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U.S. Citizenship
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FILE: LIN 07 165 53072 Office: NEBRASKA SERVICE CENTER

Date: **JAN 28 2008**

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:

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 land grant teaching and research 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 as of the date of filing. The director also determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher.

On appeal, the petitioner overcomes the director's valid concern that the record did not contain a job offer issued to the beneficiary. For the reasons discussed below, however, we uphold the director's finding that the petitioner has not demonstrated that beneficiary's eligibility 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.

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 Citizenship and

Immigration Services (CIS) *affirming* the beneficiary's employment is not a job *offer* within the ordinary meaning of that phrase.

The regulation at 8 C.F.R. § 204.5(i)(2), provides, in pertinent part:

Permanent, in reference to a research position, means either tenured, tenure track, or for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination.

On Part 6 of the petition, the petitioner indicated that the proposed employment was a permanent position. The petitioner submitted a letter from [REDACTED] Payroll Supervisor and Immigration Representative for Employment at the petitioning university, addressed to CIS, confirming the beneficiary's employment with the petitioner as a research assistant professor. This document does not constitute a job offer from the petitioner to the beneficiary. On May 30, 2007, the director requested "a copy of the offer by [the petitioner] to [the beneficiary]."

In response, the petitioner submitted a letter from [REDACTED] Department Head and Director of Research in the petitioner's Electrical Engineering and Computer Science Department, addressed to "whom it may concern" once again confirming the beneficiary's employment with the petitioner as a research assistant professor.

The director concluded that the petitioner has not submitted the required initial evidence, a copy of the actual job offer letter issued by the petitioner to the beneficiary. On appeal, the petitioner submitted the actual job offer letter issued by the petitioner to the beneficiary on February 15, 2007, which predates the filing of the petition. The letter offers the beneficiary the "permanent" position of Research Assistant Professor and asserts that the petitioner complies with the regulatory definition of "permanent" at 8 C.F.R. § 204.5(i)(2).

While the petitioner did not submit this offer in response to the director's request for additional evidence, we are satisfied that the petitioner made a good faith to comply with that request as the petitioner understood the request. Thus, we will consider the job offer submitted on appeal.

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). We are satisfied that the petitioner had offered the beneficiary the position of Research Assistant Professor prior to the date of filing and that the position is "permanent" as defined at 8 C.F.R. § 204.5(i)(2).

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 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 May 21, 2007 to classify the beneficiary as an outstanding researcher in the field of nanotechnology. 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.¹

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

Initially, the petitioner submitted evidence that the beneficiary received the Young Scientist Award for the Presentation of an Excellent Paper from the Hokuriku-Shinetsu Chapter of the Japan Society of Applied Physics, was a finalist for the Young Scientist by the Indian Science Congress Association and received a senior research fellowship from the Council for Scientific and Industrial Research (CSIR) in India. The Young Scientist award from the Indian Science Congress Association is limited to those 32

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.

years old or younger. The CSIR senior research fellowship is designed to provide opportunities “to bright young men and women for training in methods of research under the expert guidance of faculty members/scientists working in University Departments/National Laboratories and Institutes.” The upper age limit for CSIR Senior Research Fellowships is 32 years old. Finally, one of the petitioner’s references, Professor ██████████ of the University of Toyama asserts that the beneficiary received a Monbusho Research Fellowship Award from the Japanese government, which served as a Ph.D. scholarship and research and travel grant.

In his request for additional evidence, the director stated that the record did not demonstrate that the beneficiary’s awards were “major prizes or awards” as required by the regulation at 8 C.F.R. § 204.5(i)(3)(i)(A). The petitioner’s response does not address this criterion. The director concluded that the petitioner had not established that the beneficiary meets this criterion. The petitioner does not address this criterion on appeal.

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).

Scholarships are generally based on past *academic* achievement, not for accomplishments in a field of endeavor. While 8 C.F.R. § 204.5(i)(3)(A) references outstanding achievements in one’s academic field, 8 C.F.R. § 204.5(i)(2) defines “academic field” as “a body of specialized knowledge offered for study.” The definition does not include typical bases for scholarships, such as grade point average and class standing. It remains, academic study is not a field of endeavor, academic or otherwise. Rather, academic study is training for a future career in an academic field. As such, scholarships in recognition of academic achievement, such as grade point average, are insufficient. Scholarships are simply not evidence of international recognition in the field. Rather, they represent high academic achievements in comparison with other students.

