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U.S. Citizenship and Immigration Services

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[redacted]

MAR 26 2004

FILE: WAC 02 275 50222 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an 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.

Mari Johnson
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner conducts optical and sensory research and development. 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 scientist. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

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

> (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.

Service regulations at 8 C.F.R. § 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:

> (i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. Such evidence shall consist of at least two of the following:
>
> > (A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;

(B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;

(C) 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;

(D) 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;

(E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or

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

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien; and

(iii) 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.

Citizenship and Immigration Services regulations at 8 C.F.R. § 204.5(i)(3)(i) require evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. The petitioner must submit evidence to fulfill at least two of six listed criteria. In an introductory and explanatory letter accompanying the petition, Jay Olins, the petitioner's vice president of mergers and acquisitions, claims that the petitioner has fulfilled five of the six criteria. The director, in denying the petition, determined that the petitioner had met only one criterion. On appeal, in an unsigned brief, the petitioner maintains that it has met five of the six criteria. Below, we discuss each of the relevant criteria in turn.

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

Mr. Olins asserts that the beneficiary "is the recipient of four major research awards. Two of these awards were granted by the Swiss Research Commission at ETH, one by the Swiss National Science Foundation and another by the EMDO Foundation (Zurich, Switzerland). These awards are highly prestigious and are only granted to scientists who are at the very top of their field of expertise."

The petitioner submits documentation showing that several of the beneficiary's research projects or assignments are supported by grant funding. The petitioner has submitted no support for the claim that the beneficiary's grants and fellowships "are only granted to scientists who are at the very top of their field of expertise."

In response to a request for further information, the petitioner has submitted additional materials about the above grants and fellowships, but these do not contradict the finding that the funds represent payment for services rendered rather than prizes for outstanding achievement. Translated documents submitted in response to this notice show that the fellowships were "for beginning scientists," with the funds earmarked specifically for "postdoctoral training." "Beginning scientists" who have yet to finish their "training" are not "at the very top of their field of expertise."

The director determined that the petitioner has not shown that the above grants and fellowships are major prizes and awards. On appeal, the petitioner states that the grants and fellowships, along with a newly-awarded $100,000 grant from the United States Department of Defense, "can be considered as 'major awards for outstanding achievements.'"

As noted above, the beneficiary's fellowships were for the "training" of "beginning scientists." The research grants represent advance payment for ongoing or future research, rather than recognition of outstanding achievement in the field. Grant funding of this kind appears to be routine, rather than a rare accolade bestowed only on outstanding researchers. The petitioner has submitted nothing to show that the particular grants the beneficiary has received are significantly different from countless other grants awarded by numerous entities to laboratories and researchers around the world. We cannot agree with the assertion that only outstanding researchers are able to secure grant funding from prestigious organizations or government entities.

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.

Mr. Olins states that the beneficiary's "research has been the focus of the published works of others," having been "cited in at least 47 international publications." Citations of this kind do not show that the citing articles "focus" on the beneficiary's work, any more than articles by M. Watanabe, M.F. Ghilardi or B.L. McNaughton (all cited in the beneficiary's articles) have been the focus of the beneficiary's own published work. Heavy citation is more appropriate as a gauge of the impact of the beneficiary's own published work, covered by a separate criterion further below.

The director stated that citations of the beneficiary's work do not amount to published material about the beneficiary's work. On appeal, the petitioner selects two examples "[t]o demonstrate that professional publications were written by others *about* [the beneficiary's] work." One example is an article by Dr. Wolfram Schultz, which "defends the Suri-Schultz model by repeatedly referring to articles by [the beneficiary] and collaborators that demonstrate the strengths of this model." The author, Dr. Schultz, is the "Schultz" of "the Suri-

Schultz model." The article is a defense of Dr. Schultz's own work, and by "repeatedly referring to articles by [the beneficiary] and collaborators," Dr. Schultz cites his own prior articles. An article in which the beneficiary's collaborator discusses his own work is not persuasive evidence of the beneficiary's international recognition. Even then, this model is by no means the focus of Dr. Schultz's article. The petitioner has highlighted only a few brief passages in the eighteen-page article.

