U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 04 2005
WAC 03 155 54547

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:

[redacted]

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.

Marc Johnson

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 is a global electronics company. It seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B), as an outstanding professor or researcher. The petitioner seeks to employ the beneficiary as an "Advisory Engineer/Scientist." The director found that the petitioner has not established that the beneficiary is recognized internationally as outstanding in his academic field.

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:

> (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.

This petition was filed on April 23, 2003. 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. The petitioner submits evidence pertaining to the following criteria.

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 petitioner submitted evidence showing that the beneficiary was appointed to serve as a co-supervisor for a Ph.D. student during his employment at the Data Storage Institute in Singapore. We do not find that serving as advisor to a Ph.D. student (a local or institutional function) is adequate to demonstrate that the beneficiary is internationally recognized as outstanding, nor would serving in this capacity carry the same weight as evaluating established engineering professionals (who have long since completed their education) at the international level.

The petitioner also submitted correspondence requesting that he review two manuscripts for *IEEE Transactions on Magnetics*, one manuscript for *IEEE Journal of Selected Areas in Communication*, and one manuscript for the IEEE Global Communications Conference (Globecom 2000). On appeal, the petitioner submits evidence showing that the preceding journals are internationally circulated and that Globecom 2000 is an international engineering conference. We note, however, that peer review of manuscripts is a routine element of the process by which articles are selected for scientific conferences and publication in scholarly journals. Occasional participation in peer review of this kind does not automatically demonstrate that the beneficiary has achieved international recognition as outstanding in his academic field. The petitioner has not submitted evidence to show that only outstanding, internationally recognized researchers review papers in this manner.

Without evidence that sets the beneficiary apart from others in his field, such as (for example) evidence that he has peer-reviewed an unusually large number of manuscripts for publication in scientific journals, received multiple independent requests for his services from a substantial number of journals or conference committees, or served in an editorial position for distinguished journals (in the same manner as some of his witnesses), we cannot conclude that he meets this criterion.

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

Obviously, the petitioner cannot satisfy this criterion simply by listing the beneficiary's past projects, and demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research. Research work that is unoriginal would be unlikely to secure the beneficiary a master's degree, let alone classification as an outstanding researcher. Because the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher, it stands to reason that the beneficiary's research contributions have won comparable recognition. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, as well as to presume that most research is "unoriginal."

As evidence of the beneficiary's "original and scholarly contributions," the petitioner submitted evidence of a "pending Singapore patent." We note here that anyone may file a patent application, regardless of whether the invention constitutes an important contribution to the field. There is no evidence showing that the beneficiary's patent was approved as of the petition's filing date. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which Citizenship and Immigration Services (CIS) (legacy INS) held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Even if the petitioner were to provide evidence of an approved patent as of the petition's filing date, it would carry little weight in this matter. The granting of a patent documents that an innovation is original, but not every patented invention constitutes an outstanding contribution to one's field. The record contains no evidence showing that the invention described in the beneficiary's patent application has received significant attention throughout the magnetic and optical storage device industry or that his invention has been widely implemented throughout that same industry.

The petitioner also submitted correspondence confirming the acceptance of four of the beneficiary's papers for presentation at scientific conferences. The record, however, contains no documentation demonstrating that the presentation of one's work is unusual in the beneficiary's field or that the invitation to present at conferences in which the beneficiary participated was a privilege extended to only outstanding researchers. Many professional fields regularly hold conferences and symposiums to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, is not adequate to demonstrate that the beneficiary is recognized internationally as outstanding in his field. The record contains no evidence showing, for example, that the beneficiary's conference presentations commanded an unusual level of attention in comparison to the numerous other conference participants or that the beneficiary has served as a keynote speaker at an international engineering conference.

The petitioner submitted five letters in support of the petition. Three of these letters are from the beneficiary's former research collaborators at the Data Storage Institute in Singapore, the fourth is from the professor who supervised the beneficiary's doctoral research at the Indian Institute of Science, and the fifth is from the professor who supervised the beneficiary's postdoctoral research at the University of Manchester. The extremely narrow range of witnesses offering these letters does not demonstrate that the beneficiary's reputation has traveled outside of these institutions, let alone internationally as the statute requires. An individual who is recognized internationally as outstanding should be able to produce ample unsolicited materials reflecting such a reputation. The absence of substantial independent testimony raises doubt as to the extent of the beneficiary's recognition. In conclusion, we find that the evidence presented under this criterion is not adequate to demonstrate that the beneficiary is directly responsible for scientific or scholarly contributions that have been unusually influential or internationally renowned within his field.

