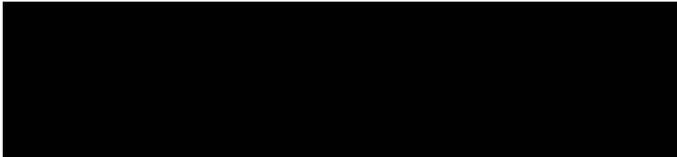


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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUL 20 2007  
LIN 05 044 50694

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.

*Mauna Deardorff*  
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 a university. 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, counsel submits a brief and additional evidence. The petitioner has not submitted the initial evidence required in this matter, the job offer from the petitioner to the beneficiary. Beyond the decision of the director, the record, supported mostly by letters from the beneficiary's immediate circle of colleagues and a publication record that is not consistent with international recognition, does not establish that the beneficiary is recognized internationally as outstanding in his academic 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.

### **Job Offer**

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 (7<sup>th</sup> 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." The online law dictionary by American Lawyer Media (ALM), available at [www.law.com](http://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. The petitioner submitted a letter from [REDACTED] an associate professor addressed to Citizenship and Immigration Services (CIS), purporting to “confirm” the beneficiary’s employment as a “postdoctoral research associate.” [REDACTED] asserts that the employment is “without specific end date and is one in which there is a good expectation of continuing employment.” This document does not constitute a job offer from the petitioner to the beneficiary. On May 26, 2005, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary.

In response, the petitioner submitted a second letter from [REDACTED] once again confirming the beneficiary’s employment as a “research associate” and asserting that the petitioner “will be promoted to Senior Research Scientist as of July 1, 2005.” [REDACTED] expresses his “understanding that it is anticipated that his work will continue at [the petitioning institution] based on performance, funding, and mutual agreement.”

The director determined that the petitioner had failed to submit the required initial evidence in this matter, the job offer.

On appeal, counsel does not expressly contest the director’s finding that a petition filed under this classification must be supported by a job offer and that the evidence submitted previously does not constitute a job offer. Rather, counsel asserts that the two new letters submitted on appeal establish that the beneficiary holds a permanent position. The petitioner submits a letter from [REDACTED] Chair of the Department of Biochemistry and Molecular Biology at the petitioning institution confirming that the beneficiary is employed as a research scientist, that the grant for this research has been continuously renewed since 1980, that the beneficiary’s employment is without an end date and that “there is a good expectation for continuing employment based on his positive performance.” Dr. [REDACTED] Vice Chancellor for Academic Affairs and Dean of Graduate Studies, asserts that the beneficiary began working for the petitioner in 1993 as a research associate and was subsequently promoted to the position of senior research scientist. [REDACTED] further asserts that this is “professional position,” is without a specific end date and is anticipated to continue indefinitely based on the beneficiary’s positive performance. [REDACTED] notes that the beneficiary’s laboratory has a track record of continued funding and that should the beneficiary receive permanent residence, “his employment will continue subject to satisfactory performance.”

Both of the new letters postdate the filing of the petition and neither letter constitutes an offer of employment from the petitioner to the beneficiary. The petitioner has not submitted the primary

required initial evidence, the original job offer predating the filing date of the petition. Confirmations after the fact are not evidence of eligibility as of the date of filing. *See generally* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). The petitioner has not complied with the regulation at 8 C.F.R. § 103.2(b)(2) regarding the submission of secondary evidence. Specifically, the petitioner has not demonstrated that the original job offer does not exist or is unavailable. While we do not question the credibility of those who have confirmed the beneficiary's employment, counsel has not sufficiently explained why we should accept attestations about the terms and conditions in a document in lieu of the document itself. Without the initial job offer, we cannot consider the petitioner's explanations about the terms and conditions set forth in that job offer.

### **International Recognition**

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 December 1, 2004 to classify the beneficiary as an outstanding researcher in the field of cell biology. 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. 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.<sup>1</sup>

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<sup>1</sup> 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.

*Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members*

The petitioner submitted evidence of his membership in the New York Academy of Science and the Moscow branch of the Society of Biochemistry and Molecular Biology of Russia. The petitioner failed to submit evidence of the membership requirements for these associations. Thus, the record does not reflect that these organizations require outstanding achievements of their 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*

The petitioner submitted evidence that his articles have been moderately cited. Articles which cite the beneficiary's work are primarily about the author's own work, not the beneficiary. As such, they cannot be considered published material about the beneficiary.

*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 relies on letters from the beneficiary's colleagues and the beneficiary's publication record to meet this criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of international recognition. 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 widespread 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 were previously aware of the beneficiary through his reputation and who have applied his work are the most persuasive.

