discussing the workshops run by the beneficiary and her husband. The petitioner also submitted a 1996 two-page article in *The Hindu* discussing the theater program the beneficiary and her husband designed for a prison as one of its reforms. In response to the director's December 18, 2002 request for additional evidence, the petitioner submitted two 1995 articles in *India Today* and *The Hindu* and an undated article in *The Times of India* also focusing on the prison theater workshop presented by the beneficiary and her husband. The articles reveal that while the beneficiary and her husband co-founded the theater workshop Child's Play, her husband wrote the script and directed the play performed at prisons. In response to the director's April 15, 2003 request for additional evidence, the petitioner submitted evidence of the following circulation numbers: 2,144,842 for *The Times of India*, 853,475 for *The Hindu*, and 417,505 for *India Today*.

The director concluded that the articles were not primarily about the beneficiary and did not evaluate her work. On appeal, counsel asserts that the articles are about the beneficiary and that distinguishing between the beneficiary and her work is not a useful distinction.

We note that the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) requires evidence “about the alien’s work in the academic field” as opposed to the more stringent “about the alien” as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii) relating to aliens of extraordinary ability. Thus, the director erred in distinguishing between the beneficiary and her work. Nevertheless, these articles cannot meet the plain language of the relevant regulation. First, while all but one of the articles are about the alien’s work, they are not about her work in the academic field at issue, elementary education. At the time the articles were written, the beneficiary only had a Bachelor of Arts degree in economics, English and psychology. She did not acquire her Master of Performing Arts degree until 1996 and did not obtain her Ph.D. in her academic field until 2001. While drama is related to the beneficiary’s academic field, founding a workshop and performing in a play written and directed by someone else is simply not work in her academic field.

Regardless, while we do not doubt the large circulation of the papers in which the articles appeared, the plain language of the regulations requires publication in “professional publications.” Mainstream newspapers are simply not professional publications. We are bound by the plain language of the regulation.

In light of the above, we concur with the director that the beneficiary does not meet this criterion.

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 director concluded that the petitioner had established that the beneficiary meets this criterion. While we disfavor reversing favorable determinations, the evidence submitted falls far short of meeting this criterion as of the date of filing.

Initially, the petitioner submitted evidence that the beneficiary served as book review editor for *Drama Matters*, a refereed journal of the Ohio Drama Education Exchange and The Ohio State University’s School of Teaching and Learning while a Ph.D. student at OSU. In response to the director’s request for evidence dated December 18, 2002, the petitioner submitted an April 22, 2002 request to serve on the editorial review board for *Thinking Classroom*, a January 24, 2003 request to review a manuscript for *Thinking Classroom Review*, and an October 17, 2002 memorandum requesting that the beneficiary, whose name is handwritten on the printed document, to review a book proposal for the International Reading Association.

In response to the director’s April 15, 2003 request for additional evidence, the petitioner submitted a June 14, 2003 letter affirming that the beneficiary served as a reviewer for the 2003 Annual American Educational Research Association (AERA) Convention and a June 4, 2003 letter affirming that the beneficiary has reviewed book proposals for the International Reading Association.

The record does not establish that the beneficiary had served in an editorial or review capacity for any publication other than *Drama Matters* as of the date of filing, April 15, 2002. Serving as a book reviewer for a journal published by the university where the beneficiary was studying for her Ph.D. is not indicative of or consistent with international recognition.

The remaining requests to serve on an editorial board (the request suggests this role is nothing more than agreeing to serve as a frequent reviewer) and to review manuscripts reflect "judging" experiences after the date of filing. As such, these activities cannot be considered evidence of the beneficiary's eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Moreover, while we do not require evidence that a judging position requires international recognition, we cannot ignore that peer reviewed journals and conferences rely on many reviewers to referee manuscripts. Not every peer reviewer enjoys international recognition. Without evidence that an unusual number of publishers internationally have requested the beneficiary's assistance, we cannot conclude that her review work is indicative of or consistent with international recognition.

The record also contains evidence that the beneficiary chaired a panel at the 2001 National Council of Teachers of English (NCTE) conference in Baltimore. The record lacks any evidence indicating the responsibilities of chairing this panel. Finally, as will be discussed below, the beneficiary claims to have authored a conference review, but that review is not in the record.

In light of the above, we withdraw the director's finding that the petitioner has established that the beneficiary meets this criterion.

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

In response to the director's December 18, 2002 request for additional evidence, the petitioner submitted three letters from faculty at OSU, one of which is unsigned. Dr. [REDACTED] the beneficiary's Ph.D. advisor, asserts that the beneficiary's dissertation focused on the relatively untouched and emotionally charged area of culturally relevant teaching. Dr. [REDACTED] further asserts that the beneficiary's conclusion that teachers and researchers struggle with how to address cultural relevance and responsiveness constitutes "a significant contribution to this area of inquiry."

Dr. [REDACTED] whom the beneficiary followed from the University of Wisconsin, Madison, to OSU, asserts that the beneficiary was the first to study how to make pedagogy more culturally relevant and responsive in a diverse urban elementary classroom when using drama strategies. He continues that the beneficiary's "analysis of the interface between her own cultural background and those of her students created a theoretical framework that she used to critique how a teacher's uses of drama must be more culturally relevant and responsive.

