U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 30 2009
WAC 04 110 52131

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.

Mari Johnson

for 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 telecommunications company. 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 senior research engineer. The director determined that the petitioner 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 asserts that the director failed to properly consider the evidence submitted. For the reasons discussed below, we find that the petitioner has demonstrated that the beneficiary meets only one of the regulatory criteria, not the requisite two. Thus, we uphold the director's ultimate conclusion.

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):
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> (B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --
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> (i) the alien is recognized internationally as outstanding in a specific academic area,
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> (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,
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> (II) for a comparable position with a university or institution of higher education to conduct research in the area, or
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> (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 April 18, 2004 to classify the beneficiary as an outstanding researcher in the field of telecommunications. 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. More specifically, outstanding professors and researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. 56 Fed. Reg. 30703, 30705 (1991). 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

Initially, the petitioner submitted a letter affirming that the beneficiary obtained "an Australian Postgraduate Research Award (APRA) Scholarship." The petitioner also submitted materials reflecting that the objective of these scholarships is to "provide financial support to postgraduate students of exceptional research promise who undertake their higher degree by research at an eligible Australian higher education institution." Recipients receive an annual stipend and may be eligible for other allowances. Eligible applicants must demonstrate academic accomplishments. Those with doctoral degrees are precluded from receiving these scholarships. The director concluded that scholarships are not major prizes or awards for outstanding achievements in the academic field.

On appeal, counsel notes that the petitioner submitted the rules for these scholarships, which indicate that academic achievements are required and list the selection process. According to the materials submitted, the scholarship is based on past *academic* achievement, not for accomplishments in a field of endeavor. While 8 C.F.R. § 204.5(i)(3)(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

[1] The petitioner does not claim that the beneficiary meets any criteria not discussed in this decision and the record contains no evidence relating to the omitted criteria.

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 for the scholarship. The most experienced members of the field, those with doctoral degrees, were precluded from eligibility. Scholarships are simply not indicative of international recognition in the field. Rather, they represent high academic achievements in comparison with fellow students. In light of the above, 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*

The petitioner submitted evidence of the beneficiary's membership in the Institute of Electrical and Electronics Engineers (IEEE). In the initial cover letter, counsel asserts that IEEE membership "recognizes those who have achieved professional proficiency, as demonstrated by degrees received and/or work experience." The materials from IEEE reflect that a mere baccalaureate degree in an IEEE designated field can qualify an individual for membership. In response to the director's request for additional evidence, the petitioner submitted IEEE's 2003 annual report "to establish the significance of the organization within the academic field" as well as the association's "more than 361,000 members." The director concluded that the membership was professional rather than exclusive. On appeal, counsel merely states that the denial "does not properly take into consideration the evidence submitted regarding the criteria to become a Member in IEEE."

IEEE's prestige in the field is not the relevant factor for consideration. According to the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B), we must look at the requirements for membership. The general requirement of "proficiency" in the field is not an outstanding achievement; rather, it represents mere competence. The more specific requirements, a degree or experience, are similarly not outstanding achievements; rather they represent the minimum credentials required to work in the field. Thus, the record does not reflect that IEEE requires outstanding achievements of their general membership and the petitioner has, therefore, not demonstrated 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*

Initially, counsel asserted that the beneficiary meets this criterion through the three citations of his thesis and a self-citation by a coauthor of one of the beneficiary's published articles. In response to the director's request for additional evidence, the petitioner submitted evidence of the prestige of the journals in which the articles citing the beneficiary's work was published and media coverage of the beneficiary's area of research. The director concluded that the evidence could not serve to meet this criterion.

On appeal, counsel asserts that the director "ignored" the evidence submitted. Counsel asserts that the citations were published in "highly prestigious scientific journals." Regarding the articles in the general media, counsel states:

> Although it is true that these articles do not refer to the Beneficiary by name, these articles are "about" the Beneficiary's work since they feature precisely the Beneficiary's original research contributions – wireless communications systems and turbo-coding. Thus, it is fair to conclude

that these articles would not have been written but for the Beneficiary's groundbreaking research results.

