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U.S. Citizenship  
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Services

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FILE:

EAC 06 038 52051

Office: NEBRASKA SERVICE CENTER

Date **MAY 29 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:



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 and reaffirmed that decision twice on motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an electronic materials 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 a research and development engineer. 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.

Counsel included a brief statement explaining the basis of the appeal on the Form I-290B. Counsel also indicated, however, that he would submit a brief and/or additional evidence to the AAO within 30 days. Counsel dated the appeal August 24, 2007. As of March 13, 2008, this office had received nothing further. Therefore, on that date, this office contacted counsel by facsimile to inquire whether counsel had submitted anything further and to request a copy of any subsequent submission. In response, counsel submitted a copy of a November 15, 2007 letter to the director advising that counsel would rely on the previously submitted evidence and briefs. For the reasons discussed below, we uphold the director's decision.

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 November 4, 2005 to classify the beneficiary as an outstanding researcher in the field of engineering. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field of engineering 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 criteria follow.

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

As noted by the director, no claim has been presented 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 that the beneficiary is a member of the American Institute of Chemical Engineers (AIChE) and the Materials Research Society (MRS). The petitioner submitted evidence that AIChE membership is open to those who meet certain education and experience requirements. The petitioner failed to submit evidence of the membership requirements for MRS.

The director concluded in his initial decision that the record does not reflect that these organizations require outstanding achievements of their general membership and counsel has never challenged this assertion.

*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.*

As noted by the director, no claim has been presented 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.*

As noted by the director, no claim has been presented that the beneficiary meets this criterion.

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

Counsel has asserted that the beneficiary's patents are conclusive proof that the beneficiary's work is original and the significance of his innovations are demonstrated by the reference letters. Counsel further notes that the beneficiary's patents can be accessed through various Internet websites. The record contains no evidence that these websites evaluate various patents and report on those patents deemed significant and influential. Rather, the websites would appear to be search engines for patents in general. Thus, the petitioner has not established that the ability to access the beneficiary's patents through these websites sets his innovations apart from other patented innovations. International accessibility does not create a presumption of international recognition. We will consider the remaining evidence below.

The record contains one U.S. patent, two U.S. patent applications and two applications filed with the World Intellectual Patent Organization. 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 research or other innovation, in order to be accepted for graduation, publication, funding or a patent, 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.

Finally, in a decision regarding a lesser classification, this office stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Commr. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* The evidence before us reflects that the beneficiary holds one patent and is listed as an inventor on two additional patent applications (the international patent applications are for the same innovations listed in the U.S. patent applications). This evidence establishes that the beneficiary has produced original designs, but the very existence of the patents does not show that the beneficiary's innovations are more significant than those of others in his field. To establish the significance of the beneficiary's work, we turn to experts in his field, whose letters we discuss below.

At the outset, we note that 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 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 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.

The beneficiary received his Ph.D. in Engineering from the City University of New York (CUNY) in 2001 under the supervision of [REDACTED]. The beneficiary then worked as a research scientist for Orica USA through July 2003, when he joined the petitioning company.

[REDACTED] discusses the beneficiary's Ph.D. dissertation on surface active agents (surfactants) and their use in enhancing the surface mobility of bubbles moving through a liquid. [REDACTED] explains the problems that arise from trace surface active impurities adsorbing onto the surface of the bubble and causing it to move as if it were a solid particle. The beneficiary discovered a set of polyethylene oxide surfactants that prevent adsorption, allowing the bubbles to move with velocities characteristic of a clean system. The beneficiary then "constructed and solved a hydrodynamic model for bubble motion in the presence of surfactant adsorption and developed criteria for how fast the surfactant exchange must be to maintain the surface mobility." [REDACTED] notes that the beneficiary presented this work at conferences and had submitted it for publication. As of the date of filing, this work had yet to be published.

[REDACTED] Chair of Johns Hopkins University's graduate program in the Department of Chemical and Biological Engineering, asserts that she had "the opportunity to observe" the beneficiary in 1998 at CUNY and that she consulted with him "on several occasions." She further asserts that her own research group has attempted to exploit the beneficiary's use of surfactants to facilitate the movement of bubbles through a liquid and that she will include "these results in a plenary lecture at an international conference this August." Although that conference would have already occurred as of the date the petition was filed, the petitioner did not submit a copy of the presentation or other evidence that [REDACTED] cited the beneficiary's work. Regardless, the fact that a researcher from John Hopkins visiting [REDACTED]'s laboratory found the beneficiary's work useful, while a favorable factor, is not evidence that the beneficiary's work is internationally recognized as outstanding.