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

The petitioner has shown that the beneficiary is the co-author of several published papers in journals such as *IEEE Transactions on Magnetics* and the *IEEE Journal on Selected Areas in Communications*. On appeal, the petitioner submits evidence showing the international distribution of these journals. The record also contains evidence showing that the beneficiary co-authored a book chapter with the professor who supervised his doctoral research. We do not find, however, that publication of one's work is presumptive evidence of international recognition. To assert that publication itself is indicative of outstanding recognition, one must establish that it is a comparatively rare achievement for a researcher's work to be published at all. The petitioner in this case has made no such showing. By way of analogy, CIS sometimes requires copies of income tax returns to establish that the petitioner has the ability to pay the proffered wage to the beneficiary. The petitioner, however, does not automatically meet this requirement by submitting a copy of an income tax return. Rather, we must consider the content of that income tax return; if it does not show that the petitioner can afford to pay the beneficiary, then the petitioner cannot credibly argue that it met its obligation merely by supplying the copy of the tax return. Similarly, while an alien's publication record can form part of the body of evidence in this matter, it does not follow that every article out of the hundreds of thousands published every year carries equal weight.

Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is internationally recognized as outstanding if there is little evidence that other researchers have relied upon the beneficiary's findings. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the beneficiary's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.)* attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the beneficiary himself has cited sources in his own articles. Numerous independent citations would provide firm evidence that other researchers have been influenced by the beneficiary's work. Their citation of the beneficiary's work demonstrates their familiarity with it. If, on the other hand, there are few citations of an alien's work, suggesting that that work has gone largely unnoticed by the larger research community, then it is reasonable to question how widely that alien's work is viewed as being noteworthy. It is also reasonable to question how much impact — and international recognition — a researcher's work would have, if that research does not influence the direction of future research. In the present case, the record contains twelve citations of the beneficiary's published work. We do not find that an aggregate total of twelve citations over a research career spanning more than a decade is adequate to demonstrate that the beneficiary's publications are internationally recognized as outstanding.

The petitioner in this case has submitted evidence under three of the regulatory criteria at 8 C.F.R. § 204.5(i)(3)(i); however, based on the preceding discussion of the evidence, we find that none of those criteria have been fulfilled.

Beyond the beneficiary's failure to satisfy at least two of the regulatory criteria at 8 C.F.R. § 204.5(i)(3)(i), we note that the record contains no formal job offer letter, i.e., a letter from the petitioner addressed to the beneficiary that sets forth a binding offer of employment, including specific terms thereof. The initial submission includes a letter from John Bertschy, Manager, Component Integration and File Integration,

Hitachi Global Storage Technologies, Inc., dated February 5, 2003 and addressed to the "California Service Center" which, over the course of sixteen pages, discusses the beneficiary's education, research background, and eligibility under the regulatory criteria. The petitioner's initial submission included another letter from John Bertschy to the California Service Center, dated January 21, 2003, confirming the beneficiary's employment with Hitachi Global Storage Technologies and describing the beneficiary's job responsibilities. These two letters indicate that the beneficiary is employed by Hitachi Global Storage Technologies, but neither letter is an offer of employment addressed to the beneficiary. Rather, they are letters addressed to the "California Service Center" which discuss (among other things) the petitioner's intention to continue employing the beneficiary in the capacity of Advisory Engineer/Scientist. Neither of these letters constitutes a formal offer of employment; indeed, they imply that the beneficiary has already accepted an offer made earlier. The record does not contain any documentation, pre-dating the petition's filing date, that initiated an employer-employee relationship between the petitioner and the beneficiary or otherwise extended a permanent job offer from the petitioner to the beneficiary.

In this case, the petitioner has shown that the beneficiary is a skilled engineering scientist, who has won the respect of individuals from the institutions where he has studied and worked, while securing some degree of international exposure for his published and presented work. The record, however, stops short of elevating the beneficiary to an international reputation 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 visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.