The other article is by three researchers at Boston University. The petitioner states that these authors "focus their first two paragraphs of the Discussion section . . . on the standard model proposed by [the beneficiary] and Dr. Schultz. The major claim of their publication is that their model is superior to the Suri-Schultz model." The paragraphs in question are, indeed, devoted to discussion of purported shortcomings of the Suri-Schultz model, such as the assertion that the model makes predictions "not found in the data." The Boston University researchers assert that their model "avoids the problem of the Suri and Schultz model."

Thus, the petitioner's two specific examples of published material about the beneficiary's work consist of (1) a review by the beneficiary's mentor and collaborator, and (2) a discussion of the flaws in the beneficiary's model. Neither of these examples leads to the conclusion that the beneficiary has won international recognition as an outstanding researcher.

> *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.*

Mr. Olins states "[w]hile employed as a research scientist at the Salk Institute in California . . . [the beneficiary] reviewed and judged the work of eight other peer-scientists for publication in the *Neural Computation* journal (MIT press)." The initial submission contains no corroboration for this claim, but the petitioner has since provided a letter from Rosemary Miller, managing editor of *Neural Computation*, indicating that the beneficiary "has to date reviewed eight manuscripts" for the journal. Ms. Miller makes it clear, however, that the beneficiary's selection for this task did not arise from international recognition. Rather, "[h]e reviewed these manuscripts from September 1999 until December 2001 when he worked as a full-time researcher in the Computational Neurobiology Laboratory at The Salk Institute for Biological Studies." Ms. Miller's letter, on *Neural Computation* letterhead, lists the journal's address as the Salk Institute. We cannot infer international recognition from the fact that the beneficiary, as a Salk Institute employee, reviewed manuscripts at the behest of others at the Salk Institute.

The petitioner's response to the director's request for evidence also includes an undated request for the beneficiary to join the "panel of referees" of the *Journal of Postgraduate Medicine*. The petitioner did not mention this invitation in the initial filing, and there is no evidence that the beneficiary has actually acted as a referee for the journal.

The director concluded that occasional peer review of manuscripts does not establish international recognition as an outstanding researcher, because such work is routine in academia. On appeal, the petitioner argues that the beneficiary served on a panel, judging the work of others, and therefore has satisfied this criterion.

From the construction of the statute and regulations, it is clear that we must view the evidence in the context of international recognition. Evidence which nominally falls under a particular criterion, but does not establish such recognition, cannot suffice to establish eligibility as an outstanding researcher. In the case of peer review of manuscripts, some degree of peer review appears to be an expected duty of competent

researchers, rather than a rare privilege.[1] There is no evidence that, as of the petition's filing date, the beneficiary's services as a "judge" were in demand anywhere except when he was working with members of the editorial staff of a journal.

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

The petitioner cites three letters from the beneficiary's mentors and collaborators. Professor Andrew G. Barto of the University of Massachusetts, Amherst, in whose laboratory the beneficiary worked for two months, states that the beneficiary "is a well-known scholar in the field of biological learning. He is an outstanding researcher in the area of computational models of learning in the dopamine system. His findings improve our understanding of Parkinson's disease and drug addiction." Prof. Barto discusses the general areas affected by the beneficiary's work, but identifies no specific contributions.

Dr. Wolfram Schultz, a research fellow at the University of Cambridge, United Kingdom, states:

> [The beneficiary] worked from November 1995 to March 1997 in my research group at the Institute for Physiology in Fribourg, Switzerland, as a postdoctoral research assistant. He was working on computer models for dopamine neuron activity. We recorded the neural activities of these neurons in our laboratory in monkeys. These neurons give an internal predictive reward signal and are involved in drug addiction and Parkinson's disease.
>
> [The beneficiary] very quickly became familiar with the crucial algorithms and with their performance and characteristics. [The beneficiary] implemented within weeks the basic algorithms and demonstrated that the performance of these algorithms is comparable to the activities of dopamine neurons. Within the next year, he adapted and improved these algorithms to a biologically-plausible model that was closely tuned to our experimental findings.

Dr. Schultz states that the beneficiary's "research addresses many important issues that are likely to produce important breakthroughs in the field of mental health," but he does not elaborate.

Dr. Carlo Albani, who identifies himself as "a leading specialist in Switzerland on the treatment of" Parkinson's disease, and who guided the beneficiary's Ph.D. thesis, states that the beneficiary has "acquired an international reputation as one of the world's leading researchers on the neural mechanisms of Parkinson's disease." This letter, like those above, discusses no specific contributions by the beneficiary; it merely identifies the beneficiary's area of expertise.

