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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 10 2006  
WAC 04 014 50411

IN RE: Petitioner: [Redacted]  
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*

2 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 city planning department. 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 "Transportation Planner II/Researcher." 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. The director further determined that the position offered was not a research position.

On appeal, the petitioner, through counsel, submitted a statement by the beneficiary. Subsequently, the petitioner submitted its own statement. We uphold the director's decision for the reasons discussed below.

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 October 20, 2003 to classify the beneficiary as an outstanding researcher in the field of transportation planning. 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. On appeal, the beneficiary asserts that his Ph.D. alone should serve to meet three of the regulatory criteria. We note that a Ph.D. is not an unusual requirement for a professor position at an accredited university or institution of higher learning. Outstanding professors and researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulatory criteria are to be used in evaluating whether a professor or researcher is deemed outstanding. 56 Fed. Reg. 30703, 30705 (1991). Thus, the mere possession of a Ph.D. cannot serve to establish eligibility for the classification sought. We will evaluate the remaining evidence below.

The petitioner did not initially indicate which criteria the beneficiary is alleged to meet. The criteria follow.

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

Initially, the petitioner submitted a letter from its Planning Director advising the beneficiary of his nomination and selection for a Team Excellence Award – General Plan Team. The director requested evidence of the origin, purpose, significance and scope of each award, as well as the criteria used to nominate and judge the prospective awardees. In response, counsel submitted evidence that the petitioner had nominated the beneficiary for an Employee Excellence Award. Counsel notes the employee award previously submitted and asserts that the award "is given to only one percent of all city employees." 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). None of the numerous letters from the petitioner's representatives affirm the percentage of employees who receive this award as claimed by counsel.

The director concluded that the award and award nomination submitted were not major prizes or awards for outstanding achievement as they were not international or national, but limited to the petitioner's workers. Neither the petitioner nor the beneficiary challenges this conclusion on appeal, and we concur with the director's analysis. 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 initially submitted evidence of the beneficiary's membership in the Institute of Transportation Engineers (ITE), the American Planning Association, the Iranian Society of Transportation Engineers and the Institute of Highways and Transportation. The petitioner failed to submit evidence of the membership requirements for these associations.

The director requested the membership requirements of the above associations. The petitioner's response did not address this criterion. The director concluded that the petitioner had not established that the beneficiary meets this criterion. Neither statement submitted on appeal addresses this criterion. We concur with the director's analysis. The petitioner has not established that the beneficiary is a member of an organization that requires outstanding achievements of its general membership.

*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 by the director, the petitioner did not assert that the beneficiary meets this criterion or submit evidence relating to it either initially or in response to the director's request for additional evidence. In his personal statement submitted on appeal, the beneficiary asserts for the first time that he meets this criterion through his Ph.D. thesis. Specifically, he notes that a Ph.D. thesis must be "a new research topic in the concern field and not repeating other works," "add to the knowledge of the field" and "produce a referred publication."

The beneficiary is not persuasive. His statement fails to explain how his own thesis, authored by him, constitutes published material *written by others* about his work in the academic field. The record contains no published materials about the beneficiary's work written by others. Thus, we affirm the director's conclusion 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 director concluded that the petitioner had not asserted that the beneficiary meets this criterion or submitted evidence relating to it. Neither the petitioner nor the beneficiary challenges this conclusion in their appellate statements. In addition, the documentation submitted on appeal does not address this criterion. Nevertheless, the initial submission included evidence that bears some discussion.

The petitioner submitted a letter from [REDACTED] an associate professor at the University of Manitoba. Professor [REDACTED] indicates that he obtained his Ph.D. from Birmingham University with the beneficiary and that the beneficiary subsequently joined Professor [REDACTED] group at Tarbiat Modares<sup>1</sup> University in Iran. Professor [REDACTED] asserts that the beneficiary taught postgraduate courses at Tarbiat Modares University, where he supervised seven students at that university and an additional seven students at other institutions for their Masters projects. The petitioner also submits a thesis listing the beneficiary as the supervisor.

<sup>1</sup> Spelling according to the beneficiary's curriculum vitae.

The evidence submitted to meet each criterion must be indicative of or consistent with international acclaim. The beneficiary indicates that he was a lecturer at Tarbiat Modaress University. It is inherent to the position of lecturer to supervise one's students. We cannot conclude that every lecturer enjoys international recognition. Without additional evidence regarding the students at other institutions purportedly supervised by the beneficiary, we cannot conclude that these duties were indicative of or consistent with international recognition.

