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[Redacted]

FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date: JUN 03 2005

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.

Maifoussa

Sz 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 state university. 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). According to the petition, the petitioner seeks to employ the beneficiary permanently in the United States as a lecturer. The director determined that the petitioner had not made a qualifying job offer to the beneficiary and had not established that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

On appeal, counsel only addresses the second basis of the director's decision. We note that the absence of a qualifying job offer is a sufficient basis for denial of the petition in and of itself.

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 as a lecturer was a permanent position. The petitioner submitted a letter from [redacted] professor and Department Coordinator at the petitioning university to Citizenship and Immigration Services (CIS), asserting that the beneficiary "is a Visiting Lecturer in the Department of Earth Science at [the petitioning university], and that he will be continuing in that capacity. [redacted] requests that the beneficiary's "visa be extended, ideally for several years, as we would like to continue to work with him in upcoming academic endeavors." This document does not constitute a job offer from the petitioner to the beneficiary. On January 23, 2004, the director requested evidence that the petitioner had extended a tenure, tenure-track or permanent job offer to the beneficiary.

In response, counsel references letters with offers from [redacted] and [redacted] and recommendation letters from [redacted] and [redacted]. Of these authors, only [redacted] appears to represent the petitioning university. [redacted], a professor at the University of California, Berkeley and an editor of *Marine Micropaleontology*, attests only to the beneficiary's work as a referee for that journal. In a letter dated August 5, 2000 [redacted], a professor at Louisiana State University, appraises the beneficiary's research. Neither [redacted] nor [redacted] appear to have any authority to make the beneficiary a permanent job offer on behalf of the petitioning university and neither purport to do so.

[redacted] a professor at Northern Illinois University, where the beneficiary also works, discusses his collaborations with the beneficiary. [redacted] Chair of the beneficiary's department at Northern Illinois University, asserts that "in addition to teaching as an Assistant Professor at [the petitioning university], has been a part-time Visiting Assistant Professor at Northern Illinois University. [redacted] does not appear to have the authority to confirm a tenure, tenure-track or permanent position from the petitioning university. The letter from [redacted] is a copy of the letter submitted initially and discussed above.

The director concluded that the letter from [redacted] did not constitute an offer of full-time permanent employment. On appeal, counsel fails to address this issue. We concur with the director that the record lacks a qualifying job offer from the petitioning university. Specifically, the petitioner has not established that it has offered the beneficiary a tenure, tenure-track or permanent position.

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 August 28, 2003 to classify the beneficiary as an outstanding researcher in the field of geology and micropaleontology. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching or research experience in the field of geology or micropaleontology as of that date, and that the beneficiary's work has been recognized internationally within the field as outstanding. The record establishes that the beneficiary has worked for the petitioner since the Fall 2000 semester.

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

In response to the director's request for additional evidence, counsel references the beneficiary's fellowship, scholarship and research award at Northern Illinois University. The beneficiary lists these accomplishments on his curriculum vitae but the petitioner submits no evidence to support these claims. The director concluded that these accomplishments were limited to students at Northern Illinois University and, thus, not indicative of international recognition. The director further concluded that academic awards are not awards for achievements in the academic field. On appeal, counsel asserts that the beneficiary has "won several prizes and awards in recognition of his outstanding achievements."

Counsel's statement does not address the directors concerns, with which we agree. Scholarships and academic fellowships are generally based on past *academic* achievement, not for accomplishments in a field of endeavor. While 8 C.F.R. § 204.5(i)(3)(i)(A) references outstanding achievements in one's academic field, 8 C.F.R. § 204.5(i)(2) defines "academic field" as "a body of specialized knowledge offered for study." The definition does not include typical bases for scholarships, such as grade point average and class standing. It remains, academic study is not a field of endeavor, academic or otherwise. Rather, academic study is training for a future career in an academic field. As such, scholarships in recognition of academic achievement, such as grade point average, are insufficient. In addition, the beneficiary only competed against other students at the university at

that time for the scholarship, fellowship and research award. Scholarships and the beneficiary's student award are simply not evidence of international recognition in the field. Rather, they represent high academic achievements in comparison with his fellow students.

Finally, as stated above, the record contains no evidence that the beneficiary received the honors claimed. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *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 Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Thus, we need not accept the beneficiary's self-serving claims on his curriculum vitae.

In light of the above, we concur with the director that the petitioner has not established that the beneficiary meets this criterion.

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

In response to the director's request for additional evidence, counsel asserts that the beneficiary meets this criterion through his employment and his membership in the North American Micropaleontology Section (NAMS) of the Society for Sedimentary Geology (SEPM) and the American Association of Petroleum Geologists (AAPG). While the petitioner submitted evidence of the beneficiary's employment, the only evidence of the beneficiary's membership in NAMS and AAPG are the inclusion of these memberships on the beneficiary's curriculum vitae. The petitioner also failed to submit evidence of the membership requirements for these associations.

The director concluded that while the petitioner may require "outstanding performance" of its faculty, the record did not establish that such performance would garner international recognition. The director further concluded that the record did not establish that NAMS or AAPG require outstanding achievements of their members. On appeal, counsel does not address these concerns.