Counsel is not persuasive. First, the director addressed the evidence. Thus, even if we differed with the director's conclusion, which we do not, we could not conclude that any evidence was "ignored." Second, 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's work.

Third, as will be discussed in more detail below, the record does not support counsel's assertions regarding the articles in the general media. First, however, it is instructive to set forth the factors we will apply in evaluating this material. Counsel acknowledges that this material does not mention the beneficiary by name. The regulation provides that the materials must be "about the alien's work." Obviously, the most persuasive evidence that an article is about the alien's work is credit given to the alien in the article itself. An article that does not mention the alien by name is typically not indicative of international recognition, the ultimate standard for the classification sought. In some extremely limited cases, however, an individual may be so widely recognized for a particular achievement that an article about that achievement without mention of the individual's name could be perceived as about that individual's work. For example, while an alien need not demonstrate the type of international recognition enjoyed by Albert Einstein, an article that was about the importance of the development of the theory of relativity but failed to mention Mr. [redacted] could still be considered an article about his work, as he is widely known to have been the pioneer of that theory. The final consideration in evaluating whether evidence is indicative of international recognition is the source of the article. A press release by the developer of the technology discussed is far less persuasive evidence of international recognition than independent journalistic coverage.

The petitioner submitted an article published after the date of filing in *Army Communicator* discussing new modems that will be "able to send and receive data at speeds from 64 kbps to 155 Mbps." This article, which does not mention the beneficiary by name or any company he has ever worked for, cannot be considered as it is dated after the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak;* 14 I&N Dec. 45, 49 (Comm. 1971).

The petitioner also submitted an article in *CommsDesign* about the 802.16 standard amended by the IEEE in January 2003. The article indicates that "convolutional turbo codes are optional" in the amended standard. The article not only fails to mention the beneficiary, but fails to mention any company he has ever worked for. The record does not demonstrate that the beneficiary is so internationally recognized as the pioneer of convolutional turbo codes to the exclusion of all others working in the field that the mere mention of such codes as an option in a newly adopted standard renders the article "about" the beneficiary's work.

In addition, the petitioner submitted an article in *CableWorld* reporting on new technologies that will compete with cable television and an article reporting the HomePlug Powerline Association's adoption of France Telecom's Turbo Code Program. Neither article mentions the beneficiary or a company for which he has worked and the record does not establish that the beneficiary pioneered the technology discussed in either article. Thus, we are not persuaded that either article is "about" the beneficiary's work in the field.

The petitioner also submitted press releases posted on Inmarsat's website. While the petitioner never worked for that company, a letter from the Director of Research and Development for the company asserts that between

1995 and 1999 the beneficiary worked on Inmarsat M4 and Inmarsat MPDS, which "are now the corner-stones of Inmarsat Global Aera [sic] Network Service." The November 18, 2002 press release reports the launch of Inmarsat Regional BGAN, based on GPRS technology. The October 10, 2003 press release announces that Inmarsat Regional BGAN received a "'Highly Commended' award in the Best New Service category at the recent World Communications Awards 2003." We cannot conclude that a system launched three years after the beneficiary stopped working on projects with the system's developer is so intimately associated with the beneficiary that published material about that system can be considered to be "about" the beneficiary's work. Moreover, as stated above, the developer's own press releases are not as persuasive as independent journalistic coverage.

Finally, the petitioner submitted news articles posted on the website of the beneficiary's alma mater, the University of South Australia. The first article, "Satellites with Space Saving Devices," includes a photograph of the modem teach for the project being discussed. The beneficiary is not featured in that photograph. The article also credits the discovery of the turbo codes used at the university to "a team of French scientists." Thus, it is not a credible assertion that this article is in any way "about" the beneficiary's work. The final article, dated in 1998, discusses a collaboration between the university and DSpace on projects for Inmarsat. We acknowledge that the beneficiary was part of this collaboration. The article, however, does not mention the beneficiary by name. Further, the record lacks evidence that the beneficiary is so internationally recognized for pioneering this project that any article about it must be considered an article about his work. Finally, as stated above, independent journalistic coverage is far more persuasive evidence of international recognition than a press release by the university sponsoring the research.

