

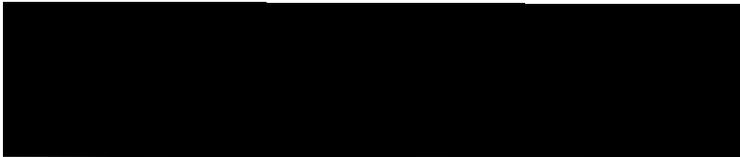
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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

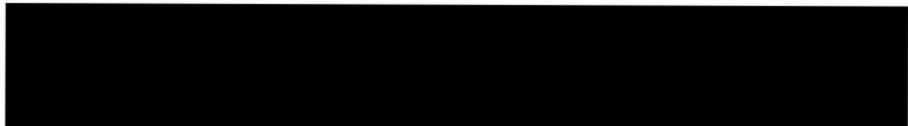
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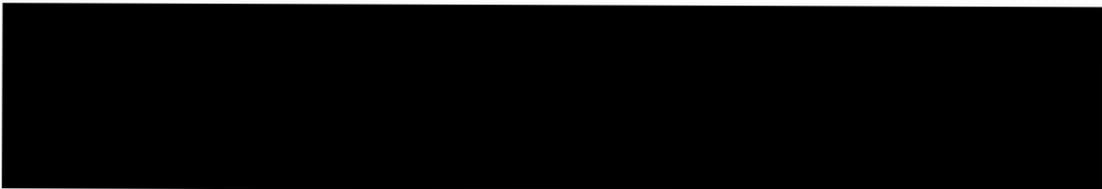
Petitioner:

Beneficiary:



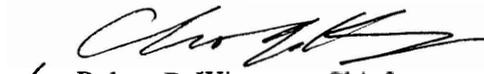
PETITION: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

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.


for 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 sustained and the petition will be approved.

The petitioner is a semiconductor manufacturer. 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 development engineer. The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for the category of outstanding professor or researcher and did not have the necessary three years of experience.

On appeal, counsel submits a brief and additional evidence, most of which was already part of the record of proceeding. While not all of counsel's assertions are persuasive, we find that the director did not give sufficient weight to the beneficiary's publication record. Moreover, while the petitioner could have provided more comprehensive documentation of the beneficiary's more than three years of experience, the director failed to consider all of the evidence that was submitted.

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 current or former employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien . . .

This petition was filed on August 28, 2006, to classify the beneficiary as an outstanding researcher in the field of electrical engineering. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in this field as of that date. The beneficiary received his Ph.D. in the applied sciences from Katholieke Universiteit Leuven in Belgium on May 31, 1999. The beneficiary indicates on his curriculum vitae that he has worked in research consistently since that time, which would amount to seven years. Inexplicably, the petitioner does not rely on this postdoctoral experience and has not submitted the required evidence to document this experience, letters from those employers affirming the experience. Instead, the petitioner relies on the beneficiary's pre-doctoral experience with Samsung and the beneficiary's experience with the Interuniversity Microelectronics Center (IMEC) in Belgium, gained mostly while the beneficiary pursued his Ph.D. The petitioner has documented the beneficiary's employment for Samsung from 1988 through 1992 and his experience with IMEC from 1994 through 1999. The beneficiary also had 23 months of experience with the petitioner as of the date of filing.

The director considered only the beneficiary's employment with IMEC and concluded that, because the work was conducted while the beneficiary was pursuing a degree and had not been demonstrated as outstanding, it could not be considered. Once again, rather than document the beneficiary's seven years of purported research experience after receiving his Ph.D., counsel focuses on the beneficiary's experience with Samsung and IMEC, asserting that the beneficiary's work for IMEC was outstanding.

Whether the beneficiary is recognized as outstanding and whether he has the necessary experience are separate inquiries unless the experience is gained while pursuing an advanced degree. Thus, the director's conclusion that the beneficiary lacks the necessary three years of experience is understandable given the petitioner's repeated failure to properly document the beneficiary's seven years of postdoctoral experience. That said, the petitioner did document that the beneficiary had 23

months of postdoctoral experience with the petitioner and that the beneficiary had several years of pre-doctoral experience and experience while pursuing his Ph.D. His most cited article was authored while a Ph.D. student and his Ph.D. work is included in the work discussed by the beneficiary's references. Thus, we withdraw the director's finding that the petitioner has not demonstrated that the beneficiary has the necessary three years of experience.

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 beneficiary 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. *Employment Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991)(enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)). The director concluded that the beneficiary had made original scientific or scholarly research contributions to his academic field pursuant to the regulation at 8 C.F.R. § 204.5(i)(3)(i)(E). Thus, while not all of counsel's assertions on appeal are persuasive, the petitioner need only demonstrate that the beneficiary meets one more criterion. We find that the petitioner has also demonstrated that the beneficiary has authored scholarly books or articles (in scholarly journals with international circulation) in the academic field pursuant to the regulation at 8 C.F.R. § 204.5(i)(3)(i)(F).

The petitioner submitted evidence that the beneficiary has authored eight articles, including an invited paper, and had presented his work at several conferences. While we concur with the director that the international exposure inherent to publication is not necessarily indicative of international recognition as outstanding, it remains that the petitioner submitted evidence that at least two of the beneficiary's articles have been well cited.

Upon careful consideration of the evidence offered with the initial petition, and later on appeal, we conclude that the petitioner has satisfactorily established that the beneficiary enjoys international recognition as an outstanding researcher in electrical engineering. Specifically, the record indicates that the beneficiary meets two of the six criteria listed at 8 C.F.R. 204.5(i)(3)(i). Based on the evidence submitted, it is concluded that the petitioner has established that the beneficiary qualifies under section 203(b)(1)(B) of the Act as an outstanding researcher.

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 met that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.