An element of this criterion is that the associations require outstanding achievements of their members. The petitioner has not submitted any evidence that NAMS or AAPG require such achievements of their members. Regardless of whether the petitioner requires "outstanding performance" of its faculty, the petitioner is a university, not an association in the beneficiary's academic field. A job is not a "membership." Thus, the beneficiary's employment is simply not relevant to this criterion. Finally, as stated above, the record lacks evidence that the beneficiary is, in fact, a member of NAMS or AAPG.

In light of the above, we concur with the director that the petitioner has not established that the beneficiary meets 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

The petitioner relies on citations of the beneficiary's articles to meet this criterion. The director concluded that reference to the beneficiary's work without evaluation was insufficient to meet this criterion. On appeal, counsel asserts that "other acclaimed scientists have mentioned [the beneficiary's] research in their own work." 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. Thus, we concur with the director that the petitioner has not established that the beneficiary meets 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 record reflects that the beneficiary has refereed articles for *Marine Micropaleontology*. [REDACTED] an editor of the journal, asserts that the journal "only request[s] reviews from scientists who have contributed significantly to their specialties and who have a solid grasp of the cutting edge of their research fields." Counsel and the beneficiary also assert that the beneficiary has served as a thesis and research advisor for graduate and undergraduate students as well as sponsoring undergraduate students for an annual student research and creative activities symposium at the petitioning university. [REDACTED] supports these assertions.

The director acknowledged that journals require experienced and knowledgeable reviewers but concluded that the petitioner had not established that the review requests were indicative of international recognition or how the beneficiary's review record compared with others in the field. The director also concluded that the type of student supervision inherent in the beneficiary's position with the petitioner was not indicative of international recognition. On appeal, counsel asserts that the beneficiary "has participated in panels, signifying his knowledge in the field."

We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of international journals, served in an editorial position for a distinguished international journal, or served as an outside thesis or dissertation advisor for students at other institutions, we cannot conclude that the beneficiary meets this criterion.

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

Counsel references the beneficiary's publication record as evidence of the beneficiary's contributions to the field. We note that the publication of scholarly articles is a separate criterion. To presume that evidence relating to that criterion, without additional evidence of the beneficiary's influence in the field, also meets this criterion would render the requirement that a beneficiary must meet two criteria meaningless.

The beneficiary authored 13 articles published between 1989 and 1999, a book chapter published in 1999 and a final article published after the date of filing. The petitioner submitted a list of 25 articles that cite the beneficiary's work. We note that several of these articles are self-citations by the beneficiary himself or a coauthor. While self-citation is a normal and expected practice, it cannot establish the beneficiary's international recognition. The most independent citations received by any one article is six.

The most comprehensive discussion of the beneficiary's published work comes from [REDACTED] the external examiner of the beneficiary's [REDACTED] dissertation. [REDACTED] provides a highly technical explanation of the beneficiary's work and concludes that it is "a significant contribution to foraminiferal studies, and will be useful in marine geological investigations focused on Neogene paleoceanography." [REDACTED] acknowledges the expected influence of the beneficiary's professor, [REDACTED] but concludes that the beneficiary's research "bears ample evidence of originality." [REDACTED] raises the beneficiary's "care with the data matrix" that contributes to the credibility of the beneficiary's results. [REDACTED] explains:

In most oceanic areas, biological productivity must have a seasonal signal. Is the foraminiferal record in abyssal sediments good enough to show an imprint of this seasonality? In answering this question (positively), [the beneficiary] has put his mark on deep-sea foraminiferal ecology and paleoecology.

[REDACTED] asserts that the beneficiary's work involves global climate change and is "vital to understanding the natural mechanisms that might affect global climate as human induced changes develop." [REDACTED] concludes that the beneficiary's research group "developed unique analytical methods." [REDACTED] concludes that the beneficiary's unique expertise is necessary to his group. We acknowledge that the beneficiary still works part-time with [REDACTED] in addition to his position at the petitioning institution. The petitioner, however, seeks to classify the beneficiary as an outstanding professor at its own institution, not at Northern Illinois University where [REDACTED] works.

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."

Noting that the record included "only one letter" from outside the beneficiary's immediate circle of colleagues, the director concluded that the record did not demonstrate that the beneficiary had garnered any international recognition for his contributions. On appeal, counsel asserts that the beneficiary has received praise "from members of the international scientific community" and that the petitioner submitted "countless articles, publications, recommendation letters, and proof of achievements and experience in support" of the petition.

As stated above, the record contains five letters of reference, 13 articles published prior to the date of filing, one book chapter and evidence of no more than six citations for any one of the beneficiary's articles. While the director concluded that one of the beneficiary's references was not a member of the beneficiary's immediate circle of colleagues, we find that [REDACTED] is not independent of the beneficiary. He was an external examiner of the beneficiary's dissertation. The record is absent evidence that independent experts internationally recognize the beneficiary's contributions to the field of geology.

Finally, counsel asserts that the beneficiary's research should not be discounted merely because he collaborated with others. While we agree with counsel that collaboration is typical in the beneficiary's field,

the collaborative nature of the beneficiary's work does not appear to have been the director's basis of denial. While the beneficiary'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. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge is recognized internationally. 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 director concluded that the beneficiary's publication record, while not "copious" was sufficient to meet this criterion in part because of the beneficiary's authorship of a book chapter. We will not contest this finding.

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 researcher or professor. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought. Moreover, as stated above, the petitioner has not established that it had made a qualifying job offer to the beneficiary.

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.