Similarly, experienced experts do not compete for age-limited awards, fellowships and competitive postdoctoral appointments. Thus, they do not suggest that a beneficiary is internationally recognized.

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

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

The petitioner submitted evidence of the beneficiary's membership in Sigma Xi, the American Physical Society, the Japan Society of Applied Physics and the Indian Physics Association. While the record reflects that Sigma Xi recognizes "noteworthy contributions in research," the petitioner did not submit the membership requirements for any of the other associations of which the beneficiary is a member. The petitioner does not address this criterion in response to the director's request for additional evidence or on appeal.

A noteworthy achievement is not necessarily an outstanding achievement. For example, an earned doctoral degree and a small number of published articles are not outstanding achievements.

In light of the above, the record does not establish that the beneficiary meets this criterion.

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 articles that cite the beneficiary's research and "articles" on the Internet about the beneficiary's research published in the *Proceedings of the National Academy of Sciences*. The director concluded that the petitioner had not demonstrated that this evidence constituted published material in *professional publications* primarily about the beneficiary's work. On appeal, the petitioner references a graph documenting visitors to the websites that carried "commentary" on the beneficiary's work. The graph shows the "daily reach (percentage)" of these sites but does not reflect the actual number of visitors.

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.

The petitioner also submitted "Researchers Control Chemical Reactions One Molecule at a Time," posted on the websites www.spacedaily.com, www.sciencenewsdaily.org, www.scienceblog.com, innovations-report.com and www.physorg.com. This "commentary," repeated verbatim on all five Internet sites, carries no byline. The identical language and lack of a byline strongly suggests that this "commentary" is actually a press release compiled and distributed by the beneficiary's employer at the time rather than independent journalistic coverage of or commentary on the beneficiary's work. The record contains no evidence regarding whether these Internet sites limit the press releases posted to their sites. Self-serving press releases on websites that permit researchers to announce their latest findings cannot serve to meet this criterion.

Finally, the petitioner submitted the science news brief entitled “Chemical Reactions, One Molecule at a Time,” available at www.world-science.net. Once again, while the language does not match the other press releases, the brief lacks a byline. The record lacks evidence regarding how many articles are briefed on this site. Thus, we cannot determine whether the inclusion of this brief on this site sets the beneficiary apart from his peers. Finally, we note that the brief does not mention the beneficiary by name.

In light of the above, 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, as of the date of filing, the beneficiary has refereed articles for the *Journal of Physics D: Applied Physics*, *Physica Status Solidi* and the *Journal of Materials: Materials in Electronics*. In response to the director’s request for additional evidence, the petitioner submitted evidence that referees for Institute of Physics journals “are carefully selected from the international research community.” The director concluded that the beneficiary’s participation in the widespread manuscript review process cannot meet this criterion. On appeal, the petitioner asserts that the beneficiary received referees requests from difference journals and conferences demonstrates that the beneficiary has the “considerable understanding of the entire scientific discipline.”

The petitioner must demonstrate 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). Thus, we will only consider those reviews performed as of that date. 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.

The director noted that the Department of Labor’s Occupational Outlook Handbook 224 (2006-2007 ed.)² provides that college and university faculty “may perform experiments; collect and analyze data; and examine original documents, literature, and other source material. From this process, they arrive at conclusions, and publish their findings in scholarly journals, books and electronic media.” Further down on the same page, the publication states that faculty members at universities “normally spend a significant part of their time doing research.” *Id.* The director then concluded that the petitioner had

² The director quoted an earlier edition of this publication.

not demonstrated that the beneficiary's research contributions were sufficient to meet this criterion. On appeal, the petitioner notes the submission of reference letters, citations, requests to review manuscripts and the press releases mentioned above.

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. 56 Fed. Reg. at 30705. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. *Id.* 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 opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of international recognition. 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 international recognition and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An

individual with international recognition should be able to produce unsolicited materials reflecting that recognition.

All of the letters submitted in this matter are from the beneficiary's immediate circle of colleagues. Such letters are important in explaining the beneficiary's role on various projects, but cannot, by themselves, establish that the beneficiary is recognized beyond his colleagues. We interpret international recognition as requiring more than simply having worked in more than one country and, thus, having international colleagues who are familiar with your work.

