

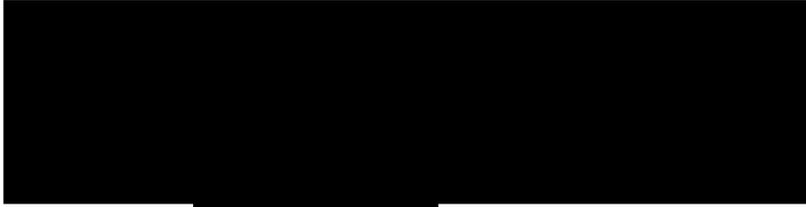
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U.S. Citizenship
and Immigration
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FILE: [REDACTED]
LIN 06 181 53509

Office: NEBRASKA SERVICE CENTER

Date: FEB 19 2008

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:

SELF-REPRESENTED

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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a university. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary in the United States as a research assistant professor. The director determined that the petitioner had not established that it had offered the beneficiary a permanent job or that the beneficiary had attained the international recognition as outstanding required for classification as an outstanding researcher.

On appeal, the petitioner submits a statement and additional evidence. For the reasons discussed below, we concur with the petitioner that the director relied on the terms and conditions of the wrong position title in reaching his conclusion that the beneficiary's position is not sufficiently permanent. Nevertheless, we uphold the director's finding that the petitioner has not established that the beneficiary enjoys international recognition as outstanding.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(B) Outstanding professors and researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

Job Offer

The regulation at 8 C.F.R. § 204.5(i)(3)(iii) provides that a petition must be accompanied by:

An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or

(C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

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 the beneficiary's June 1, 2006 Personnel Action Form reflecting the beneficiary's hire date as a research assistant professor. The form lists an end date of June 30, 2006. The form also reflects that the beneficiary worked for the petitioner from January 18, 2000 through March 12, 2006 in a lesser research position. On February 8, 2007, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary. In this notice, the director noted that the beneficiary had a type "F" position and requested the petitioner's human resources or personnel manual explaining this type of appointment. The director also requested evidence as to whether the beneficiary's employment had been extended past June 30, 2006.

In response, the petitioner submitted a screen print from the petitioner's personnel system reflecting that type "F" employment is "Faculty – Fiscal Appointment." A separate faculty type is "Academic Appointment." The petitioner also submitted an April 23, 2007 Personnel Action Form reflecting that the beneficiary's appointment as a research assistant professor was renewed through June 30, 2007.

The director visited the petitioner's website and noted that assistant professor positions can only be renewed six times. Thus, the director concluded that the beneficiary's position was not permanent. On appeal, the petitioner notes that the beneficiary is not employed as an assistant professor but as a research assistant professor. The petitioner submits evidence that these are distinct job titles, with assistant professors being tenure-track and research faculty falling under a classification not eligible for tenure. [REDACTED] Head of the petitioner's Biochemistry and Molecular Biophysics Department, explains that assistant professor positions are probationary tenure-track positions. Research faculty positions, however, are indefinitely renewable and expected to continue provided there are available funds.¹ [REDACTED] the beneficiary's current research sponsor at the petitioning institution, confirms that the grant funding the beneficiary's position has been fully funded for the past 15 years.

In promulgating the final regulation, the Immigration and Naturalization Services, now CIS, recognized that it is unusual for colleges and universities to place researchers in tenured or tenure-track positions. Thus, the commentary to the final rule accepts that research positions "*having no fixed term* and in which the employee will *ordinarily* have an *expectation* of permanent employment" as comparable. (Emphasis added.) 56 Fed. Reg. 60897, 60899 (Nov. 29, 1991).

The petitioner has continually employed the beneficiary since 2000. There is no limit on the number of renewals for the beneficiary's current position title. Thus, we are persuaded that the beneficiary has an ordinary expectation of permanent employment.

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

¹ Section 3.13.03 of the petitioner's Handbook for Appointed Personnel, available at <http://uhap.web.arizona.edu/chap3.html>, confirms that nontenure-eligible faculty assistant professors may be renewed "an indefinite number of times," section 3.13.06 states that a decision of nonrenewal is appealable and section 3.13.07 states that 90 days notice must be provided in cases of nonrenewal.

as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from current or former 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 June 1, 2006 to classify the beneficiary as an outstanding researcher in the field of entomology. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field as of that date, and that the beneficiary's work has been recognized internationally within the field as outstanding.

The regulation at 8 C.F.R. § 204.5(i)(3)(i) states that a petition for an outstanding professor or researcher must be accompanied by “[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition.” The regulation lists six criteria, of which the 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. *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991)(enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)). The petitioner claims to have satisfied the following criteria.²

Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field.