In light of the above, the petitioner has not demonstrated that the beneficiary meets this criterion.

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

The director concluded that the record lacked evidence that those who have not collaborated with the beneficiary share his colleagues' favorable opinion of his work, that the beneficiary's articles were considered significant and that the beneficiary was the originator of the innovations with pending patents.

On appeal, counsel notes the prior submission of several letters from individuals who have not worked with the beneficiary. Counsel further asserts that the beneficiary's articles and patents serve to meet this criterion, noting that the regulations do not require that the beneficiary be the sole innovator behind an original contribution.

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."

Regarding patents, we recognize that most innovations are the product of a collaboration and we concur with counsel that the regulations do not require that the beneficiary be identified as the sole inventor. That said, the

evidence that the beneficiary is listed as an inventor on four patent applications, two of which were approved after the date of filing, establishes only that he is an inventor. The very existence of the patents does not, however, show that the beneficiary's inventions are more significant than those of others in his field. To establish the significance of the beneficiary's work, we turn to experts in his field, whose letters we discuss below. As stated by counsel on appeal, some of the letters are from independent members of the field.

The beneficiary obtained his Ph.D. at the University of South Australia in 1999. The beneficiary worked for [redacted] during his studies. In 2000, the beneficiary joined [redacted] as their Chief Technical Officer, according to his curriculum vitae. In 2003, the beneficiary joined the petitioner. As of the date of filing, the beneficiary had one patent application pending in the United Kingdom and three patents pending in the United States. The British patent application concerns a satellite communication system with variable data transmission rate while the U.S. patent applications relate to turbo codes and a method and apparatus for improved performance sliding window decoding. The two U.S. patent applications subsequently approved are assigned to [redacted]

The petitioner submits letters from the beneficiary's supervisors for his Ph.D. thesis, Dr. [redacted] and Dr. [redacted]n. Dr. [redacted] states:

> During his Ph.D. studies, [the beneficiary] developed some significant structures for serially concatenated trellis coded modulation (SCTCM), leading to significantly [sic] improvements in bandwidth and power efficiencies for wireless communication, such as mobile satellite systems and cellular mobile systems. One of his most outstanding contributions was the development of structures with significantly lower complexity implementation, making these Turbo coding schemes feasible for complexity, power and bandwidth constrained applications in wireless communication.
>
> Also during his Ph.D. studies and the years following his candidature, he focused on the important area of practical implantation and integration of cutting-edge research advances. This lead [sic] of the construction of pioneering proof-of-concept prototypes and commercial extensions intended for mobile satellite applications. [The beneficiary] is behind several "World's First" implementations in the area of modem design for data communication over satellites. His work in this area was new and novel in the sense that prohibiting problems were solved for the practical application of powerful iterative processing.

Dr. [redacted] notes that the beneficiary proceeded to apply for patents for his innovations and concludes that the beneficiary's ability to demonstrate the practical implementation of his theoretical techniques have "propelled the capabilities of commercial communications systems towards fundamental theoretical limits, and ultimately closer to optimal use of scarce resources."

While Dr. [redacted] indicates that some of the beneficiary's work used Dr. [redacted] codes, he also asserts that the beneficiary's work on serially concatenated codes was "ground breaking" and was later used "to develop new codes for Intelsat, which provide communications near the limit of their theoretical capacity with error rates of less than one in ten billion." Finally, Dr. [redacted] asserts that Inmarsat has adopted the beneficiary's high-speed turbo decoder as its standard, allowing voice, internet and slow video to be sent from anywhere in the world.

Dr. [redacted] assertions regarding Inmarsat are supported by a letter from the Director of research and development at Inmarsat, [redacted] Fractman. Mr. [redacted] asserts that the projects on which the beneficiary worked for Inmarsat "are now the corner-stones of Inmarsat Global Aera [sic] Network Service." Mr. [redacted] continues that the beneficiary's innovations "saved up to 50% of the amount of required spectrum for our services."