In an unsigned letter, Dr. [REDACTED] Director of the Office of Equity and Diversity, affirms that the beneficiary received a research award from this office in part due to one reviewer's comments that the beneficiary's research proposal touched on an area little researched.

In response to the director's April 14, 2003 request for evidence demonstrating that the beneficiary's contributions have been recognized internationally, the petitioner submitted three additional letters. Dr. [REDACTED] a Senior Research Associate at the Center for Educational Development, concludes that the beneficiary is "outstanding in her work" based on her publications in top rated journals and presentations at prestigious conferences. Dr. [REDACTED] does not indicate that he was aware of the beneficiary prior to being contacted for a reference or provide examples of how the beneficiary's work has impacted education through drama.

Dr. [REDACTED] an associate professor at California State University, San Marcos, asserts that she uses the beneficiary's article in her own class "because it supports those pre-service teachers who are enrolled in the arts cohort in the College of Education." Dr. [REDACTED] concludes that the beneficiary's work is significant and "should" be regarded as internationally outstanding. We note that Dr. [REDACTED] works for another campus of the petitioning university.

Finally, Dr. [REDACTED] a professor emeritus at the University of Victoria in Canada, asserts that she has attended the beneficiary's conference presentations, read her work, and incorporated it into her own work. Dr. [REDACTED] states:

[The beneficiary's] contributions to the field are unique in that she brings a perspective that is rich in cultural potential. Her dissertation contributed much that is important to our understanding of how culture and the socialization of young people can intersect and how that understanding can generate new pedagogies. [The beneficiary] studied under one of drama's most innovative minds and the rigour and high standards of Dr. [REDACTED] are replicated in all work that [the beneficiary] undertakes.

Dr. Saxton concludes that the beneficiary is "regarded highly by her international network of peers."

Several references, including [REDACTED] Dean of the petitioning university, attest to the prestigious nature of the journals that have published the beneficiary's work and the conferences where she has presented her work. Dean [REDACTED] further asserts that the beneficiary "has published a chapter in a highly regarded, internationally distributed textbook in her field."

The director concluded that the letters did not establish the beneficiary's international recognition for original contributions. On appeal, counsel asserts that the letters from those who know the beneficiary should not be discounted as peer review is used to decide grant applications. Counsel further asserts that the independent reference letters, in combination with the remaining evidence in the record, sufficiently establish that the beneficiary's contributions are unique and recognized internationally.

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 letters from the beneficiary's mentors are useful in explaining the nature of the beneficiary's work and the beneficiary's contributions to specific projects, they cannot, by themselves, demonstrate international recognition. Moreover, letters from independent members of the field who were previously aware of the beneficiary's work are more persuasive than letters from the field that merely review her credentials.

We find the record lacks evidence that the beneficiary's contributions have been recognized internationally beyond a single professor in Canada. More specifically, the record lacks evidence that the beneficiary's articles

or book chapter are routinely assigned as course reading in multiple universities in and outside the United States. Moreover, as will be discussed in more detail below, the record lacks any evidence that the beneficiary's work has served as the foundation of any other work, such as evidence that her work is widely cited. [REDACTED] claim that the book containing the beneficiary's chapter is distributed internationally is not supported in the record.

In light of the above, we concur with the director that the petitioner has not established 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 petitioner submitted evidence that the beneficiary has authored two articles and a book review in OSU's own publication, *Drama Matters*, an article adapted from a presentation published in OSU's *Educational Reports*, an article in *Teacher Plus*, published by the Indian publishing company Orient Longman. The beneficiary's references attest to her publication in *Research in Drama Education* and its five percent acceptance rate. On her curriculum vitae, the beneficiary lists a conference review published in that publication. We note that the materials for the publication list separate submission procedures for manuscripts and conference reviews. The review itself is not part of the record. The beneficiary has also presented her work at conferences.

The director concluded that publication is typical for researchers and professors and that the petitioner had not established the international importance and circulation of the publications in which the beneficiary's work appeared.

On appeal, counsel notes that the beneficiary's references attested to the fact that the publications are peer reviewed, top tier and highly selective. Counsel notes that *Research in Drama Education* has an international editorial board.

The regulation at 8 C.F.R. § 204.5(i)(3)(i)(F) requires that the beneficiary be published in journals with an international circulation. Thus, the fact that the journals may be peer reviewed, top tier or highly selective is irrelevant. The record contains no evidence that *Drama Matters*, the *Educational Reports*, or *Teacher Plus* have an international circulation. While it appears that *Research in Drama Education* may have an international circulation, the record does not contain the beneficiary's conference review allegedly published in that journal. Nor does the record contain the beneficiary's book chapter that is alleged to be distributed internationally. Moreover, the evidence relating to any given criterion may be reviewed as to whether it is indicative of or consistent with international recognition. Mere publication in internationally circulated journals is not typically sufficient without evidence that the published work has been widely cited internationally or is required reading for courses in the field at several international universities.

The petitioner has shown that the beneficiary is a talented and prolific researcher, who has won the respect of her collaborators, employers, and mentors, while securing some degree of international exposure for her 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.

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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.