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U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: MAR 05 2007  
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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:  
[REDACTED]

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.

2 *Robert P. Wiemann*  
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 pharmaceutical manufacturing 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 research scientist. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

On appeal, counsel submits a brief and a copy of documents already a part of the record of proceeding. For the reasons discussed below, we uphold the director's decision. In general, while the record is supported by letters from esteemed members of the beneficiary's field, their general accolades are not supported by more objective evidence of international recognition. While their opinions have been given due consideration and we do not doubt the authors' sincerity or expertise, the remaining evidence is simply not consistent with the beneficiary's claimed international recognition as outstanding, the statutory standard for the classification sought.

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 September 3, 2005 to classify the beneficiary as an outstanding researcher in the field of polymer science and engineering. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in this 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 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. 56 Fed. Reg. 30703, 30705 (July 5, 1991). The petitioner claims the beneficiary has satisfied the following criteria.<sup>1</sup>

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

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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.

The petitioner submitted evidence of the beneficiary's membership in the Society for Plastics Engineers (PSE) and the American Chemical Society (ACS). The materials from these organizations, submitted by the petitioner, reflect that PSE requires a combination of education and experience amounting to six "credits." The list of credits reveals that a Ph.D. alone equals six credits. Thus, PSE requires no more than a Ph.D. for membership. ACS membership is also open to those with an acceptable combination of education and experience, including as little as a bachelor's degree in a chemical science certified to ACS.

On appeal, counsel does not challenge the director's conclusion that these organizations do not require outstanding achievements of their general membership. We concur with the director's analysis and conclusion.

*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 submitted a letter from Dr. [REDACTED] a member of the beneficiary's thesis committee at the University of Massachusetts, Amherst, asserting that the beneficiary has refereed articles for the *Polymer Composites Journal* and the *Polymer Engineering & Science Journal*. Dr. [REDACTED] is an editor for both journals. Dr. [REDACTED] asserts that both journals are internationally circulated, enjoy a "strong reputation" and are "strictly refereed by the scientific community." Dr. [REDACTED] further asserts that the beneficiary "has made valuable and significant scientific contribution[s] to these fields through his internationally recognized research, which qualifies him as an unquestionable choice of referee." In a separate letter, Dr. [REDACTED] bases his conclusion that the beneficiary has an international reputation on the fact that he has presented his work at international conferences.

The director noted that peer review is routine in the field and that Dr. [REDACTED] is a close colleague and concluded that the petitioner had not established that the beneficiary was selected for these responsibilities based on his international recognition.

On appeal, counsel reiterates the statements of Dr. [REDACTED] and notes that the court in *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994), held that 8 C.F.R. § 204.5(h)(3)(iv), a regulation relating to a different classification than the one sought in this matter, does not require evidence that participating as a judge was the result of having extraordinary ability. *Id.* at 1231.

In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Regardless, we do not find it violates the reasoning in *Buletini*, 860 F. Supp. at 1231, to examine the evidence submitted as to whether it is indicative of or consistent with international recognition. The court in *Buletini* was concerned that an alien would need to first demonstrate “extraordinary ability” in order to meet the criterion set forth in the regulation at 8 C.F.R. § 204.5(h)(3)(iv). We are not following this “circular exercise” that troubled the court. Rather, we are looking at the type of review responsibilities inherent to the field and what review responsibilities might be indicative of or at least consistent with international recognition.

While we do not question Dr. ██████ sincerity, a simple declaration that the beneficiary is internationally recognized is insufficient. The evidence supporting that declaration must be consistent with it. International recognition, by definition, requires recognition beyond one’s own thesis committee members. Dr. ██████ does not suggest that an independent editorial committee reviews the credentials of every reviewer for these two journals. We concur with the director that being requested to review an article by one’s own advisor is not indicative of international recognition.

Moreover, we cannot ignore that scientific journals 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. Dr. ██████ does not provide the number of referees for either journal. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has received independent requests from a substantial number of journals from editors with whom he has no connection or, like Dr. ██████ 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.*

The director stated that the petitioner cannot demonstrate that the beneficiary meets 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.

On appeal, counsel asserts that the plain language of the regulation requires only that the research contributions be original. As stated above, eligible aliens should stand apart in the academic community through eminence and distinction based on international recognition. The criteria are to be used in evaluating whether a researcher is deemed outstanding. 56 Fed. Reg. 30703, 30705 (July 5, 1991). We cannot ignore that it is inherent to the field of research and development to pursue original research and innovations. Interpreting the regulation at 8 C.F.R. § 204.5(i)(3)(i)(E) as inquiring *only* whether the beneficiary’s research is technically “original” would imply that most

research is "unoriginal." Such an approach is meaningless as a tool for evaluating the extent of the beneficiary's recognition in the field.