It is significant that the *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 (Nov. 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).

The petitioner relies on a research grant from the National Institutes of Health (NIH) to meet this criterion. Research grants simply fund a scientist's work. Every successful scientist engaged in

² 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.

research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement. As acknowledged by [REDACTED] on appeal, the research grant funding the beneficiary's research has been fully funded for the past 15 years, before the beneficiary began working on the project at the petitioning university. Moreover, while the beneficiary is listed among the investigators in the critique, there is no evidence that he is listed as the principal investigator anywhere on the grant application.

For the reasons discussed above, the grant funding the beneficiary's research cannot serve to meet this criterion.

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

The petitioner concedes on appeal that the beneficiary's membership in the Entomology Society of America cannot serve to meet this criterion and the record contains no evidence that this society requires outstanding achievements of its members. Thus, the petitioner has not established that the beneficiary meets this criterion.

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 record reflects that the beneficiary has refereed articles for *The Journal of Insect Science* and *Insect Biochemistry and Molecular Biology*. The request to review manuscripts for *Insect Biochemistry and Molecular Biology* originate from the University of California, Riverside, where the beneficiary received his Master of Science degree.

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. Without 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 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.

Obviously, the petitioner cannot satisfy this criterion simply by listing the beneficiary's past projects and demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research. Research work that is unoriginal would be unlikely to secure the beneficiary a master's

degree, let alone classification as an outstanding researcher. Because the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher, it stands to reason that the beneficiary's research contributions have won comparable recognition. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

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 professor or 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. 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.

The petitioner relies mostly on reference letters from the beneficiary's immediate circle of colleagues to meet this criterion. While the letters originate from researchers beyond the United States, all of the references, including those that authored the letters submitted on appeal, have a direct connection with the beneficiary. It can be presumed that a researcher who has international recognition as outstanding would be known beyond his immediate circle of colleagues.

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 (Commr. 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. 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of talent and skill 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 the most persuasive. 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.

In his initial letter, ██████████ asserts that the best example of the beneficiary's contributions is "his recent development of the 'Whole Body Transfection' (WBT) protocol that allows researchers for the first time to analyze the structure and function of cloned genes in live mosquitoes without the need for expensive and inefficient germline transmission." ██████████ concedes, however, that this work had only been submitted for publication and accepted for presentation. Without evidence that this work had been widely disseminated as of the date of filing, we cannot conclude that this work had the potential to have impacted the field as of that date. While ██████████ asserts in later letters that this work was published and presented, the petitioner must establish the beneficiary's eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

██████████, a former visiting professor at the petitioning institution according to his curriculum vitae in the record, discusses the importance of mosquito research. He further asserts that the beneficiary is investigating the genetic diversity of female mosquitoes using genetic engineering. As an example of the beneficiary's "innovative techniques," ██████████ refers to WBT. As stated above, however, the beneficiary has not presented or published this work as of the date of filing. ██████████ speculates that the beneficiary's work "will extend our understanding of the nutritional metabolism in the mosquitoes, and moreover, make a large contribution to preventive medicine of insect-mediated infectious diseases." The record contains a similar letter from ██████████ a former assistant research professor at the petitioning institution.

On appeal, the petitioner submits several letters from the beneficiary's former fellow graduate and doctoral students and postdoctoral associates that provide high praise of the beneficiary's skills but no specific examples of how the beneficiary's work has impacted the field. We emphasize that the statutory standard for the classification sought is not simply raw talent, which is necessarily subjective, but international recognition as outstanding. Such recognition must come from beyond the beneficiary's former classmates and entry-level researchers. Thus, these letters provide little relevant information and, as such, have minimal evidentiary value.

The remaining letters warrant more analysis. ██████████, the beneficiary's Master of Science advisor at the University of California, Riverside, lists four contributions. First, the beneficiary identified transposable elements in mosquitoes, crucial factors in being able to genetically modify disease carrying mosquitoes. While ██████████ asserts that "this aspect of mosquito research was featured prominently in the Grand Challenge grants sponsored by Bill Gates," the record contains no evidence that the beneficiary's individual results, as opposed to area of research, have received widespread recognition. Second, the beneficiary characterized ammonia and nitrogen metabolism in mosquitoes, relevant to protein and egg formation in mosquitoes. Third, the beneficiary cloned and characterized digestive protease genes in mosquitoes, crucial to the digestion of blood in female mosquitoes and possibly relevant to disease transmission. Finally, the beneficiary characterized vitellogenin genes in mosquitoes, crucial to egg formation and reproduction. While ██████████ discusses the importance of this area of research, she does not provide specific examples of how the beneficiary's work has impacted the field.