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

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

Initially, the petitioner submitted reference letters from its own staff, a former fellow Ph.D. student of the beneficiary's, a past president of the ITE who is currently a traffic engineer for the petitioner and a member of the group with which the beneficiary collaborated on his Ph.D. thesis. The director noted the lack of letters from more independent sources in his request for additional evidence. In response, the petitioner submitted another letter from its own staff and two letters from other professionals in the field in the same city. Counsel noted that one of the references characterizes the beneficiary's work as "original," that the work was the basis of a Ph.D. thesis and that the work was supported by the World Bank.

The director concluded that the petitioner had not established that the international community considered the beneficiary's work especially significant. On appeal, the beneficiary asserts that work in his field is country-specific or regional. Thus, it is not applicable on an international level. He then asserts that his international experience is itself a contribution to the field. Finally, as stated above, the beneficiary asserts that his Ph.D. thesis alone serves to establish his eligibility since Ph.D. theses must be original.

Contrary to the assertions made by counsel and the beneficiary, 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 work. Transportation analysis and modeling 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 contributions have won comparable recognition. To argue that all original scholarly work is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, and to presume that most scholarly work is "unoriginal." We will consider the letters with these principles in mind.

The beneficiary obtained his Ph.D. from Birmingham University in the United Kingdom in 1990. He subsequently taught and worked in Iran before accepting a position with the petitioner in 2000.

██████████, a coauthor of some of the beneficiary's articles while he was a Ph.D. student, asserts that the beneficiary "pioneered" the development of a software suite, BSM, to determine priorities for highway maintenance. While Mr. ██████████ praises the beneficiary's skills, he does not explain whether this project was applied by any entity or how it otherwise influenced the field.

Professor ██████████ asserts that the beneficiary was a senior consultant for the city of ██████████ in Iran and that the beneficiary improved traffic in that city. In addition, the beneficiary presented work to the Road Ministry of

Iran, which accepted his recommendations. Roads and other forms of transportation are developed and maintained by governments. It is inherent in the position of transportation consultant for a government entity to provide recommendations for transportation improvement to that government entity. We are not persuaded that every adopted transportation recommendation is a notable contribution to the field as a whole.

The petitioner's staff praise the beneficiary's analytic abilities and knowledge in the field. They note his proficiency with the modeling software EMME/2, customizing it to provide results for the petitioner's specific geographic needs. His skill with this software allowed him to determine the impact of various transportation improvements. The beneficiary has contributed to the petitioner's General Plan, including coordinating the input of other city departments and revising tables figures and photographs. The beneficiary took into consideration telecommunications, elderly mobility and parking. He also participated in sessions where the plan was explained to the public. The beneficiary also updated socioeconomic and trip generation data as it relates to street impact fees. A number of his suggestions for revising and improving the calculation of street impact fees were adopted. In addition, the beneficiary developed new guidelines for future traffic studies, resulting in consistent and quality products. Finally, the beneficiary researched the general plans of other U.S. cities, producing a satisfactory and valuable piece of work.

██████████, past president of the Arizona Planning Association, located in the same city as the petitioner, provides similar information and asserts that the beneficiary has contributed to the petitioner's long-term transportation plans. While Mr. ██████████ further asserts that the beneficiary has contributed to the planning profession in general, he provides no examples of such contributions.

██████████ a traffic engineer with the petitioner and a former president of ITE, asserts that she encouraged the beneficiary to present his work with EMME/2 to the 2002 ITE annual meeting. Ms. ██████████ asserts that the beneficiary's presentation was "well-received" by those interested in the subject. Ms. ██████████ concludes that the beneficiary is "one of the most influential people in the transportation profession and an international leader in the field of transportation," but fails to provide examples of the beneficiary's influence beyond the specific projects on which he has worked.

The above letters are all from the beneficiary's collaborators and immediate colleagues. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's international recognition. The petitioner did not submit letters from independent experts in the field or evidence that the beneficiary is widely cited to support the opinions of the beneficiary's colleagues.

The record shows that the petitioner is respected by his colleagues and has made useful contributions to the projects on which he has worked. It can be argued, however, that most modeling projects, in order to receive funding or be adopted, must present some benefit. The record does not establish that the beneficiary's work represented a groundbreaking advance in transportation planning.