In a similar vein, the very existence of an invention disclosure does not show that the beneficiary's invention is more significant than those of others in his field. Significantly, in a case involving a lesser classification, this office stated that a patent is not necessarily evidence of even a degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7; (Comm. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* In this instance, while the beneficiary and his advisor, Dr. [REDACTED] filed a Uniform Invention Disclosure Form with the University of Massachusetts, Amherst, there is no confirmation from the relevant office that the university then proceeded to file a patent application for this invention or that any company has expressed any interest in licensing the innovation.

The beneficiary received his undergraduate degree from Fudan University. He then attended Bowling Green State University in Ohio before receiving his Ph.D. from the University of Massachusetts, Amherst. As of the date of filing, the beneficiary was working for the petitioner as a research scientist.

The petitioner submitted several reference letters in support of this criterion. 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 beneficiary 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 beneficiary and are merely responding to a solicitation to review the beneficiary'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 recognition.

Dr. [REDACTED] discusses the beneficiary's work at the University of Massachusetts, Amherst. There, the beneficiary focused on exploring an innovative method to produce high performance matrix-free fiber-reinforced polymeric composites. Dr. [REDACTED] explains:

[The beneficiary] developed a novel process called high-temperature high-pressure sintering and produced Spectra® fiber-reinforced model ballistic shields, and other high strength high impact resistant matrix-free composites with double curvatures, which disproved a prominent researcher's claim that Spectra® fiber cannot be directly molded and opened our eyes to new frontiers in this field. [The beneficiary] performed the first-ever complete characterization of this type of composites using various thermal, mechanical, structural and morphological methods: WAXD, SEM, DSC, TMA, tensile, flexure, impact, adhesion, etc. Moreover, he extended the studies to 2 other similar materials, conducted the first extensive comparative study and provided comprehensive technical understanding and insights related to this novel process and the resulting cutting-edge new materials.

Dr. [REDACTED] notes that this work was supported by the U.S. Army Research, Development and Engineering Command and has applications to providing stronger and lightweight body armor and helmets.

Dr. [REDACTED] continues:

In another research project, [the beneficiary] investigated the swelling stress of Kapton® and various polyacrylic thin films in diffusive media, measured the diffusivity of the liquid media using a novel experimental setup called environmental tensile testing, and examined the influence of swelling on the mechanical and adhesion properties of the polymer films

Dr. [REDACTED] notes that this work was supported by Hewlett-Packard. While Dr. [REDACTED] affirms that the beneficiary's record is remarkable "for a new Ph.D.," at issue is whether the beneficiary's contributions have garnered international recognition.

Dr. [REDACTED] asserts that the beneficiary's work with Dr. [REDACTED] "is held in high regard in the scientific community and is respectfully cited." Dr. [REDACTED] further asserts that the beneficiary's international recognition is apparent from his publications and presentations and that "many in the U.S. benefit from his significant original research." Dr. [REDACTED] provides no examples of a single independent laboratory, academic, military or private, applying the beneficiary's methods. Nor does Dr. [REDACTED] provide the number of citations necessary to be "respectfully cited." Primary and secondary evidence of citations would be the citing articles themselves or a citation index listing the articles that cite the beneficiary's work. Only where primary and secondary evidence is unavailable or nonexistent may the petitioner rely on affidavits. The record does not establish that the citing articles or a citation index are unavailable or nonexistent. Thus, while we do not question Dr. [REDACTED]'s sincerity, his unsupported

attestation that the beneficiary is "respectfully cited" is insufficient. The record lacks evidence that the beneficiary has been cited at all. Moreover, the most persuasive evidence that the beneficiary's work has opened new lines of research would be citations, which are lacking, or letters from other laboratories actually applying the beneficiary's methods. The petitioner submits no such evidence.

Dr. [REDACTED], former Director of the Polymer Synthesis Laboratories at the University of Massachusetts, Amherst, asserts that the beneficiary's contributions have been significant, but provides no examples of new lines of research or polymer manufacture being pursued as a result of the beneficiary's work.

Dr. [REDACTED], Dean of the College of Engineering at Hanyang University in Korea, asserts that his knowledge of the beneficiary is through "personal review of his research work." Dr. [REDACTED] does not state that he was aware of the beneficiary or his work prior to being requested for a reference letter. Dr. [REDACTED] reiterates the information provided by Dr. [REDACTED] concluding that the beneficiary's work is "completely original." Dr. [REDACTED] continues that the beneficiary's "discoveries have been acknowledged by the international community as outstanding, and, therefore, contributed to his stature as an outstanding researcher and extraordinary scientist." An unsupported declaration that the beneficiary is internationally recognized, without evidence of the beneficiary's influence in current polymer manufacture or independent research, is insufficient.

