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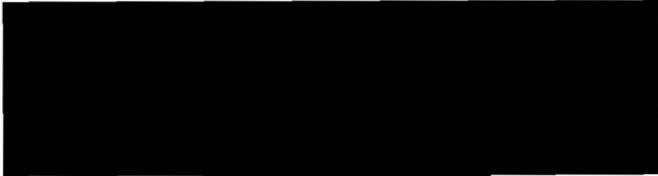
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
LIN 06 171 50756

Office: NEBRASKA SERVICE CENTER

Date: MAY 29 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:



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 pharmaceutical company. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as an associate principal scientist. The director 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, counsel submits a brief and a copy of a non-precedent decision by this office involving a beneficiary who had served on an editorial board and was well cited, facts not present in the matter before us. Regardless, while the regulation at 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all Citizenship and Immigration Service (CIS) employees in the administration of the Act, unpublished decisions are not similarly binding. For the reasons discussed below, we uphold the director’s bases of denial.

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 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 1, 2006 to classify the beneficiary as an outstanding researcher in the field of pharmacokinetics. 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.<sup>1</sup>

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

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<sup>1</sup> The petitioner does not claim that the beneficiary meets any criteria not discussed in this decision and the record contains no evidence relating to the omitted criteria.

The petitioner initially submitted evidence of the beneficiary's membership in the Beta Theta Chapter at Long Island University of the Rho Chi Society. The membership certificate is dated April 1999, while the beneficiary was a Ph.D. student at that university. In response to the director's request for additional evidence, the petitioner submitted the society's bylaws. The bylaws provide that Graduate Membership is open to all graduate students who:

1. are pursuing a Master of Science or a Doctor of Philosophy degree and are majoring in one or more areas of pharmaceutical study mentored or supervised by a member of the pharmacy faculty, and
2. have completed no less than one-half of the required course work as defined for their degree by the program, and
3. have maintained the equivalent of a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate course work [weighted scale conversion formula omitted], and
4. are nominated for membership by a member of the faculty or self, and
5. meet the requirements for membership set forth in Section 3.a) 4. above.

Section 3(a)(4) requires certification by the school of pharmacy's dean or the dean designee that the student has no known disciplinary action for academic dishonesty, misconduct or unprofessional behavior.

The director concluded that the bylaws did not establish that the society requires outstanding achievements of its members. On appeal, counsel asserts that the society requires high standards of intellectual and scholarly attainment for election to membership and, thus, is recognized among scholars and academic circles. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The society's bylaws do not support counsel's assertions. The Graduate Membership requirements set forth in those bylaws require only that the prospective member have completed a certain amount of coursework in pursuit of a degree in a relevant field, maintain a certain grade point average, be nominated by a faculty member or even the prospective member himself and demonstrate a lack of disciplinary action. None of these requirements represent an outstanding achievement in the field of pharmacy itself. In fact, graduate members may not have even entered the field yet.

In light of the above, the beneficiary's membership in the Rho Chi Society cannot meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B). Moreover, the bylaws reveal that members are elected by their local chapter. The petitioner has not demonstrated how election to

membership in a local chapter at the beneficiary's own university is indicative of international recognition.

*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 initially asserted that the single citation submitted initially served to meet this criterion. In the director's request for additional evidence, the director advised that citations cannot serve to meet this criterion. The petitioner's response does not address this criterion. The director concluded that the petitioner had not demonstrated that the beneficiary meets this criterion. Counsel does not challenge that conclusion on appeal. We concur with the director. Articles which cite the beneficiary's work are primarily about the author's own work, not the beneficiary's work. As such, they cannot be considered published material about the beneficiary's work.

*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 had refereed manuscripts for the *Journal of Pharmacokinetics and Pharmacodynamics* and abstracts for American Association of Pharmaceutical Sciences conferences. The beneficiary was one of 217 reviewers for the journal over five years. The beneficiary served as an abstract reviewer for one of seven divisions of the "PPDM" section of the conference. In response to the director's request for additional evidence, the petitioner submitted evidence that the beneficiary reviewed manuscripts for *Life Sciences* after the date of filing. The petitioner, however, must establish the beneficiary's eligibility as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Thus, we cannot consider any achievements after that date.

