

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B3



FILE:

LIN 05 115 51186

Office: NEBRASKA SERVICE CENTER

Date: OCT 02 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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 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). The petitioner seeks to employ the beneficiary permanently in the United States as an assistant professor. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in her academic field, as required for classification as an outstanding researcher.

On appeal, counsel submits a brief and new reference letters. For the reasons discussed below, we concur with the director.

At the outset, we acknowledge the assertions by several references that there is a shortage of math education professionals, especially in early education. As stated in a case involving a lesser classification, the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 221. Ultimately, while we do not question the importance of the beneficiary's field or her qualifications for her position, the petitioner has not demonstrated the beneficiary's international recognition in the field.

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 March 7, 2005 to classify the beneficiary as an outstanding researcher in the field of math education. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching and/or research experience in the field as of that date. The beneficiary began teaching in August 2002. The director concluded that the beneficiary had not had full responsibility for the courses taught while a Ph.D. student prior to August 2002 and found that the petitioner had not demonstrated the necessary three years experience. On appeal, counsel asserts that the beneficiary's research experience while a Ph.D. student should be considered. This assertion brings us to the issue of whether the beneficiary's work is recognized within the academic community 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 (July 5, 1991). Initially, counsel asserted that the beneficiary meets four criteria that are not found in the regulation at 8 C.F.R. § 204.5(i)(3)(i). In response to the director's request for additional evidence, counsel asserts that the beneficiary meets five of the six regulatory criteria at 8 C.F.R. § 204.5(i)(3)(i). On appeal, counsel challenges the director's findings regarding three criteria. The criteria follow.

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

It is significant that the *proposed* regulation relating to this classification would have required evidence of a major *international* award. The final rule removed the requirement that the award be "international," but left the word "major." The commentary states: "The word 'international' has been removed in order to accommodate the *possibility* that an alien might be recognized internationally/as outstanding for having received a major award that is not international." (Emphasis added.) 56 Fed. Reg. 60897-01, 60899 (November 29, 1991.)

Thus, the standard for this criterion is very high. The rule recognizes only the "possibility" that a *major* award that is not international would qualify. Significantly, even lesser international awards cannot serve to meet this criterion given the continued use of the word "major" in the final rule. *Cf.* 8 C.F.R. § 204.5(h)(3)(i) (allowing for "lesser" nationally or internationally recognized awards for a separate classification than the one sought in this matter).

Counsel did not address this criterion in the initial brief. In response to the director's request for additional evidence, counsel lists research awards from the beneficiary's employer or school. The awards themselves are not part of the record. The director concluded that the petitioner had not established the significance of the research awards. On appeal, counsel does not challenge the director's conclusion that the beneficiary does not meet this criterion. We concur with the director and further note that the record lacks the awards themselves. The beneficiary's self-serving curriculum vitae and counsel's assertions are insufficient. 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)). 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).

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.

Counsel initially asserted that the beneficiary is a member of “professional associations.” The regulation at 8 C.F.R. § 204.5(i)(3)(i)(B), however, does not simply require membership in professional associations. Rather, the associations must require outstanding achievements of their members. The petitioner initially submitted the beneficiary’s membership card for the National Council of Teachers of Mathematics (NCTM). The beneficiary listed other memberships, but asserted that the associations did not issue membership cards. It is the petitioner’s burden to demonstrate the beneficiary’s eligibility. The petitioner did not submit letters from the association or other types of evidence of membership. Thus, the only membership established is the beneficiary’s membership in NCTM.

In response to the director’s request for additional evidence, the petitioner submitted evidence of the membership requirements for the International Group for the Psychology of Mathematics Education (PME), which is open to persons involved in active research in furtherance of the group’s aims.

The director concluded that the petitioner had not established that the associations of which the beneficiary is a member require outstanding achievements of their members. Counsel does not challenge this conclusion on appeal and we concur with the director. We further note that the petitioner did not submit evidence of all of the memberships claimed.

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.

Neither counsel nor the petitioner has ever asserted that the beneficiary meets this criterion and the record contains no evidence relating to it.

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 was a reviewer for the PME-NA 2004 Conference in Toronto in 2004. The director concluded that the petitioner had not established the significance of this responsibility. On appeal, counsel submits a letter from [REDACTED], Editor-in-Chief of the Proceedings of the 2005 Annual Meeting of PME-NA. [REDACTED] asserts that the beneficiary was selected as a reviewer of the Proceedings “from over one hundred fifty volunteers.” [REDACTED] does not, however, give the total number of reviewers.

We cannot ignore that scientific journals and published conference proceedings 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 her field, such as evidence that she 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.

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 petitioner submitted a letter from the beneficiary's doctoral dissertation advisor at the University of Missouri, [REDACTED] Professor [REDACTED] asserts that the beneficiary was a member of a research team that "implemented professional development projects for elementary classroom teachers." Professor [REDACTED] asserts that the beneficiary made substantial contributions to the project and that her dissertation "was the primary vehicle for disseminating results from one of these projects." Professor [REDACTED] does not explain how these results have impacted the field of math education.

