



U.S. Citizenship
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Services

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FILE: [Redacted]
LIN 06 245 50216

Office: NEBRASKA SERVICE CENTER

Date: JUN 06 2007

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 sustained and the petition will be approved.

The petitioner engages in biotechnology and pharmaceutical research. 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). According to the petition, the petitioner seeks to employ the beneficiary in the United States as a senior scientist. The director determined that the petitioner had not established that it had offered the beneficiary a permanent job as of the date of filing or that the beneficiary was internationally recognized as outstanding in the field.

On appeal, counsel submits a brief and additional evidence. While not all of counsel's assertions are persuasive, we find that the new evidence overcomes the director's valid concerns.

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." The online law dictionary by American Lawyer Media (ALM), 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. The petitioner submitted a letter from [REDACTED] Senior HRIS/Rewards Analyst, Human Resources for the petitioner, addressed to Citizenship and Immigration Services (CIS), asserting that the petitioner was offering the beneficiary a full-time regular position as a Senior Scientist. This document does not constitute a job offer from the petitioner to the beneficiary. On October 11, 2006, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary.

In response, the petitioner submitted a letter dated October 12, 2006 from the petitioner to the beneficiary offering her the Senior Scientist position. The director concluded that this letter postdated the filing of the petition and, thus, could not serve as evidence of a qualifying job offer as of that date.

On appeal, counsel asserts that the petition itself is evidence of the petitioner's "intent" to offer the beneficiary full-time employment and notes that the petitioner initially submitted the letter from [REDACTED] addressed to the director. Counsel further asserts that the job offer dated October 12, 2006 was actually extended to the beneficiary in July 2006, before the petition was filed, but was reprinted in response to the director's request. Counsel asserts that the computer redated the letter.

The regulation at 8 C.F.R. § 204.5(i)(3)(iii) expressly requires the submission of a job offer. Such language would not be necessary if the filing of the petition itself constituted sufficient evidence of a permanent job offer. Moreover, as stated above, a letter addressed to a third party is not a job offer. Finally, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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). The petitioner did not submit its own explanation of the October 12, 2006 date on the job offer letter submitted in response to the director's request for additional evidence.

Nevertheless, on appeal, the petitioner submits its 2003 job offer issued to the beneficiary. The offer is for a Scientist I position. The letter does not suggest that the job has a specific termination date.

In promulgating the final regulation, the Immigration and Naturalization Services, now CIS, explained in its commentary to the final rule that research positions "*having no fixed term* and in which the employee will *ordinarily* have an *expectation* of permanent employment" are comparable to tenure or tenure-track positions. (Emphasis added.) 56 Fed. Reg. 60867, 60899 (November 29, 1991). The petitioner has employed the beneficiary since March 2003 under a contract with no specific termination date and has recently promoted the beneficiary. We are persuaded that the beneficiary enjoyed a reasonable expectation of permanent employment as of the date of filing.

Next, we address the issue of whether the petitioner has demonstrated that the beneficiary is recognized internationally as outstanding. 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.

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. 56 Fed. Reg. 30703, 30705 (July 5, 1991). The director concluded that the beneficiary does meet the regulatory criterion relating to authorship of scholarly articles set forth at 8 C.F.R. § 204.5(i)(3)(i)(F). **Thus, the petitioner need only demonstrate on appeal that the beneficiary meets one additional requirement.**

On appeal, counsel asserts that the beneficiary meets all of the regulatory criteria. Not all of counsel’s assertions are equally persuasive. Nevertheless, we are persuaded that the petitioner has now established that the beneficiary meets the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(E), which requires “evidence of the alien’s original scientific or scholarly research contributions to the academic field.”

Obviously, the petitioner cannot demonstrate that the beneficiary satisfies 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.”

In a similar vein, the very existence of a patent does not show that the beneficiary’s invention is more significant than those of others in her field. To establish the significance of the beneficiary’s work, we turn to experts in her field, whose letters we discuss below, and the evidence supporting their opinions.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of international recognition. Citizenship and Immigration Services (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 were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with international recognition should be able to produce unsolicited materials reflecting that acclaim.

The evidence relating to this criterion initially included the beneficiary's publications, a self-serving list of citations and letters from the beneficiary's colleagues. The director reasonably concluded that this evidence did not demonstrate that the beneficiary had received international recognition for her contributions. On appeal, the petitioner submits letters from independent researchers who have applied on the beneficiary's techniques and some of the claimed citations of the beneficiary's work.

