



U.S. Citizenship
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FILE:

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Office: NEBRASKA SERVICE CENTER

Date: JUN 15 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an institution of higher medical education. 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 in the United States as a research associate. The director determined that the petitioner had not established that it had offered the beneficiary a permanent job as of the date of filing.

On appeal, the petitioner submits the initial offer of employment, explicitly requested by the director on June 8, 2005. For the reasons discussed below, the petitioner has not overcome the director's basis of denial. Moreover, we find that the petitioner has not established that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

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.

(Emphasis added.) Black's Law Dictionary 1111 (7th ed. 1999) defines "offer" as "the act or an instance of presenting something for acceptance" or "a display of willingness to enter into a contract on specified terms, made in a way that would lead a reasonable person to understand that an acceptance, having been sought, will result in a binding contract." Black's Law Dictionary does not define "offeror" or "offeree." ALM's online law dictionary, available at www.law.com, defines offer as "a specific proposal to enter into an agreement with another. An offer is essential to the formation of an enforceable contract. An offer and acceptance of the offer creates the contract." Significantly, the same dictionary defines offeree as "a person or entity *to whom an offer to enter into a contract is made* by another (the offeror)," and offeror as "a person or entity who makes a specific proposal *to another (the offeree)* to enter into a contract." (Emphasis added.)

In light of the above, we concur with the director that the ordinary meaning of an "offer" requires that it be made to the offeree, not a third party. As such, regulatory language requiring that the offer be made "to the beneficiary" would simply be redundant. Thus, a letter addressed to Citizenship and Immigration Services (CIS) *affirming* the beneficiary's employment is not a job *offer* within the ordinary meaning of that phrase.

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 was a permanent position. Counsel indicated that a job offer was included in the initial submission. None of the initial evidence, however, discusses the job offered. The petitioner did submit a letter from Dr. [REDACTED] of the Finch University of Health Sciences at the petitioner's address indicating he had offered the petitioner a chief research associate position in 2003. This letter is addressed to CIS. This document does not constitute a job offer from the petitioner to the beneficiary. On June 8, 2005, the director requested "a photocopy of the letter signed and dated prior to the petitioner's filing from an administrative hiring authority of the university addressed to the beneficiary providing the precise terms of employment." The director further requested evidence in the form of a contract or school policies demonstrating that the offered position was "permanent" as defined at 8 C.F.R. § 204.5(i)(2).

In response, the petitioner submitted a letter dated after the date of filing from [REDACTED], Director of Human Resources for the petitioner. The letter is addressed "To Whom it May Concern" and provides that the beneficiary's position has no pre-determined termination date and that the beneficiary will be employed as long as funding remains available unless he is removed for misconduct or dereliction of duty.

The director concluded that the letter was not a job offer issued to the beneficiary prior to the date of filing. The director also expressed concern that the beneficiary's job was contingent on funding.

On appeal, the petitioner submits the initial job offer issued to the beneficiary dated March 24, 2004. The letter contains the following language:

Similar to most employers in Illinois, the University employment relationship is at-will. Please note that the right of the employee or the University to terminate the employment relationship at-will is recognized and affirmed as a condition of employment.

The petitioner also submitted a list of faculty employment benefits. The petitioner provides no official materials, such as a policy handbook, confirming that those employed in at-will positions with the petitioner have an expectation of continued employment absent good cause for termination.

As stated above, the regulation at 8 C.F.R. § 204.5(i)(3)(iii) explicitly requires a job offer as part of the initial evidence to support a petition under this classification. As quoted above, the director explicitly requested the job offer letter issued to the beneficiary prior to the date of filing. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the

visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

We recognize that university research positions are typically contingent on continued funding and find that such a contingency is not disqualifying where the petitioner demonstrates an intent to seek future funding and a pattern of funding the position. Nevertheless, the regulations are explicit that a job offer is part of the required initial evidence when seeking to classify an alien pursuant to section 203(b)(1)(B) of the Act. Thus, the director did not err in denying the petition for the lack of such evidence.

In addition, we find that the petitioner has not demonstrated that the beneficiary enjoys international recognition as required for the classification sought. 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 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.

Counsel has never asserted that the beneficiary’s awards can serve to meet this criterion. Rather, counsel references the beneficiary’s awards as “other evidence of international recognition of [the] beneficiary’s ability and contributions.” The regulations relating to the classification sought do not permit the submission of comparable or “other” evidence. Rather, they indicate that evidence of eligibility “shall” consist of evidence relating to at least two of the regulatory criteria. The regulations include an awards criterion specifying which awards can serve as evidence of international recognition. As such, if awards are to serve as evidence of international recognition, they must be major prizes or

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.

awards for outstanding achievement in the academic field. Lesser awards cannot serve to meet a nonspecific criterion not included in the regulations.² Thus, we will evaluate the beneficiary's awards under this criterion.

The petitioner submitted a letter confirming that the beneficiary was the recipient of a travel grant from the European Behavioural Pharmacology Society in 2004. The record is absent evidence of how many conference attendees receive such grants and whether the pool of competitors is open to the most renowned members of the field or limited to those at the beginning of their careers who may have fewer funds to travel to conferences.

The record lacks evidence that this travel award is a major prize or award. As such, 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.

Counsel did not initially assert that the beneficiary meets this criterion, although Dr. [REDACTED] asserts that the beneficiary participated in peer-review for journals such as *Neuropsychopharmacology*. In response to the director's request for additional evidence, counsel asserted for the first time that the beneficiary meets this criterion. At that time, the petitioner submitted a letter from [REDACTED] Editor of *Neuropsychopharmacology*, confirming that the beneficiary "regularly reviews for our journal." The petitioner has not established whether the journal directly requested that the beneficiary review the manuscripts or whether the request was passed on to the beneficiary from his supervisor. Being requested to review an article by one's own supervisor is not evidence of international recognition. Moreover, Mr. [REDACTED] does not assert that the beneficiary had reviewed manuscripts as of the date of filing. We cannot consider any review responsibilities after that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Regardless, 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 journals, or served in an editorial position for a distinguished journal, we cannot conclude that the beneficiary meets this criterion.

