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U.S. Citizenship and Immigration Services

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[redacted]

JAN 26 2005

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 03 094 50435

IN RE: Petitioner: [redacted]
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:

[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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a biotechnology firm. 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 principal investigator. The director determined that the petitioner had not established the significance of the beneficiary's research, or that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

On appeal, counsel asserts that the director's request for additional evidence did not identify any deficiencies in the evidence submitted initially and asserts that new evidence is now being submitted to overcome the 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.

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 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.

This petition was filed on February 4, 2003 to classify the beneficiary as an outstanding researcher in the field of biotechnology. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field of biotechnology 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 petitioner 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 claims to have satisfied the following criteria.

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

The petitioner relies on the beneficiary's receipt of a postdoctoral fellowship award from the American Heart Association's (AHA) New England Affiliate Research Committee. The award letter reflects that the fellowship funded the beneficiary's work on molecular mechanisms of transcriptional regulation of a cGMP signal transduction system. In addition, while a Ph.D. student at the University of Cambridge, the beneficiary received a scholarship from the Cambridge Overseas Trust and an Overseas Research Student (ORS) award.

The director concluded that the petitioner had not demonstrated the criteria used to select the recipients of the above scholarships and fellowships. On appeal, the petitioner submitted a letter from [redacted] of the Students in Residence program at the Cambridge Overseas Trust. She asserts that in 1992, the year the beneficiary received his scholarship, the trust received 500 scholarship applications from 32 countries, 160 of which were approved. In addition, the petitioner submitted a letter from [redacted] Executive Assistant for the ORS Award Scheme at Universities UK, who asserts that in 1992 ORS offered awards to 1,132 of the 4,250 applicants. The petitioner also submitted a letter from the AHA indicating that the percentile cut off for postdoctoral fellowships was 36.05 percent and that the beneficiary's percentile rank was 24.42 percent. The petitioner also submitted the summary of award characteristics, indicating that the objective of the fellowship is "to help a trainee initiate a career" and that candidates may have no more than three years postdoctoral experience and may not hold faculty rank.

The petitioner also submitted evidence of a 1996 $500 travel grant to present his work from the American Society of Hypertension, awarded to approximately 25 percent of those who applied.

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 his fellow students.

Similarly, it is clear from the materials from the AHA that the beneficiary received a research grant limited to newly graduated postdoctoral trainees in the field. First, research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement. Moreover, a grant limited to newly graduated postdoctoral trainees in the field is not indicative of international recognition in the field. The beneficiary did not compete with the most experienced and recognized members of the field.

In light of the above, we find that the beneficiary's scholarship and fellowship cannot serve to meet this criterion.

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

The petitioner submitted a letter confirming the beneficiary's membership in the Basic Cardiovascular Science Council of the American Heart Association. The petitioner asserted that this council "requires outstanding research ability abilities of its members."

The director failed to address this criterion. On appeal, counsel reiterates the claim that the council "requires outstanding research ability of its members." Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Moreover, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record lacks any evidence that the council requires outstanding *achievements*, as required by 8 C.F.R. § 204.5(i)(3)(B), or even outstanding research ability, as claimed by the petitioner and council. Thus, the petitioner has not established 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 submits evidence that three of the beneficiary's articles have been cited 11, 10, and nine times. We note that the citations by independent researchers total nine, nine, and eight respectively. The director appears to have dismissed these citations based on the fact that researchers are obligated to cite their sources. On appeal, the petitioner asserts that citations are the most persuasive evidence of the importance and impact of a researcher's work.

We concur with the petitioner that citations are evidence of the impact and influence of the article cited. Nevertheless, the articles citing the beneficiary's work are still primarily about the author's research, not the

beneficiary and his research. Thus, the citations cannot be considered published material about the beneficiary's work and cannot serve to meet this criterion. The citations will be considered below, however, as evidence relating to whether the beneficiary meets the scholarly articles criterion set forth at 8 C.F.R. § 204.5(i)(3)(F).

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 asserts that the beneficiary meets this criterion through his supervision of another postdoctoral research fellow, at Brigham and Women's Hospital. The director failed to discuss this criterion. On appeal, counsel reiterates the claim that supervision of another postdoctoral fellow meets this criterion.