The petitioner also submitted letters from the beneficiary's faculty and student collaborators from the University of Missouri. While Associate Professor [REDACTED] asserts that the beneficiary has performed research in "topics of interest in math education throughout the United States," she does not explain how the beneficiary's work has influenced the field. [REDACTED] a former doctoral student at the University of Missouri, explains what the beneficiary learned while at the University of Missouri. He continues:

Her research agenda has the potential to change the way elementary teachers think about their students' mathematical abilities. Moreover, it also offers a fresh model of how professional development of teachers could and should be done in every American Elementary School.

Dr. [REDACTED], however, does not provide any examples of the beneficiary's work being implemented or otherwise explain how her work has already influenced the field. Professor [REDACTED] of the University of Missouri notes that the beneficiary has published and presented her findings. Professor [REDACTED] of the same university provides similar information. The record, however, contains no evidence that the beneficiary's publications or presentations have been heavily cited, that they are assigned reading in math education courses in and outside of the United States or that they have served of the basis of math curricula in various locales. Thus, the petitioner has not demonstrated the impact of these publications and presentations.

Department Chair of the petitioner's Department of Mathematics, asserts that the beneficiary's work addresses better teaching methods and the influence of teachers among themselves. Dr. [REDACTED] does not, however, provide examples of the beneficiary's work being applied. Rather, he predicts that it "will have a substantial impact on the nation's ability to train teachers of mathematics."

Professor [REDACTED] of the petitioning institution, lists several contributions by the beneficiary and explains their significance. First, he asserts that she develops, revises and teaches "innovative mathematics courses for elementary teachers" and examines the reasoning and understanding by the teachers to improve the courses. He provides no examples, however, of school districts adopting curricula based on the beneficiary's courses. Second, Professor [REDACTED] asserts that the beneficiary's work is relevant to providing professional development for current teachers. Once again, however, Professor [REDACTED] provides no examples of school districts applying the beneficiary's ideas in offering professional development based on the beneficiary's theories or assigning her articles as required reading. Third, Professor [REDACTED] asserts that the beneficiary's articles provide important knowledge to teachers and predicts that this work "has the potential to significantly impact research on student learning in terms of reasoning and justification." As with his other claims of significance, Professor [REDACTED] fails to support his conclusion with examples of the beneficiary's publications being cited or assigned as required reading. Fourth, Professor [REDACTED] discusses the beneficiary's analysis of varying state curricula. While he asserts that this work has "strong potential for future research as well as classroom practices and related policies in mathematics education," he does not assert that her work has already had this impact. Finally, Professor Hirsch discusses the beneficiary's international collaborations but does not explain how these collaborations have already proved influential in the field.

Dr. [REDACTED], an associate professor at the petitioning university, asserts that he is co-director of the Center for the Study of Mathematics Curriculum and that the beneficiary has begun a project for the center. Dr. [REDACTED] does not assert that this work has already proved influential in the field.

Dr. [REDACTED] an assistant professor at the petitioning university, asserts that the beneficiary collaborated with colleagues at "multiple campuses" to develop and pilot innovative math curriculum for prospective elementary math teachers and that this program "reaches over one thousand prospective teachers a year." Dr. [REDACTED] does not indicate that this program has garnered international or even national attention.

All of the above letters are from the beneficiary's immediate circle of colleagues. While such letters are useful in explaining the details of the beneficiary's research, they cannot, by themselves, establish any international recognition. On appeal, the petitioner submits letters from independent references.

Dr. [REDACTED] an assistant professor at The Ohio State University, explains that he met the beneficiary at a conference and that he and the beneficiary have communicated about issues since that time. Dr. [REDACTED] asserts that the beneficiary's work has been recognized nationally and internationally based on her publications and presentations. As stated above, however, no persuasive evidence has

been submitted as to the impact of these publications and presentations. Specifically, the record lacks evidence that her work has been cited or is widely assigned as required reading for math educators. Dr. and Dr. [REDACTED] Co-Director of the Center for the Study of Mathematics Curriculum and Director of the Department of Mathematics at Michigan State University, discuss pending publication of the beneficiary's work in book form. These letters do not establish the beneficiary's international recognition as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

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. The record does not establish that the beneficiary's work garnered 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 10 articles published in journals or conference proceeding compilations as of the date of filing. The director concluded that without evidence that the beneficiary's work had been cited, it could not be concluded that the beneficiary's published work had garnered international attention. On appeal, counsel asserts that the "field of mathematics education does not make a practice of tracking the citations of one's publications." Counsel notes that the beneficiary's references attest to the beneficiary's outstanding publication record.

We concur with the director that the evidence submitted to meet this criterion must be indicative of or consistent with not only international *exposure*, but international *recognition*. 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. Counsel does not support her assertion regarding the lack of citations in the beneficiary's field with evidence that the top math education journals have low average citation rates. Moreover, the record does not contain other evidence of the impact of the beneficiary's articles, such as syllabi for math education courses in and outside of the United States listing the beneficiary's work as required reading or evidence that her published work has served as the basis for proposed standards in various locales.

In light of the above, 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 her collaborators, employers, and mentors, while securing some degree of international exposure for her work. The record, however, stops short of elevating the beneficiary to an international

reputation as an outstanding researcher or professor. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

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.