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)). Thus, the petitioner's initial list of 97 articles and current list of 102 articles that allegedly cite the beneficiary's work are not persuasive evidence. While the petitioner's claims would be dramatically bolstered by the inclusion of a citation index confirming the 97 citations that allegedly predate the filing of the petition, the new evidence submitted, together with the evidence already submitted, serves to establish that the beneficiary meets this criterion.

The beneficiary received her Ph.D. at the University of Toledo in 2001. The beneficiary then worked as a postdoctoral scientist at ██████████ in Greenfield, Indiana. As of the date of filing, the beneficiary was employed with the petitioner, located in Massachusetts.

the beneficiary's research advisor at the University of Toledo, discusses the beneficiary's dissertation research there. [REDACTED] explains that the beneficiary developed two biocatalytic electrochemical sensors. Specifically, the beneficiary developed and miniaturized a device that senses thiol molecules, important biomarkers for a variety of human diseases. The beneficiary also developed a second-generation sensor/detector for the neurotransmitter acetylcholine and its metabolic precursor that greatly enhanced the stability of the sensor. [REDACTED] asserts that the second sensor was essential to the laboratory's research efforts relating to neurotransmitters and neurodegenerative diseases. [REDACTED] asserts that the beneficiary's three articles on sensors have been cited 52 times. More persuasive evidence of this number of citations, however, would be a citation index. Finally, the beneficiary participated in research directed towards the development of strategies for the separation of enantiomeric drug candidates by capillary electrophoresis. This technology is important as the Food and Drug Administration (FDA) requires any new drug to be composed of only one enantiomer.

[REDACTED], a former senior pathologist, study director and toxicology project leader at [REDACTED] asserts that the beneficiary continued her work with enantiomer separation at [REDACTED] to develop a chiral separation method for the company's antidepressant, Prozac. Her methods were "more robust, flexible and efficient, as well as more economically and environmentally friendly in the consumption of materials than conventional chiral separation methods."

the petitioner's Senior Vice President, asserts that the beneficiary developed a water-based, and thus less toxic, formulation of STA-4783, the petitioner's lead anticancer drug currently in clinical trials. The beneficiary has also "discovered a metabolic pathway and elimination mechanism of STA-9090, another anticancer drug in preclinical development stage, by conducting studies in laboratory animals as well as in vitro using cells isolated from human liver."

The only initial letter from an independent source is from [REDACTED] an associate professor at National Taiwan University. [REDACTED] discusses the beneficiary's 1997 publication relating to DNA microarrays. [REDACTED] asserts generally that **this** work has had an impact in the field and has been cited by "many other scientists." [REDACTED] does not indicate that his own work has been impacted and the petitioner did not submit a citation index documenting the citations of the beneficiary's 1997 article.

On appeal, the petitioner submits corroboration of the beneficiary's impact by independent references and through what purports to be a sampling of citations of her work. [REDACTED] an assistant professor at Sungshin Women's University in Korea, asserts that he learned of the beneficiary's work through a search of the literature. He continues that he had "tremendous difficulty separating and quantitating minor byproducts produced during enantioselective synthesis" until applying the beneficiary's discovery in chiral separation using charged cyclodextrin as chiral selectors. A modified version of her methods is now routine in [REDACTED] laboratory.

[REDACTED] a senior researcher at Santen Pharmaceutical Company in Japan, asserts that, after meeting the beneficiary at a meeting in April 2006, he successfully applied the beneficiary's approach, which is now the standard screening platform at Santen.

Beyond these letters, the citations provided for the first time on appeal are noteworthy. For example, the book "Advanced Macromolecular and Supramolecular Materials and Processes," edited by [REDACTED], spends close to a full page to the beneficiary's work with DNA microarrays. A review article prepared by researchers in France addresses only two methods for Amperometric detection, referring to the beneficiary's sensor as "another interesting method." Another review cites the beneficiary's article for "the development of an internal standard method for measurement with covalently linked enzyme-modified microelectrodes [that] has enabled detection of these elusive compounds from synaptosomal preparations." The remaining citations reflect a reliance on the beneficiary's methods.

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

The record now 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, including the documents submitted on appeal, 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.