The director concluded that peer-review is a routine institutional practice in the beneficiary's field and could not be considered evidence of international recognition. On appeal, counsel asserts generally that the evidence submitted to meet this criterion is indicative of the beneficiary's international recognition.

We cannot ignore that scientific journals and conferences are peer reviewed and rely on many scientists to review submitted manuscripts and abstracts. 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 manuscripts, 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 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.

Furthermore, the regulations include a separate criterion for scholarly articles. 8 C.F.R. § 204.5(i)(3)(i)(F). Thus, the mere authorship of scholarly articles cannot serve as presumptive evidence to meet this criterion. To hold otherwise would render the regulatory requirement that a beneficiary meet at least two criteria meaningless.

The petitioner relies on reference letters to meet this criterion. Most of the letters are from the beneficiary's immediate circle of colleagues. The beneficiary's two independent references indicate that their opinion is based on a review of written material supplied by the beneficiary's "representatives." Neither independent reference indicates that he or she had ever heard of the beneficiary or his work prior to being contacted for a reference letter.

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 beneficiary through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the beneficiary and are merely responding to a solicitation to review the beneficiary's curriculum vitae and work and provide an opinion based solely on this review. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with international recognition should be able to produce unsolicited materials reflecting that acclaim.

The beneficiary received his Ph.D. from Long Island University in 2002. He subsequently worked as a pharmacokineticist and scientist at Johnson and Johnson before joining the petitioning company. The beneficiary's curriculum vitae reflects that while working for Johnson and Johnson and the petitioning company, the beneficiary was also studying for his Master of Business Administration (MBA).

an associate professor at Long Island University, asserts that he "professionally interacted" with the beneficiary. The record reflects that the beneficiary coauthored three articles and four conference presentations with [REDACTED] and the beneficiary indicated on his curriculum vitae that [REDACTED] was his major advisor. [REDACTED] asserts broadly that the beneficiary is "a leader in the application of modeling and simulation to help design clinical trials." [REDACTED] explains that mechanism and physiologic based modeling and simulation is a new and promising field and that the beneficiary's research on the "complexation" between large proteins and small drug molecules offered the first comprehensive understanding of these processes and "paved the road for the development of many medical molecular entities." [REDACTED] does not identify any independent laboratory that has relied on the beneficiary's models or simulation techniques.

[REDACTED], a principal scientist at Johnson and Johnson, asserts that he has known the beneficiary since 2002 and was initially impressed with the beneficiary's Ph.D. research on the carbonic anhydrase inhibitor methazolamide. [REDACTED] further asserts that the beneficiary's recent work on the use of pharmacokinetics modeling and simulation in hematology "is recognized as a breakthrough and a major step in our efforts to better understand, target and treat cardiovascular disease." [REDACTED], however, provides no examples of how the beneficiary's modeling and simulation is being used beyond his employers.

a former research fellow at Johnson and Johnson, provides additional detail about the beneficiary's work there. [REDACTED] states that the beneficiary analyzed data on the heterogeneity of the patient population of an anti-bacterial agent, the different types of bacteria targeted by the drug and changes in the disease within a single patient. The beneficiary quantified this data and conducted a Computer Assisted Clinical Trial Design (CATD) to determine the most optimal utility of the drug. According to [REDACTED], the beneficiary predicted the percentage of patients that would benefit from the drug and the risk factors and identified a therapeutic window of plasma drug exposures within which the drug could be used. The beneficiary also researched animal data for an anti-coagulant drug for heart

disease and extrapolated a safe starting dose for human clinical trials. [REDACTED] asserts that the results of the clinical studies confirmed the predictive power of the beneficiary's methodologies.

In a cover letter supporting the petition, [REDACTED], Senior Director of the petitioning company, asserts that the beneficiary studied patient variables and developed dose recommendations for an anti-fungal drug, Posaconazole, approved in Europe and, after the date of filing, in the United States. In addition, the beneficiary used computer assisted trial design to determine an intravenous dose for an otherwise oral brain tumor medication, Temozolomide.