The beneficiary obtained his Ph.D. from the University of Toyama in 2001 under the direction of [REDACTED]. Upon graduating, the beneficiary joined the laboratory of [REDACTED] at the University of California, Riverside. In 2004, the beneficiary joined the petitioner's Center for Accelerated Applications at the Nanoscale (CAAN) under the supervision of [REDACTED].

[REDACTED] asserts that the beneficiary became a key member of the scanning tunneling microscopy (STM) and molecular beam epitaxy laboratory at the University of Toyama. [REDACTED] explains that while integrating InSb with Si would allow significant gains in reliability, speed and price of circuits, growth of high-quality InSb films on Si substrates is complicated by the "lattice mismatch" between the two materials. The beneficiary "developed methods to grow high quality InSb films on Si substrates without buffer layers using molecular beam epitaxy." The beneficiary then "discovered several complex surface reconstructions formed by Si-In-Sb interactions." While [REDACTED] asserts that this work won "appreciation from his peers," [REDACTED] does not provide any examples of how the beneficiary's work is being applied in the field or how it has otherwise impacted the field.

[REDACTED] asserts that the beneficiary was the second postdoctoral researcher to join his group and contributed to the development of a STM-based single molecule manipulation system. [REDACTED] asserts that the beneficiary's work in the laboratory ultimately "led to his pioneering study on the development of structure-reactivity relationships in organic molecules." This work was published in the *Proceedings of the National Academy of Sciences* in 2004 and was the subject of the press releases posted on various Internet sites. [REDACTED] asserts that the beneficiary's work in this area "attracted wide attention from [the] science community." Three years later, when the petition was filed, however, this work had yet to be cited in a single article. [REDACTED] fails to provide any examples of independent researchers utilizing the beneficiary's work in this area.

[REDACTED] asserts that the beneficiary is currently working at CAAN on nanotechnology programs to develop nanosensors and gas sensors for gas detection, bio-warfare agent detection and malaria pathogen detection. [REDACTED] asserts that this work is "expected to improve homeland security and the safety of defense personnel" and that the beneficiary is important to the timely completion of the work. [REDACTED] asserts that the beneficiary has applied his earlier work, published in the *Proceedings of the National Academy of Sciences*, toward the development of gas sensors. Dr. [REDACTED] does not, however, identify any specific contribution the beneficiary has already made on these projects or explain how such contributions have already impacted the field.

The remaining letters, all from the beneficiary's immediate circle of colleagues, provide similar information to that discussed above. In addition, [REDACTED], Diversity Coordinator for the petitioner's College of Engineering, asserts that the beneficiary conducted a three-month workshop for high school students as part of the petitioner's Flandreau Indian School Success Academy, a program for Native American high schools. While the beneficiary's participation in this program may reflect on his character, it does not demonstrate his international recognition as an outstanding researcher.

Finally, in response to the director's request for additional evidence, the petitioner submitted letters from the U.S. Army Research Office expressing an interest in reviewing a research proposal from the beneficiary. These letters postdate the filing of the petition and demonstrate the promise of the beneficiary's proposals rather than the influence of his past work.

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 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. The record does not establish that the beneficiary's work garnered international recognition in the field 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 four published articles and several abstracts. The petitioner also presented his work at several conferences. The director concluded that the beneficiary meets this criterion.

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." In addition, the Department of Labor's Occupational Outlook Handbook 172 (2006-2007 ed.) asserts that written communication skills are necessary for physicists because the job often requires the researcher to "write research papers." As quoted above, 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 international recognition; we must consider the research community's reaction to those articles.

While the petitioner asserts on appeal that the beneficiary has been cited 55 times, at issue is the number of citations as of the date of filing in this matter. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. **Initially, the petitioner submitted evidence that several of the beneficiary's articles have been cited, often by coauthors.** While self-citation by a coauthor is a normal and expected process, it cannot establish the beneficiary's recognition beyond his immediate circle of colleagues. The most citations recorded for any one article as of the date of filing was seven, and only three of those citations are by independent research teams. This citation record does not set the beneficiary apart from his peers. Thus, we withdraw the director's finding that the petitioner meets 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 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.