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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date:

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.

Maura Deadnick

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 dismissed.

The petitioner researches, develops and manufactures pharmaceuticals and healthcare products. 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 an associate principal 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 additional evidence. For the reasons discussed below, while we afford more evidentiary weight to the petitioner's scholarly articles, one of which is moderately cited, we concur with the director that the petitioner has not established the beneficiary's eligibility for the classification sought.

Beyond the decision of the director, we further conclude that the petitioner's confirmation to the director that it has offered the beneficiary a job was not responsive to the director's request for the actual job offer issued to the beneficiary. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.

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 July 27, 2006 to classify the beneficiary as an outstanding researcher in the field of organic chemistry. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field of organic chemistry as of that date, and that the beneficiary's work has been recognized internationally within the field as outstanding. The beneficiary received his Ph.D. from the University of Nottingham in October 2001. He then worked as a postdoctoral fellow at the Ohio State University through July 2003 before joining the petitioner. Thus, he had three years of research experience as of July 27, 2006.

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 to have satisfied the following criteria.¹

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 relies on citations of the beneficiary's articles to meet this criterion. The record reflects that of the beneficiary's five articles, four have been cited between two and four times each and the final article has been moderately cited. The director acknowledged the citations but concluded:

However, citations are generally brief references to a person's work within a larger article discussing the author's own work, and such articles generally have dozens of citations. There is nothing to demonstrate that any of the articles referenced were specifically about either the [beneficiary] or his work.

On appeal, counsel asserts that the director's conclusions "are legally and factually unfounded." Counsel then discusses the prestigious nature of the journals in which the citations appear and asserts that "the mere inclusion of one's work within the bounds of these journals – whether in an original publication or in a citation – is evidence in and of itself of the international recognition of the chemist by the scientific community at large." Counsel further asserts that some of the articles indicate that the beneficiary's work formed the basis of the author's work and others are review articles confirming the importance of the beneficiary's results.

The regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) provides that the materials must be "about the alien's work." We concur with the director that articles which cite the beneficiary's work are primarily about the author's own work or a broad look at recent work in the field. As such, they cannot be considered published material about the beneficiary's work. In reaching this conclusion, we do not find that citations have no evidentiary weight or relevance to the classification sought. Citations often bolster other evidence relating to the contributions and scholarly articles criteria set forth at 8 C.F.R. § 204.5(i)(3)(i)(E),(F) and we will discuss the citations of the beneficiary's work below in that context. They cannot, however, serve to meet the plain language of this criterion.

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

Evidence of the alien's original scientific or scholarly research contributions to the academic field.

¹ 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.

In explaining the analysis of the evidence under this criterion, the director stated:

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 doctorate degree, let alone classification as an outstanding professor or 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.

As stated above, outstanding 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 researcher is deemed outstanding. 56 Fed. Reg. 30703, 30705 (July 5, 1991). Any Ph.D. thesis, postdoctoral or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. Thus, to conclude that every researcher who performs original research that adds to the general pool of knowledge meets this criterion would render this criterion meaningless. Thus, we concur with the director's analysis; the petitioner must demonstrate not only that the beneficiary has made "original" contributions but also that these contributions are indicative of a researcher who has been recognized in the field internationally.

In examining the significance of the beneficiary's work, we turn to experts in his field, whose letters we discuss below. The opinions of experts in the field, however, 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 "outstanding" ability or 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.

Dr. [REDACTED], a professor at the Autonomous University of Madrid, asserts that the beneficiary worked at the university in 1997, after receiving his bachelor degree. While Dr. [REDACTED] asserts that the beneficiary achieved more than the "average student," he does not explain how the beneficiary's work at the Autonomous University of Madrid garnered international recognition.

Dr. [REDACTED] currently a professor at the University of California Davis, explains that he supervised the beneficiary's early doctoral research at the University of Nottingham. There, the beneficiary worked on synthesizing the novel hetrotricyclic molecule azatriquinacene. The beneficiary was able to succeed in this project using a reaction that had been attempted previously without success, by dividing that reaction into two steps. During this work, the beneficiary "discovered an unusual trimerization reaction of azatriquinamine" and subsequently synthesized "more novel azatriquinane structures." This work has been minimally cited.

Dr. [REDACTED] a Reader in Organic Chemistry at the University of Nottingham, merely asserts that the beneficiary performed original research using various methods and techniques but does not discuss the significance of this work or the beneficiary's role on these projects. Dr. [REDACTED] Pattenden, another professor at the University of Nottingham, asserts that the beneficiary demonstrated that two different chemical reactions were highly effective with the synthesis of dinucleotides. Dr. [REDACTED] notes that the beneficiary and Dr. [REDACTED] are the only two authors on the articles reporting these results, indicating that the beneficiary performed "all of the experimental work." We acknowledge that one of the articles coauthored with Dr. [REDACTED] was cited three times while the other was cited in 20 articles by independent research teams.