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

² If directly relevant to another criterion, awards could bolster the evidence submitted to meet that criterion. For example, a significant award recognizing an alien's scholarly articles could be considered as part of the evidence submitted to meet the scholarly articles criterion at 8 C.F.R. § 204.5(i)(3)(i)(F).

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."

The beneficiary obtained his Ph.D. in 2001 from the University of Malta. The beneficiary then worked as a postdoctoral fellow at Albany Medical College through July 2004, after which he began working as a research associate for the petitioning university. The beneficiary had been working for the petitioner only three months when the petition was filed. The beneficiary has also worked as a lecturer at the Training and Research Institute in Albany. Initially and in response to the director's request for additional evidence, the petitioner submitted several letters from colleagues and others in the field.

Dr. [REDACTED] a professor at Albany Medical College, discusses the beneficiary's work in Malta and at Albany Medical College. In Malta, the beneficiary confirmed that IFN- α -induced anhedonia, one of two compulsory attributes for the diagnosis of a major depressive episode in humans, could be reversed through the use of two antidepressants, desipramine and fluoxetine. Dr. [REDACTED] explains that this work is important because little research had explored the mechanisms of the behavioral effects of interferon administration. Finally, Dr. [REDACTED] asserts that this work resulted in two publications and a conference presentation but the record contains no evidence that the articles or presentation have been widely cited or otherwise influential.

Dr. [REDACTED], a retired professor in Canada who met the beneficiary at a conference in 1997, asserts that the beneficiary uses an electrical technique called voltammetry to measure the amount of a neurotransmitter. Dr. [REDACTED] further asserts that the beneficiary is one of a small group of "internationally recognized experts" in this technique. Other references note that the beneficiary combined this technique with an electrophysiological technique. This office has concluded that exposure to technology is not necessarily a sufficient ground to warrant a national interest waiver of the job offer for advanced degree professionals or aliens of exceptional ability, a lesser classification than the one sought in this matter. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 (Comm. 1998).

In Dr. [REDACTED] laboratory, the beneficiary measured the release of dopamine and assessed the responses dopamine has on brain circuits. Dr. [REDACTED] discusses the importance of this general area of research and predicts that the beneficiary's results "will" have a strong impact on the current understanding of the mechanisms regulating brain circuit activity and have implications for drug addiction and schizophrenia. Dr. [REDACTED] indicates that he and the beneficiary were, as of July 22,

2004, preparing a manuscript that he anticipated would “have an enormous impact in the scientific community.” Predictions of future contributions are insufficient to meet this criterion.

Dr. [REDACTED], Director of the Sidney Albert Training and Research Institute, asserts that she contracted the beneficiary to provide lectures to the staff at the institute. She praises his ability to present the information in a comprehensible fashion to professionals who are not medical researchers. While valuable for the staff, the record does not indicate that these lectures contributed to the beneficiary’s academic field of neurology as a whole.

Dr. [REDACTED] praises the beneficiary’s abilities and concludes that he is a “virtually irreplaceable component of the on-going research in the field.” Dr. [REDACTED] predicts that the beneficiary will contribute to new medications for Parkinson’s disease and schizophrenia. The beneficiary’s work is also “likely” to benefit patients with neurological and psychiatric disorders. Another collaborator at the petitioning university, Dr. [REDACTED], Vice Chair of the petitioner’s Department of Neuroscience, claims generally that the beneficiary has “advanced this medical field significantly and shed light on the mechanisms of interferon-induced depression.” Dr. [REDACTED] however, provides no examples of work influenced by the beneficiary’s results other than to opine that the beneficiary’s work “has tremendous potential to identify novel therapeutic targets” for treating neurological disorders.

Dr. [REDACTED], a professor at the University of Pittsburgh, asserts that he met the beneficiary at a scientific conference and that the beneficiary subsequently presented his work on a visit to Dr. [REDACTED] laboratory. Dr. [REDACTED] indicates that the beneficiary’s presentation was well received and that he has stayed in touch with the beneficiary based on their mutual interests. Dr. [REDACTED] explains that the beneficiary used a unique and innovative approach to study the neural systems thought to be dysfunctional in schizophrenia. While Dr. [REDACTED] concludes that the beneficiary has made original and important contributions, he provides no examples of how the beneficiary’s work, including his presentation for Dr. [REDACTED] laboratory, has influenced the research being conducted in Dr. [REDACTED] laboratory or the work of other researchers.

The remaining letters provide similar information to that discussed above and general assertions of international recognition. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also 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)).

In evaluating the reference letters, we note that letters containing mere assertions of international recognition and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who have applied his work are far more persuasive than letters providing general praise. To be considered a contribution indicative of international recognition in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work. None of the independent experts claim to have been impacted by the beneficiary's work and the petitioner submitted no evidence that the beneficiary has been widely and frequently cited.

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. By publishing and presenting his work the beneficiary, like most researchers, has gained some international exposure. The record does not establish that the beneficiary's work represented an original contribution indicative of international recognition. Thus, 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 had authored eight published articles and abstracts as of the date of filing and had presented his work at two conferences. The beneficiary's subsequent articles, presentations and book chapters cannot be considered as evidence of his eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49.

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. As stated above, the petitioner provides no evidence that his articles have had a notable impact in his field. Specifically, the petitioner submitted no evidence that independent researchers have cited the beneficiary's work.

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.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved.

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.