[REDACTED], who, like the beneficiary, received his Master's degree from the University of California, Riverside and his Ph.D. from the petitioning university, provides additional detail regarding the beneficiary's work. Specifically, [REDACTED] explains that the beneficiary's study on vitellogenin genes "provided [an] understanding of the evolutionary processes and the importance of mosquito vitellogenin genes in the egg development." This work "provided a significant advancement in understanding the process of how mosquito[es] nourish their eggs upon their blood meal." [REDACTED] also praises the beneficiary's work with mosquito digestive enzymes, which "may be applicable for studying the mechanisms of other gene regulations." [REDACTED] further asserts that the beneficiary's technique for microinjection of mosquitoes has "become popular in the field to study various gene functions in the mosquito." [REDACTED] does not identify any independent research team that has adopted the beneficiary's technique and the record contains no letters from independent research teams confirming their use of the beneficiary's technique and its significance.

[REDACTED] a former visiting professor at the petitioning institution, asserts:

[The beneficiary's] exciting findings include a detailed understanding of [the] expression [the] digestive protease genes in [the] gut of *Aedes aegypti*, a major mosquito vector of DENGUE and YELLOW FEVER viruses. He also determined and identified a number of those protease molecules at [the] DNA and protein levels. His previously researchers [sic] at the University of California, Riverside are chemical ecology of *Culex tarsalis* and *Culex quinquefasciatus*, major mosquito vectors of Western Equine Encephalitis and St. Louis Encephalitis diseases in [the] USA.

[REDACTED] z asserts that the beneficiary's publications "are important references for my laboratory, and I am sure it is especially true for all other insect scientists working on mosquitoes." [REDACTED] does not, however, explain how the beneficiary's work has specifically influenced his own work or provide examples of independent research teams that use the beneficiary's work as an important reference.

[REDACTED], a senior researcher at the National Institute of Infectious Diseases in Japan, is the most independent reference. We note, however, that he was a postdoctoral fellow at the petitioning institution from 1984 through 1990 and subsequently met with the beneficiary at a symposium at the petitioning institution in May 2002. [REDACTED] asserts that the beneficiary "determined DNA and amino acid sequences of many key proteins including yolk proteins, digestive enzymes, and transporters from medically-important disease transmitting mosquitoes, such as yellow fever and malaria mosquitoes and made them available to our research community through the National Institutes of Health, Genetic Sequence Database, Bethesda, Maryland U.S.A."

While the beneficiary's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. The letters, as discussed above,

provide mostly general praise of the beneficiary without explaining how the beneficiary's work has contributed to and impacted the field of entomology. While a few of the letters list specific contributions, they do not establish the impact of those contributions as of the date of filing beyond contributing to the general pool of knowledge in the field. The record contains no letters from independent researchers who explain how their own work has been impacted by the beneficiary. Moreover, as will be discussed in more detail below, the citation evidence submitted does not establish that any one article by the beneficiary has been cited by more than seven independent researchers. Thus, the petitioner has not demonstrated that the beneficiary has made contributions indicative of international recognition as outstanding.

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 seven published articles and a book chapter. The beneficiary is also a listed author for several conference presentations, many of which were presented as poster presentations. 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.

Moreover, for biological scientists, the Department of Labor's Occupational Outlook Handbook 151 (2006-2007 ed.) reflects that a "solid record of published research is essential in obtaining a permanent position involving basic research." The handbook also provides that university faculty spend a significant amount of their time doing research and often publish their findings. *Id.* at 224. In addition, the handbook acknowledges that faculty face "the pressure to do research and publish their findings." *Id.* at 225. This information reinforces our position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles. Finally, the petitioner's own policies, provided on appeal, reveal that assistant professors "must" publish research achievements, which will be critically evaluated by outside peers in evaluating the assistant professor's job performance. If publication alone were indicative of the significance of the achievement, such outside evaluation would not be necessary.

The petitioner submitted 13 articles and book chapters that cite the beneficiary's work, four of which are self-citations by coauthors. While self-citation is a normal and expected process, it cannot demonstrate the beneficiary's recognition beyond his circle of collaborators. Considering only the independent citations, two of the beneficiary's articles have been cited once each, another article has

been cited three times and a final article has been cited seven times. We are not persuaded that this citation record sets the beneficiary apart from others in his field or is otherwise indicative of or consistent with international recognition as outstanding.

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 the level of an alien who is internationally recognized 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.