The above letters do not fulfill the regulatory requirements. It cannot suffice simply to assert that the beneficiary has won international recognition for unspecified contributions, particularly when all of the witnesses have worked closely with the beneficiary. Such a witness base cannot establish, first-hand, the international recognition required by the statute and regulations.

Mr. Olins describes the beneficiary's current work for the petitioner:

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[1] We note, for instance, the American Chemical Society's *Ethical Guidelines to Publication of Chemical Research*, which indicates "[i]nasmuch as the reviewing of manuscripts is an essential step in the publication process, and therefore in the operation of the scientific method, every scientist has an obligation to do a fair share of reviewing."

> [The beneficiary] works to develop advanced algorithms for ground water monitoring for the U.S. Department of Energy, and he has been working on image recognition software to recognize military objects on satellite images for the U.S. National Imagery and Mapping Agency. He is further working on image enhancement algorithms for IR radar systems for the U.S. Army.

It is not readily apparent how this current work relates to the beneficiary's previous, medically-related research work.

In response to a request for additional evidence, Mr. Olins points to citations of the beneficiary's published articles, and the beneficiary's appearances at scientific conferences. The publication and presentation of the beneficiary's work is covered by a separate criterion, below. To state that such evidence, on its face, also satisfies this second criterion would make the criterion redundant, while also defeating the purpose of requiring multiple types of documentary evidence.

On appeal, the petitioner submits four new witness letters, "written by experts of international reputation who never worked with" the beneficiary, intended to establish the significance of the beneficiary's contributions. Dr. Olaf Sporns of the University of Indiana met the beneficiary at a 1999 conference and has "remained in touch" with him since that time. Dr. Sporns states that the beneficiary "is considered one of the leading researchers in the area of neural computation," and that his "recent cutting-edge research into the mechanisms of reward-related learning contributed extensively to elucidate the link between neural activity and behaviour." Dr. Howard Casey Cromwell of Bowling Green State University states that the beneficiary "is an outstanding researcher of exceptional ability who has risen rapidly to international recognition due to his critical discoveries on reward learning. Using his expertise in biology and mathematics, [the beneficiary] has gained brilliant insights into how the brain learns reward expectations. . . . [H]is research has significantly influenced the methodology utilized by scientists in the field." As before, the beneficiary's actual contributions are only vaguely described.

The remaining two witnesses offer similar assessments of the beneficiary's work. One witness, Dr. José Bargas of the National University of Mexico, met the beneficiary at a conference in Los Angeles. The other, Professor Richard Sutton of the University of Alberta, Canada, spent his entire career in the United States until accepting his faculty position in Canada in August 2003. When the petition was filed in September 2002, Dr. Sutton worked for AT&T in New Jersey. Their letters do not show that the beneficiary's work, outside of personal connections, had won him international recognition at the time the petition was filed. The beneficiary must have been eligible as of the filing date, pursuant to *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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

The petitioner documents 47 citations of the beneficiary's articles, with one article showing 20 citations. The director concluded that the petitioner had satisfied this criterion. This conclusion is defensible, although we note that a number of these citations are self-citations by the beneficiary or his collaborators, which diminishes the volume of independent citations of the beneficiary's work. The bulk of the beneficiary's citation record rests on two articles, each with numerous self-citations. As noted above, at least one article cites the beneficiary's work only in the context of arguing that the beneficiary's model is flawed and ought to be abandoned.

All of the witnesses state that the beneficiary's work will influence our understanding of Alzheimer's disease and Parkinson's disease, although there is no evidence that the petitioner has employed, or will employ, the beneficiary in areas directly related to neurology, medicine or biology. Whatever reputation the beneficiary

earned as a doctoral student and as a postdoctoral fellow is, therefore, of questionable relevance as pertains his current work.

The overall pattern demonstrated by the record shows that the beneficiary is a respected and successful scientist whose research has had some degree of influence on the field. Several of the petitioner's claims, however, are not persuasive, and we do not find that the beneficiary has achieved a level of international recognition sufficient to qualify for the highly restrictive classification of outstanding researcher. 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.