Before we address the specific information provided in the letters, it is notable that some of the beneficiary's references qualify their accolades of the beneficiary. [REDACTED], a professor at the University of Missouri-Kansas City, asserts that the beneficiary has "an impressive publication record for a young scientist." (Emphasis added.) [REDACTED] makes the same assertion. [REDACTED] a professor at the petitioning institution, acknowledges that the beneficiary has produced "some important results" and speculates that the beneficiary "can make a significant contribution" to his area of research. [REDACTED], a professor at Moscow State University, states:

It is clear that *as [the beneficiary] develops into an independent scientist* [h]e will tackle new problems with the same level of expertise, creativity and productivity.

(Emphasis added.) [REDACTED] then states that the beneficiary ranks "among the leading *young* specialists in biochemistry." (Emphasis added.) It can be expected that a researcher who is recognized internationally as outstanding would not be described in such qualified terms.

Other letters provide less qualified praise but the specifics provided are not persuasive. [REDACTED] asserts that the beneficiary joined [REDACTED] laboratory in 2003. [REDACTED] asserts that the beneficiary discovered that the packaging protein Muclin directly binds to several of the digestive enzymes in the pancreas. [REDACTED] predicts that these results will allow the research team to be able to determine the nature of the molecular interactions, which will "open a new area of research of detailed understanding of digestive enzyme storage." [REDACTED] asserts that these results are significant and important. Neither reference explains how this work is already impacting the field. The record does not suggest that this work has been published or otherwise widely disseminated in the field. Thus, it is difficult to gauge the reaction in the wider cell biology community to this work.

[REDACTED] a professor at the petitioning institution, discusses the beneficiary's previous work at the University of Missouri – Kansas City, resulting in a series of articles addressing the mechanism of formation of protein complexes. Specifically, the beneficiary illuminated the role of the GroEL chaperonin, a protein dedicated to the correct folding and assembling of other proteins. The beneficiary also explained the interactions of two subunits of the important human enzyme the pyruvate dehydrogenase complex. [REDACTED] notes that this work has been published and cited. Similarly, [REDACTED], another professor at the petitioning institution, asserts that the beneficiary's recognition is apparent from his citation record. Counsel initially asserted that the beneficiary's work has "been cited over one hundred times," stating more specifically that the beneficiary had been cited 112 times. The record does not support counsel's assertion. Specifically, the Web of Science printouts contained in the record reflect that individual articles by the beneficiary have been cited four, six, two, six, and two times. While [REDACTED] asserts that the average research article is only cited once, we are not persuaded that between two and six citations per article is evidence that that the beneficiary's

research is widely recognized as outstanding.

The petitioner also submits letters from the beneficiary's former colleagues in Russia. [REDACTED], a professor at Moscow State University, discusses the beneficiary's work in her laboratory as follows:

[The beneficiary] contributed in a creative and useful way to the research in which he was involved. In the course of the study on GroEL/D-glyceraldehyde-3-phosphate dehydrogenase interactions, he demonstrated for the first time the capability of the chaperonin of binding not only unfolded monomeric, but also quasi-native dimeric species of the protein. This discovery is important for our understanding of the role possibly played by GroEL in the formation of [the] oligomeric protein structure.

[REDACTED] asserts that she has continued to follow his work in the United States. [REDACTED] another professor at Moscow State University, asserts that the beneficiary was the first to use covalently immobilized proteins to study GroE-protein interactions because of their complexity. The beneficiary improved the chemical synthesis of BrCN and developed a new method for purification, which involved a great deal of time and effort. While [REDACTED] asserts that it is "difficult to overestimate the importance of this work for understanding the basic mechanisms of heat-shock proteins function in a cell as well as their role in folding different enzymes," [REDACTED] does not explain how this work has impacted the field. For example, [REDACTED] does not identify subsequent research that was made possible due to the beneficiary's work.

[REDACTED] the beneficiary's Ph.D. advisor, asserts that the beneficiary's Ph.D. research "brought the new concept [sic] and expanded the field of protein folding." [REDACTED] asserts that the beneficiary received a Young Scientist Award from Moscow State University for excellent performance during his Ph.D. program. While [REDACTED] asserts that this award "distinguishes him from others with similar education and background," it does not establish his recognition beyond Moscow State University, where he received his Ph.D.

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 has garnered international recognition.

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.*

The petitioner submitted evidence that the beneficiary has authored six published articles and several abstracts, including three published in the proceedings of a symposium. 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 discussed above, the beneficiary's citation record is minimal. Thus, we are not persuaded that his publication record is indicative of international recognition in the field. We note that international exposure is not necessarily indicative of international recognition. Even if we were to conclude that the beneficiary meets this criterion, which we do not, the beneficiary falls far short of meeting any other criterion. As stated above, an alien must meet at least two criteria to be eligible for the classification sought.

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.

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.