Dr. [redacted] Chief Technical Officer of [redacted], indicates that he supervised the beneficiary's work there. He indicates that after the beneficiary left DSpace, he continued to collaborate with the beneficiary, most recently in 2002, and that [redacted] licensed the beneficiary's turbo code designs. Dr. [redacted] concludes that the beneficiary's turbo coding work "has allowed new codes to be discovered, capable of halving or more the complexity of integrated circuits implementations."

[redacted] Principal Engineer for [redacted] Technologies, asserts that he began his component supplier relationship with the beneficiary while the beneficiary was working at [redacted] Mr. [redacted] affirms that he has "relied on [the beneficiary] to provide innovative signal processing solutions to our data detection problems." Mr. [redacted] notes that the beneficiary has produced research papers for InPhase. Mr. [redacted] notes that few individuals have examined the new area of holographic data storage "with a signal processing perspective." The beneficiary "has formulated a custom signal processing scheme theory and successively implemented that theory into electronics hardware for our application."

In response to the director's request for additional evidence, the petitioner submitted two letters discussing the beneficiary's contribution to the standardization meetings of the IEEE, held one month prior to the date of filing. Dr. [redacted], Technical Director for [redacted] at [redacted], asserts that the beneficiary's work has "spurred the development of a new class of codes, combining the advantages of two powerful concepts: 1) Turbo codes, and 2) Low-density parity check codes." Dr. [redacted] contends that these "flex" codes have been implemented in several industry products. Regarding the standardization meeting, Dr. [redacted] asserts that the beneficiary's designs "directly influenced the standardization process."

Dr. [redacted], Technical Manager for [redacted], asserts that the beneficiary's work stands out for the following reasons:

- Existence of actual decoders, running at high speed: [the petitioner] has clearly advanced considerably farther than anyone else, and already has field-programmable gate arrays that implement the codes and decoders proposed.

- Excellent theoretical design: the performance of the codes is excellent, but even further the accompanying theory shows why this is so. This is an important factor in gaining acceptance for any aspect of a communication system in a standards context.

- Flexible design that fits the structure of many different decoding approaches: this allows for a maximum flexibility and cost-reduction, and building on the best of previous approaches.

Not all of the above letters are from the beneficiary's colleagues, as claimed by the director. The letters are extremely specific and explain how the beneficiary's work is being applied and where. The claims that the beneficiary's work is being adopted are supported by letters from companies that are licensing and applying the beneficiary's work. As such, we are satisfied that the beneficiary meets this criterion. An alien, however, must meet at least two criteria in order to be eligible for the classification sought. For the reasons discussed above and below, the beneficiary falls far short of meeting any other 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 five published articles and presented his work at seven conferences. The beneficiary's presentations were published in the proceedings of those conferences. The director concluded that publication is commonplace for Ph.D. students and researchers and that the petitioner had not demonstrated that the beneficiary's work was significant. On appeal, counsel asserts that the beneficiary's coauthors are experts in the field and notes that some of the articles list the beneficiary as the sole author. Finally, counsel asserts that the regulations do not preclude articles authored while a student and notes that the beneficiary "has numerous scientific publications in renowned international scientific journals." Counsel concludes that "the fact that others in the scientific community utilized these publications in their own research is evidence of the impact these publications have had on the field."

As stated above, outstanding professors and researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. 56 Fed. Reg. 30703, 30705 (1991). 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 our position that publication of scholarly articles is not automatically evidence of international recognition; we must consider the research community's reaction to those articles.

The petitioner initially submitted evidence that the beneficiary's thesis has been cited three times, including a citation by Dr. [redacted] In addition, Dr. [redacted] cited one of the articles he coauthored with the beneficiary. The petitioner submitted a letter from Dr. [redacted], who indicates he became familiar with the beneficiary while researching an article. Dr. [redacted] continues that he cited the beneficiary's thesis "and his work was essential to the development of our results." Dr. [redacted] included his curriculum vitae, which reveals that he is a frequent collaborator with Dr. [redacted] the beneficiary's thesis advisor, having coauthored at least four articles with Dr. [redacted] prior to citing the beneficiary's thesis. Regardless, three citations of the beneficiary's thesis and a single self-citation by a coauthor of one of the beneficiary's published articles is not persuasive evidence that the beneficiary is internationally recognized in the field.

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.

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.