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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **AUG 30 2007**
LIN 04 253 51624

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

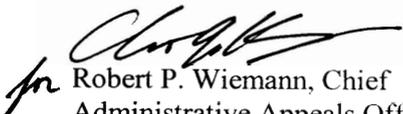
PETITION: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to
Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

ON BEHALF OF PETITIONER:



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 and reaffirmed the decision on motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a pharmaceuticals and healthcare 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 principal scientist. The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding professor or researcher.

On appeal, counsel submits a brief. Some of counsel's assertions are not persuasive. For example, the director's assertion that the petitioner must demonstrate the beneficiary's eligibility as of the filing date of the petition is legally sound. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Counsel cites no authority to support his assertion that this principle should not apply in cases involving procedural delays. Moreover, we also find much of the director's analysis of the evidence to be legally and factually sound. Nevertheless, the petitioner need only demonstrate that the beneficiary meets two of the six regulatory criteria. For the reasons discussed below, we find that the director failed to give sufficient weight to the evidence submitted to meet the criteria set forth at 8 C.F.R. § 204.5(i)(3)(i)(D),(F) (relating to judging the work of others and scholarly articles).

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.

The sole issue to be considered in this proceeding is whether the beneficiary's scientific accomplishments are internationally recognized as those of an outstanding researcher in his field. 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." 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 petitioner must establish that the beneficiary meets at least two of the six criteria stated at 8 C.F.R. § 204.5(i)(3)(i). The following criteria are met:

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 petitioner initially submitted evidence that the beneficiary serves as a member of the editorial board for *The International Journal of Pharmacy Education* and has reviewed manuscripts and abstracts for other journals and conferences, including as the Abstract Screening Chair for the 2002 annual meeting of the American Association of Pharmaceutical Scientists.

The director acknowledged that the beneficiary serves as a member of the editorial board for *The International Journal of Pharmacy Education* but concluded that peer review is routine in the field. On appeal, counsel asserts that peer review should serve to meet this regulatory criterion.

The evidence submitted to meet a given criterion must be indicative of or at least consistent with international recognition as outstanding if that statutory standard is to have any meaning. Moreover, as stated above, the regulatory criteria are to be used in *evaluating* whether an alien enjoys international recognition as outstanding; evidence that simply relates to a given criterion is not presumptive evidence of eligibility.

We concur with the director that peer-review is routine in the field and, thus, usually has limited value in demonstrating the reviewer's international recognition as outstanding. Nevertheless, the director's attempt to equate the beneficiary's editorial position with a peer-reviewer is not persuasive. [REDACTED] Editor of *The International Journal of Pharmacy Education*, expressly states that the beneficiary provides policy guidance in addition to reviewing manuscripts. We are persuaded that [REDACTED] has established that the beneficiary is a regular member of the editorial board, and not simply one of the journal's numerous peer-reviewers.

In light of the above, we are satisfied 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 director acknowledged that the beneficiary had authored several articles and book chapters but concluded that the petitioner had not established the significance of the beneficiary's publication record. On appeal, counsel correctly notes that the director failed to consider the citation reports submitted initially. The record contains evidence that the beneficiary has been well cited. We are satisfied that the beneficiary's publication record is sufficiently indicative of international recognition to meet this criterion.

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 outstanding within the pharmaceutical research field. The petitioner has overcome the objections set forth in the director's notice of denial, and thereby removed every stated obstacle to the approval of the petition.

The record indicates that the beneficiary meets at least 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.