In response to the director's request for additional evidence, the beneficiary submitted two additional letters. [REDACTED], a professor of chemistry at Virginia Polytechnic Institute, asserts that her opinion is based on her "review of documents submitted" to her by the beneficiary's "representatives." She does not suggest that she was previously aware of the beneficiary or his work through his alleged international reputation prior to being contacted for a reference letter. [REDACTED] concludes that the beneficiary's contributions relating to Posaconazole and Temozolomide are indicative of a researcher of international repute. She does not, however, indicate that the beneficiary's models for determining the dosage for these drugs have garnered attention beyond the beneficiary's employer. [REDACTED] does not affirm that she has personally been influenced by the beneficiary's models.

[REDACTED], a professor of chemistry at North Carolina State University, asserts that his opinion is based on his "review of written documents pertaining to" the beneficiary provided by the beneficiary's "representatives." [REDACTED] does not suggest that he was previously aware of the beneficiary's innovations that have, according to [REDACTED], "garnered sustained national and international acclaim and awards." [REDACTED] affirms the importance of the beneficiary's work on Temozolomide and asserts that the beneficiary "has gained an international reputation for his strong work in establishing guidelines and best practices for PK/PD modeling and simulation with computer assisted clinical trial designs." [REDACTED], however, does not provide a single example of any research laboratory other than the petitioner using the beneficiary's guidelines. While [REDACTED] notes that the petitioner has issued awards to the beneficiary, these awards cannot demonstrate that the beneficiary is recognized beyond his own employer, let alone internationally recognized.

[REDACTED] notes the beneficiary's publication record and asserts that these publications "have also been cited in the work of others within the field." [REDACTED] concludes that these citations indicate that the beneficiary's research "has significantly influenced the field and continuing work of his colleagues." The record, however, does not support [REDACTED]'s assertion. Initially, the petitioner submitted only one citation of his work. In response to the director's request for additional evidence, the petitioner submitted slightly complex citation evidence, which, upon careful reading, documents no more than three citations, two of which are self-citations by [REDACTED]. While self-citation is a normal and expected process, such citations cannot demonstrate the beneficiary's reputation beyond his immediate circle of colleagues. We do not find the beneficiary's publication and citation record to be indicative of contributions that are internationally recognized as outstanding.

The record shows that the beneficiary is respected by his colleagues and has made useful contributions to the clinical trials of important drugs. It can be argued, however, that most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. While we do not contest the ultimate significance of the drugs on which the beneficiary has worked, the petitioner has not demonstrated that the pharmaceutical field internationally has recognized the significance of the methodologies used to determine the dosing of these drugs during clinical trials rather than simply the utility of the drugs themselves.

In light of the above, the petitioner has not established that he 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, as of the date of filing, the beneficiary had authored three published articles and had presented his work at several conferences. The director concluded that the evidence submitted to demonstrate citations was "convoluted" and that the petitioner had not demonstrated the impact of the beneficiary's published articles.

On appeal, counsel does not acknowledge the director's concern that the citation evidence submitted was difficult to understand. Rather, counsel asserts that the petitioner demonstrated that the beneficiary was published in prestigious publications and that the significance of the published work is "demonstrated by its dissemination to his peers in the field." Finally, counsel relies on a non-precedent decision by this office involving an alien who was "well-cited" for the proposition that the "wide citation" of the beneficiary's work was not sufficiently considered by the director.

Counsel is not persuasive. First, we will not presume international recognition from international exposure. Thus, the dissemination of the beneficiary's work alone is insufficient. As stated above, outstanding professors and researchers should stand apart in the academic community through eminence and distinction based on international recognition. 56 Fed. Reg. at 30705. In addition, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record does not support counsel's assertion that the beneficiary is widely cited. As stated by the director, the citation evidence is somewhat confusing. A careful reading of the evidence in its entirety, however, reveals that the beneficiary has been cited three times, two of which are by the beneficiary's own coauthor. This evidence does not support counsel's assertion that the beneficiary is widely cited.

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.” Moreover, for biological scientists, the Department of Labor’s *Occupational Outlook Handbook* (2008-2008 ed.), available online at <http://www.bls.gov/oco/ocos047.htm>, accessed May 28, 2008, reflects that a “solid record of published research is essential in obtaining a permanent position involving basic research.” 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.

In light of the above, the beneficiary’s publication record is not indicative of or consistent with international recognition as outstanding. Even if we were to conclude that the beneficiary meets the plain language of this criterion without analyzing the quality of the evidence submitted to meet this criterion, the beneficiary would only meet one 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.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.