Dr. [REDACTED] a professor at the Ohio State University, discusses the beneficiary's research in his laboratory from November 2001 through July 2003. The beneficiary "worked towards the total synthesis of the marine natural product [REDACTED]." Dr. [REDACTED] asserts that the beneficiary was one of two individuals working on this project although the synthesis of complex structures is usually accomplished by a number of chemists working for many years. The record contains no evidence that, as of the date of filing, the beneficiary had published or presented this work or that it was otherwise disseminated internationally in the field. As such, the petitioner has not demonstrated that this work could have garnered the beneficiary any international recognition as of the date of filing. The petitioner must establish the beneficiary's eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The above letters are all from the beneficiary's collaborators and immediate circle of colleagues. While such letters are important in providing details about the beneficiary's role in various projects, they cannot by themselves establish the petitioner's national or international acclaim. In response to the director's request for additional evidence, the petitioner submitted two letters from independent members of the field: Dr. [REDACTED] of North Carolina State University and Dr. [REDACTED]

of Virginia Polytechnic Institute and State University. Both references assert that their opinion is based on a review of the beneficiary's credentials and published work; neither reference indicates that he or she had previous knowledge of the beneficiary and his work prior to be requested to provide a reference letter. Moreover, neither reference claims to have been influenced by the beneficiary. Rather, Dr. [REDACTED] and Dr. [REDACTED] simply reiterate the beneficiary's experience and publications and praise his skill and knowledge in the field.

The petitioner has not established that the beneficiary's work prior to joining the petitioner has garnered international recognition. The record contains no letters from researchers explaining the beneficiary's influence on their own work or who had even heard of the beneficiary prior to being requested to provide a letter in support of the petition. The beneficiary has had a single article cited more than four times. The 20 citations of the beneficiary's 2001 article in *Organic Letters* are not as notable as counsel implies. In most of the independent articles citing the beneficiary's work, his work is cited as one of multiple articles (as many as 26 in one article) for the same proposition. The citations are not without weight; we consider them as persuasive evidence relating to the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(F) below. To conclude, however, that meeting that criterion creates a presumption of meeting this criterion would render the requirement that an alien meet at least two criteria meaningless. In the absence of stronger evidence that the beneficiary is personally recognized in the field for his contributions, we are not persuaded that a single moderately cited article establishes that the beneficiary's original contributions to the field have garnered him personal international recognition.

With the petitioner, the beneficiary was, at the time of filing, pursuing an agent to treat obesity and Metabolic Syndrome. The petitioner submitted four patent applications it has filed listing the beneficiary as one of several inventors. The director noted the lack of evidence that these patents were approved or demonstrating their significance. On appeal, the petitioner submits a letter from Dr. [REDACTED] a professor at the University of California, Irvine. Dr. [REDACTED] asserts that the beneficiary's work for the petitioner "could be used to treat" obesity and Metabolic Syndrome. The record lacks evidence of any clinical trials, media coverage of the agents developed or other comparable evidence that this work has attracted any attention beyond the petitioner. This office has previously stated that a patent is not necessarily evidence of a track record of success with some 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.* The impact of the beneficiary's agent as of the date of filing is not documented in the record.

While the beneficiary's research is no doubt of value, the record does not reflect that the beneficiary has garnered international recognition for his original work. Thus, 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 had authored five published articles as of the date of filing. We will not consider articles published after that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. The director noted that all of the published articles were authored while the beneficiary was still a Ph.D. student. The director then cited the Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998 for the proposition that even researchers holding entry-level postdoctoral appointments are "expected" to publish their results. The director then concluded that the publication of articles by itself was insufficient to meet this criterion. The director acknowledged that the beneficiary had been cited but found that the evidence was not indicative of or uniquely consistent with international recognition.

On appeal, counsel asserts that the director erred in dismissing the beneficiary's articles based solely on the fact that the beneficiary authored them while a doctoral student. Counsel asserts that there is no basis in the law or regulations for excluding doctoral work.

As quoted above, the regulation at 8 C.F.R. § 204.5(i)(3)(ii) specifies that research experience while working on an advanced degree is acceptable provided the alien has acquired the degree and the research conducted toward the degree has been recognized within the academic field as outstanding. Thus, while we concur with counsel that doctoral research may be considered, it does not appear from the director's decision that the beneficiary's student status was the basis for finding that the beneficiary does not meet this criterion. Rather, the director concluded that publication of one's research results is routine in the field, even for researchers in entry-level positions, and cannot serve to set the beneficiary apart from others in the field without additional evidence of the impact of those articles.

Counsel further asserts that the prestigious nature of the journals that have published the beneficiary's articles is evidence that the beneficiary "is internationally recognized as an outstanding researcher." Counsel is not persuasive. We will not presume the beneficiary's recognition in the field from the prestige of the journals in which he was published. Rather, the petitioner must demonstrate the significance of the individual articles.

While we concluded above that the citations of the beneficiary's articles do not constitute published material about the beneficiary and are insufficient to demonstrate the beneficiary's recognition for contributions to the field, we are persuaded that they are sufficient to meet this single 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 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.

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 (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 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 its Group Vice President of Chemical Research addressed to CIS, confirming an offer to the beneficiary. This document does not constitute a job offer from the petitioner to the beneficiary. On September 29, 2006, the director requested "a letter offering the alien a permanent research position."

In response, the petitioner submitted another letter addressed to CIS confirming its offer to the beneficiary. The director did not raise this issue in the final denial notice. Nevertheless, we find that the record still lacks this required initial evidence, the job offer extended by the petitioner to the beneficiary. While we will consider all relevant circumstances regarding the beneficiary's reasonable expectation of permanent employment, such as evidence of the petitioner's retention of the beneficiary over several years, such evidence is only meaningful once the required initial evidence, the job offer, has been submitted. In this matter, the petitioner has failed to persuasively explain why we should accept the petitioner's description of a document in lieu of the document itself.

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.