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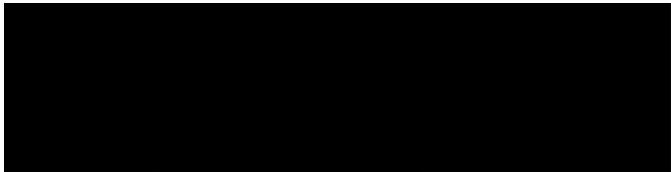
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Washington, DC 20529



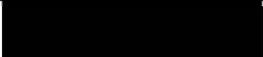
U.S. Citizenship  
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Office: NEBRASKA SERVICE CENTER

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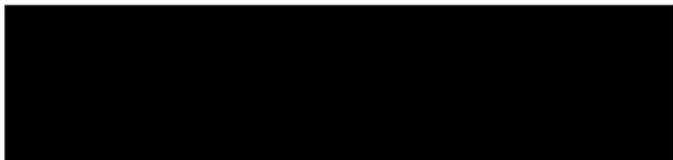
Petitioner:



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 sustained and the petition will be approved.

The petitioner is a public university. It seeks to classify the beneficiary as an outstanding professor 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 assistant professor of finance. The record contains a letter offering the beneficiary a tenure-track position with the petitioner. 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 several exhibits. Ultimately, counsel asserts that the director erred in evaluating the evidence submitted. As discussed below, we uphold the director's right to evaluate the evidence and concur with many of the director's concerns regarding the six regulatory criteria relevant to this matter, of which an alien must meet at least two. Nevertheless, while we reject many of counsel's legal assertions, we are satisfied that the beneficiary meets the minimum two regulatory criteria 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 November 6, 2006 to classify the beneficiary as an outstanding researcher in the field of finance. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching experience in the field of finance as of that date, which he does, and that the beneficiary's work has been recognized internationally within the field of finance 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.

The director acknowledged that counsel had asserted that the beneficiary met more than two of the criteria and stated:

While this contention is true on its face, these criteria were intended to be evaluative rather than dispositive. The evidence which a petitioner submits to meet each criterion must be indicative of, or consistent with, a beneficiary's international recognition.

The director then considered the evidence and concluded that it did not set the beneficiary apart from his peers. On appeal, counsel references a July 30, 1992 correspondence memorandum from Lawrence Weinig, Acting Assistant Commissioner, to the then Director of the Nebraska Service Center, [REDACTED] issued his correspondence memorandum in response to an inquiry from [REDACTED]

and makes clear that he is discussing his personal inclinations. Moreover, in contrast to official policy memoranda issued to the field, correspondence memoranda issued to a single individual do not constitute official Citizenship and Immigration Services (CIS) policy and will not be considered as such in the adjudication of petitions or applications. Although the correspondence may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer's analysis of an issue. See Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).<sup>1</sup>

Counsel then acknowledges a letter from Edward Skerrit, Chief, Immigrant Branch, Adjudications at the legacy Immigration and Naturalization Service (INS). The letter was issued to Nathan Waxman and indicates:

The listed types of evidence serve as guidelines for the adjudicator and the petitioner. . . . [T]he overall impression should be that the alien fits the classification. Mere presentation of evidence which relates to two of the listed criteria does not guarantee an approval. The evidence must be weighed and evaluated.

Counsel notes, however, that the commentary to proposed regulations, published at 60 Fed. Reg. 29772 (1995), states:

The fact that the beneficiary may meet two of the listed criteria does not necessarily mean that he or she has the international recognition to be considered an outstanding researcher or professor. The Service adjudicator must still determine whether the alien is recognized internationally as outstanding in the academic field specified in the petition. The Service, therefore, proposes to amend this regulation to specifically state that having two types of the listed evidence does not compel a finding that the beneficiary is recognized internationally as outstanding.

Counsel implies that, as this proposed regulation was never issued, legacy Immigration and Naturalization Service (INS) and its successor, CIS, never adopted a policy whereby evidence submitted to meet a given criterion should be evaluated.

Counsel is not persuasive. It is clear from the commentary referenced by counsel that legacy INS was attempting to state more clearly an interpretation that was already held by the agency. Regardless, the controlling purpose of the existing regulation is to establish international recognition, and any evidence submitted to meet the regulatory criteria must therefore be to some extent indicative of international recognition. This conclusion is supported by the commentary to the existing regulation, indicating that 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

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<sup>1</sup> Although this memorandum principally addresses letters from the Office of Adjudications to the public, the memorandum specifies that letters written by any CIS employee do not constitute official CIS policy.

to be used in evaluating whether a professor or researcher is deemed outstanding. 56 Fed. Reg. 30703, 30705 (July 5, 1991). Thus, the director did not err in concluding that the mere submission of evidence relating to at least two criteria is insufficient. While we ultimately find that the beneficiary meets two criteria, confusion in the analysis of three other criteria warrants some discussion before addressing the criteria the beneficiary does meet.

First, the director dismissed the beneficiary's awards because they were earned while the beneficiary was a student. On appeal, counsel asserts that the statute and regulations do not bar consideration of awards received while a student under the criterion at 8 C.F.R. § 204.5(i)(3)(i)(A) and notes that the regulation at 8 C.F.R. § 204.5(i)(3)(ii) expressly acknowledges that work towards an advanced degree can be recognized as outstanding.