Dr. [REDACTED], an independent technical consultant in polymer characterization and industrial applications for ConocoPhillips and other companies, asserts that he met the beneficiary at a conference and was "intrigued by the originality of [the beneficiary's] work and kept on tracking his research progress." Dr. [REDACTED] asserts that the beneficiary "developed a whole new methodology to make even better materials with great ease." Dr. [REDACTED] does not indicate that any company for which he serves as a consultant has expressed any interest in adopting the beneficiary's methodologies. Dr. [REDACTED] asserts that the beneficiary's contributions are apparent by his "abundant publications and presentations." As of the date of filing, the beneficiary's published articles included only two presentations either preprinted or reproduced in the conference proceedings. The beneficiary's remaining articles had either just been submitted or were "in press." The beneficiary had presented his work at six conferences. We are not persuaded that this record is "abundant."

Dr. [REDACTED], Senior Advisor at LAS Associates in Taiwan, asserts that he served as a referee of the beneficiary's manuscripts. Dr. [REDACTED] asserts that he can "foresee plenty of applications for the new materials using this process: from military armor systems to space structural materials, from orthopedic implants to automobile parts, from high strength vessel and container to sporting goods, etc." It can be expected that any research in polymer science has some predicted application. Far more persuasive would be evidence that a military or private manufacturer has begun pursuing the beneficiary's methods.

Cao Xianghong, Senior Vice President of the China Petroleum and Chemical Corporation, asserts that he learned of the beneficiary's work on ultra-high-molecular weight polyethylene (UHMWPE) fibers

through a "literature search." Mr. [REDACTED] further asserts that he was impressed with the originality of the beneficiary's work and began a correspondence with the beneficiary. Mr. [REDACTED] affirms that the beneficiary's research "has revolutionized the way to make original polymeric fiber-reinforced composites." It can be expected that any method that has "revolutionized" a manufacturing process would have been adopted or at least would be pursued by manufacturers. The record contains no evidence that this is the case. Mr. [REDACTED] does not claim that his own company has altered its manufacturing process based on the beneficiary's work or is pursuing such a change. Rather, Mr. [REDACTED] attests to his personal belief that "the technology and innovation derived from [the beneficiary's] research will have great significance for the chemical industry." Such a statement is highly speculative.

Dr. [REDACTED], a professor at the State University of New York at Stony Brook and fellow of the American Physical Society, asserts that he tracks the beneficiary's work. He also asserts that the beneficiary has "revolutionized the way to make complex shaped high strength and impact resistant composites with double curvatures." While Dr. [REDACTED] asserts that this work, when presented, "received immediate attention from both industry and academia," the record lacks letters from those in industry and academia who are pursuing the beneficiary's methods. Dr. [REDACTED] provides no examples of institutions or private companies actively pursuing the beneficiary's polymer manufacturing methods.

Dr. [REDACTED], Senior Technology Fellow at Aspen Technology and a member of the National Academy of Engineering, characterizes the beneficiary as "among the most promising young scientists in the field of polymer science and engineering." Subsequently, Dr. [REDACTED] discusses the "potential applications" of the beneficiary's work. Such statements suggest that the petition was filed prematurely, before much of the beneficiary's work had truly had an opportunity to influence the field.

Our conclusion that the petition was filed, at best, prematurely is supported by the fact that, as of the date of filing, the beneficiary had not published his work other than in connection with his presentations and no industry had expressed any interest in licensing his patent pending innovation. The record also contains no evidence that his preprint and proceedings materials had been cited.

Regarding the beneficiary's work for the petitioner, the petitioner submitted an unsigned letter purportedly from [REDACTED], the beneficiary's group leader. As this letter is unsigned, however, it has no evidentiary value. Dr. [REDACTED] asserts that the beneficiary's current work relates to the use of polymeric materials for drug delivery. The record lacks evidence of the significance of this work, such as media coverage of projects at the petitioning company on which the beneficiary has worked.

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. The record does not establish that the beneficiary's work has garnered international recognition in the field.

*Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.*

As of the date of filing, the beneficiary had authored a published preprint and an article in the proceedings of a conference. The beneficiary had also presented his work at six conferences. The director concluded that the beneficiary's publication record, which included several articles that had yet to be published as of the date of filing, was not consistent with international recognition.

On appeal, counsel asserts that the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(F) requires only authorship, not publication, of articles. While the regulation does not use the phrase "published articles," counsel's assertion is not persuasive. The regulation specifies articles "in" journals with an international circulation. If the article has yet to be published, it has not appeared "in" anything with an international circulation. The statutory standard in this matter is international recognition. We are not persuaded that an article that has yet to be published garners the author any international exposure, let alone international recognition.

Moreover, 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 stated above, eligible aliens should stand apart in the academic community through eminence and distinction based on international recognition. The criteria are to be used in evaluating whether a researcher is deemed outstanding. 56 Fed. Reg. 30703, 30705 (July 5, 1991). The record lacks evidence that any independent research group had cited the beneficiary's work. Nor does the record contain any other recognition afforded the beneficiary's presentations that set them apart from the presentations of his peers. Thus, we concur with the director that the beneficiary's publication record is not consistent with international recognition and, therefore, cannot serve to meet this criterion.

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 a limited 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.