[REDACTED], a senior research scientist at Orica, indicates that he supervised the beneficiary at that company. [REDACTED] indicates that the beneficiary's first project for Orica resulted in an intellectual property disclosure for two new commercial explosives that would save Orica \$1.7 million. While [REDACTED] asserts that this innovation "is being considered for patenting," the record does not include a patent application for this product.

[REDACTED] further asserts that the beneficiary's work with surfactants improved water resistance by three times at Orica, providing a major economic benefit for the company. Finally, [REDACTED] asserts that the beneficiary "took charge of a project to improve the quality of Orica's Magnafrac line of gassed emulsion packaged products." Through laboratory tests, the beneficiary "succeeded in improving the product quality proved by the results on trial products." [REDACTED] notes that Orica is implementing the beneficiary's process improvement, resulting in an annual savings of \$700,000. Suresh Subramanian, former Director for Global Product Development at Orica, provides similar information.

Clearly, the beneficiary performed useful services for his employer. The record, however, lacks evidence that the beneficiary's work at Orica garnered any international attention. For example, the record contains no evidence that trade journals or other media reported on the improvements at Orica derived from the beneficiary's work.

[REDACTED], Manager for Pad Engineering Research at the petitioning company, discusses the beneficiary's work there on characterizing the surface texture of chemical mechanical polishing (CMP) polishing pads. [REDACTED] notes that the beneficiary has presented some of this work at conferences. The record contains evidence that the petitioner has filed U.S. and international patent applications based on the beneficiary's work there.

With the exception of the letter from [REDACTED], the above letters are all from the beneficiary's immediate circle of collaborators and colleagues. [REDACTED] appears to at least have spent some time in [REDACTED]'s laboratory such that she observed the beneficiary's work there. Contrary to the assertions of prior counsel and the petitioner's current counsel in response to the director's request for additional evidence, as of the date of filing, the beneficiary had yet to publish any of his work in peer-reviewed journals and the record contains no evidence of any citations. We acknowledge that the beneficiary presented his work at some conferences. The record, however, lacks evidence that these presentations have been widely influential. 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 or the generally comparable act of presenting one's work orally at a distinguished conference cannot serve as presumptive evidence to meet the contributions criterion at 8 C.F.R. § 204.5(i)(3)(i)(E). To hold otherwise would render the regulatory requirement that a beneficiary meet at least two criteria meaningless.

While the beneficiary is listed as an inventor on patent applications and a patent, the record lacks evidence that these patents have garnered any international attention let alone that they are internationally recognized as outstanding.

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 or a patent. The record does not establish that the beneficiary's work has been internationally recognized as outstanding.

*Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.*

Initially, prior counsel characterized the beneficiary as a "Published and Widely Cited Author." In response to the director's request for additional evidence, counsel asserted that "the record shows that [the beneficiary] has authored numerous original peer-review research articles published in journals with international circulation" and that "his work is cited often by peers in the field." 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 either assertion.

The petitioner submitted evidence that, as of the date of filing, the beneficiary has authored two articles that were either “in press” or had been submitted for publication. In his brief on motion, counsel asserted that the beneficiary’s papers have undergone peer review, that he has authored patents and that the reference letters attest to the significance of the work to be published. The petitioner must demonstrate 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). The regulation at 8 C.F.R. § 204.5(i)(3)(i)(F) requires evidence of authorship of articles in internationally circulated journals. The purpose of the regulatory criteria is to demonstrate international recognition. Articles that have yet to appear in internationally circulated journals cannot meet the plain language of the regulatory criterion. Moreover, they are not indicative of or consistent with international recognition as they have not yet even been disseminated in the field.

The petitioner is listed as an innovator on one U.S. patent, two U.S. patent applications and two international patent applications. Patents are not articles and are not published in internationally circulated scholarly journals. No provision in the regulation at 8 C.F.R. § 204.5(i) would even permit the consideration of comparable evidence for the classification sought; thus, we need not consider whether patent applications are comparable to articles in peer-reviewed scholarly journals.

We acknowledge that the beneficiary or one of his colleagues presented his work at several conferences. The record, however, lacks evidence supporting prior assertions that the beneficiary is widely cited or even that he has been cited at all. The petitioner has simply not established that the beneficiary’s publication record, which consists of conference presentations only, is indicative of international recognition in the field or suggests that the beneficiary stands apart in the academic community through eminence and distinction based on international recognition. 56 Fed. Reg. at 30705.

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 a very limited 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.