We concur with counsel insofar as the issue is not the beneficiary's status when he won recognition but the nature of the recognition itself. Specifically, an award where the pool of competitors or candidates is limited to graduate students is not as persuasive as awards for which the most experienced and esteemed members of the field aspire.

Our position is supported by the fact that the initial proposed regulation relating to this classification would have required evidence of a major *international* award. The final rule removed the requirement that the award be "international," but left the word "major." The commentary states: "The word "international" has been removed in order to accommodate the *possibility* that an alien might be recognized internationally as outstanding for having received a major award that is not international." (Emphasis added.) 56 Fed. Reg. 60897-01, 60899 (November 29, 1991.)

Thus, the standard for this criterion is very high. The rule recognizes only the "possibility" that a *major* award that is not international would qualify. Significantly, even lesser international awards cannot serve to meet this criterion given the continued use of the word "major" in the final rule. *Cf.* 8 C.F.R. § 204.5(h)(3)(i) (allowing for "lesser" nationally or internationally recognized awards for a separate classification than the one sought in this matter).

Second, the director concluded that the beneficiary's status as a certified financial analyst (CFA) did not establish that he is outstanding while counsel asserts on appeal that CFA membership is internationally recognized. Both the director and counsel fail to analyze this criterion under the plain language of the regulation at 8 C.F.R. § 204.5(3)(i)(B), which calls for membership in an association that requires outstanding achievements of their members. Thus, the director's analysis was too subjective and counsel's assertion that we should consider international familiarity with the *association* is simply not supported by the regulation.

The materials submitted indicate that in order to become a CFA, an accountant must demonstrate a specific level of education and experience and pass what we acknowledge may be a competitive exam. We are not persuaded, however, that these are outstanding achievements. Notably, the beneficiary was admitted as a CFA with over 2,000 other accountants who qualified at the same time.

Third, regarding the judging criterion at 8 C.F.R. § 204.5(i)(3)(D), the director dismissed the beneficiary's role as a "discussant" and his service as one of at least 100 referees for an economic journal as typical in the field. On appeal, counsel references non-precedent decisions by this office and the correspondence memorandum from [REDACTED], states that there is "conflicting" interpretations of this criterion, and concludes that the beneficiary meets even the strictest interpretation of this criterion.

Ultimately, we look to the statutory standard for the classification sought, international recognition. As stated above, 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). While the director could have elaborated on this issue, it remains that the petitioner has not established the significance of a "discussant" in relation to the session chairs, moderators and panelists also named at these conferences. Finally, we cannot ignore that peer reviewed journals would, by definition, appear to rely on many economists to review submitted articles. The petitioner has not provided evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served on a small-member editorial board for a distinguished journal.

Despite the lack of sufficient evidence to meet the above criteria, the beneficiary need only meet two criteria to be eligible for the classification. The beneficiary meets the following two criteria:

*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 articles that cite the beneficiary's work to meet this criterion. The director concluded that many successful researchers "make reference to the work of others in their publications." On appeal, counsel acknowledges that the non-precedent decisions on which he relies generally hold that citations cannot serve to meet this criterion. Counsel, notes, however, that the proposal to amend the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) to require a discussion or analysis of the alien's work was never adopted. Thus, counsel concludes that such a standard cannot be applied. Nevertheless, counsel asserts that the beneficiary meets this criterion even under that standard.

Regardless of any proposed rule change, the regulation as currently written requires that the published material be "about" the beneficiary's work in the academic field. 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 and cannot meet the plain language requirements of this criterion.

In addition to the more typical citations, however, the petitioner submitted an article by economists at a university in Spain evaluating a small number of models using Spanish economic data. The article includes a lengthy discussion and evaluation of the beneficiary's model, concluding that it is one of the strongest models evaluated in the article. We are persuaded that this article constitutes published material about the beneficiary's work in his academic field.

*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 eight published articles and a book chapter. The beneficiary has also presented his work at conferences. The director concluded that the beneficiary's publication record did not set him apart from his peers. On appeal, counsel relies on the correspondence memorandum from [REDACTED] and non-precedent decisions issued by this office more than ten years ago for the proposition that the mere submission of scholarly articles serves to meet this criterion without further inquiry.

As stated above, the correspondence memorandum from [REDACTED] not represent official CIS policy. Moreover, [REDACTED] clearly states that the adjudication of petitions submitted under the outstanding professor category "is not simply a case of counting pieces of paper." While [REDACTED] expressly excludes "vanity press" publications and concludes that peer-reviewed published articles would constitute "solid pieces of evidence," he reiterates at the end that an adjudicator should "evaluate evidence, not simply count it." Regarding the non-precedent decisions issued by this office, while the regulation at 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Moreover, the decisions do not explicitly state that publication alone is always sufficient to meet this criterion and it is unknown whether the record in those matters contained other evidence of the influence the articles had had in the field.

That said, the petitioner submitted evidence that the beneficiary's articles have been favorably analyzed in other published articles in the field. Thus, we are satisfied that the beneficiary meets this criterion.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that the beneficiary enjoys international recognition as outstanding in his academic field.

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.