In light of the above, 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.*

Initially, the petitioner submitted the beneficiary's unpublished Ph.D. thesis, an article of the same name published in 1991 in the *European Journal of Operational Research*, a program documenting his presentation at the Universities Transport Studies Group 22<sup>nd</sup> Annual Conference, an article in *Dimensions of Rural Transportation*, the proceedings of a 1988 "International Seminar," an unpublished article entitled "Guideline for Comprehensive Transportation Studies in Developing Countries" and a program reflecting that the beneficiary was a panel participant at a 2002 conference in Phoenix, Arizona. The record also includes the program for the 2002 annual meeting of the Institute of Transportation Engineers (ITE) in Philadelphia reflecting a presentation by the beneficiary, a foreign language journal with no translation, the 1992 publication "Mathematics in Transport Planning and Control" that includes a chapter by the beneficiary and the proceedings of a 1990 OECD Workshop on knowledge-based expert systems in transportation that includes a chapter by the beneficiary.

The director requested evidence to establish the circulation of any journal that published the beneficiary's articles. In response, counsel states:

The European Operational Research Journal is an internationally recognized and distributed monthly journal. The ITE journal is an annual summary which comes out of the ITE annual international conference. Also, the Oxford publication of the International Conference is a well respected annual publication. These journals cover international transportation issues, are distributed internationally and are read by and referred to by the experts in this field.

The petitioner also submitted evidence that the beneficiary had submitted an abstract for a presentation at the 2004 ITE annual meeting. The director concluded that the petitioner had not demonstrated the significance of the beneficiary's published work. On appeal, the beneficiary asserts:

There is no signal publication used by every transportation practitioners [sic] and researchers [sic] in the world. There are many journals [that] discuss regional issues. Scientists and researchers in different countries tend to publish their own work in various journals with regional circulations.

It is a well known requirement that for a PhD thesis to be approved is to produce a referred publication. European Operational Research is a referred journal, and that was the reason to approve my PhD thesis.

This office is well aware that a Ph.D. must be original and that it is not unusual for one's thesis to be published, especially in fields of engineering and the sciences. As often stated by this office, 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."

The beneficiary's position that a Ph.D. thesis can serve to establish eligibility for this classification is not persuasive. We cannot conclude that every Ph.D. recipient enjoys international recognition. Rather, the expected publication of theses and postdoctoral work reinforces the director's position that publication of scholarly articles is not automatically evidence of international recognition. This office consistently holds that we must consider the scientific community's reaction to those articles.

As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. at 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The record lacks evidence supporting counsel's assertions that the above journals have an international circulation. Moreover, this office typically looks for evidence of an article's influence, such as evidence that the article has been widely cited. The record lacks evidence that any of the beneficiary's published work has been cited.

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

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 far 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.

Finally, the director concluded that the beneficiary's position as a transportation planner was not primarily a research position. On appeal, the beneficiary asserts that his research has formed the basis of four reports, which would not be possible if he were involved in "day-today [sic] affairs." The petitioner submits a list of job duties. While the duties provided by the petitioner use phrases such as "conducts research and leads the Planning Department" and "supervises and participates in multimodal transportation research and planning," the position appears to mainly involve compiling data, developing models, and applying those models to produce viable transportation plans and calculate street impact fees. We are not persuaded that these duties are primarily research duties.

Beyond the decision of the director, the petitioner has not established that it is an eligible petitioner. As quoted above, section 203(b)(1)(B) of the Act, the alien must seek to work for a university, institution of higher education or a department, division, or institute of a private employer. The regulation at 8 C.F.R. §204.5(i)(3)(iii) mirrors the language in the Act.

We must presume that the use of the word "private" in the statute is not superfluous and, thus, that it has some meaning. See *Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). Black's Law Dictionary 1213 (7<sup>th</sup> ed. 1999) defines "private" as "[r]elating or belonging to an individual, as opposed to the public or the government." The petitioner is not a university, institute of higher learning, or a private employer, but a government agency. This interpretation does not preclude government agencies from filing petitions in behalf of researchers. For example, an agency may request that the job offer requirement be waived in the national interest for aliens of exceptional ability or advanced degree professionals pursuant to Section 203(b)(2) of the Act. The instant petition, however, does not seek that

classification for the beneficiary and, pursuant to *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971), may not be amended to do so.

This interpretation is consistent with a proposed amendment to the above regulation that was never finalized. Specifically, the proposed rule at 60 Fed. Reg. 29771, 29775 (June 6, 1995) asserts that government agencies "should" be able to file petitions under this classification and proposes to add government agencies to the list of eligible employer. The fact that it was deemed necessary to propose an amendment to the regulation to allow state, local, or Federal government agencies to petition under this classification reinforces the position that the current regulation does not do so. We reiterate that this proposed amendment to add government agencies to the list of eligible employers was not implemented as a final rule. Accordingly, the petitioning entity is not an eligible petitioner in accordance with 8 C.F.R. § 204.5(i)(3)(iii). Based on this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.