None of the petitioner's references at Brigham and Women's Hospital attest to this supervision. While the record contains an abstract listing Dr. as the first author and the beneficiary as a coauthor, this evidence does not imply that the beneficiary supervised Dr Regardless, this office consistently holds that duties inherent to one's position are not indicative of or uniquely consistent with international recognition. Specifically, we cannot conclude that every instructor who grades his students or that every laboratory supervisor who oversees another researcher has international recognition. Thus, we find that the petitioner has not established that the beneficiary meets this criterion.

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

Initially, the petitioner submitted reference letters from the beneficiary's collaborators and mentors. At the time of filing, the beneficiary was working as a principal investigator for the petitioning company. Dr the Associate Director for the petitioner, indicates that the beneficiary works in his core cancer group investigating the tumor suppressor protein PTEN. Dr. asserts that the beneficiary "developed a novel methodology, called RNAi, which was rated amongst the top 10 scientific discoveries in 2001 by the prestigious journal, *Science*." Using RNAi, the beneficiary "managed to prevent the abnormal protein expression and function in cancer cells caused by PTEN mutations, and thereby he corrects the cancer causing effects of PTEN mutations." The petitioner did not provide a copy of the designation by *Science* or any evidence that this journal credited the beneficiary with one of the top 10 scientific discoveries in 2001.

Prior to working for the petitioner, the beneficiary worked as a postdoctoral researcher at Brigham and Women's Hospital. According to the beneficiary's references, his work there, using advanced gene chip technology, has lead to the identification of more than 100 genes regulated by cGMP, a hormone-like molecule impacting the cardiovascular system, especially blood pressure. According to Dr. in whose laboratory the beneficiary worked at Brigham and Women's Hospital, the scientists who discovered cGMP received the Nobel Prize in 1998 and *Science* designated cGMP "Molecule of the Year" due to the fact that it mediates several clinically important drugs. Dr. further asserts that the beneficiary identified the cGMP responsive element, previously unknown, and that the genes identified by the beneficiary as regulated by cGMP could serve as drug targets and, thus, "have the potential for the development of new therapies for coronary heart disease."

In addition, while studying for his Ph.D. at the University of Cambridge, the beneficiary, working in the laboratory of Dr studied ANP, a hormone that regulates cardiovascular functions. According to Dr the beneficiary was "the first researcher to uncover the up-regulation of ANP and its receptors

during the development of artery disease impacting on a potential therapy in this disease." While Dr is the Global Vice President and Head of Translational Medicine and Technology at GlaxoSmithKline, he does not indicate that the pharmaceutical company is currently pursuing any cardiovascular therapies based on the beneficiary's work.

The director noted that all of the initial references had collaborated or mentored the beneficiary. On appeal, counsel asserts that the beneficiary's collaborators are in the best position to evaluate his work. The petitioner provides several independent evaluations of the beneficiary's work. Only one of these new references attests to having known of the beneficiary's work prior to being contacted for a reference letter. The remaining references indicate that their evaluation is solely based on a review of the beneficiary's curriculum vitae.

Dr. a professor at the University of Massachusetts, Worcester, Dr. Clinical Director of the Northern Institute for Cancer Research in Britain, and Dr. another professor at the University of Massachusetts, assert that the beneficiary's work with the tumor suppressor Wnt5a constitutes a major contribution to the field. This work, however, was published after the date of filing and cannot be considered evidence of the beneficiary's eligibility after that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971). None of these references discuss the beneficiary's work published prior to the date of filing.

Dr. Director of the Center for Free Radical Biology at the University of Alabama at Birmingham, discusses the beneficiary's work with ANP. Dr. tates that "insights gained through [the beneficiary's] research are playing an important role in the development of novel therapies against restenosis, as ANP/cGMP research moves from the laboratory towards clinical applications." Dr. Director of the Cardiovascular Research Institute at the Morehouse School of Medicine provides similar information. As an example of the beneficiary's influence, Dr asserts that ANP is now used as a gene therapy for targeting restenosis as reported in a March 2002 issue of *Circulation*. The list of articles citing the beneficiary's work, printed in November 2002, does not include a 2002 article in *Circulation.* Thus, the petitioner has not established the beneficiary's influence on that work. Finally, Dr does not indicate that his own work has been influenced by the beneficiary.

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 or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who obtains a Ph.D. or is working with a government grant has made a contribution of major significance. The record does not establish that the beneficiary's work represented a groundbreaking advance in 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 submitted three articles and nine abstracts. As stated above, independent researchers have cited each article no more than nine times. The director noted that researchers are typically required to publish the results of their work.

On appeal, counsel asserts that the beneficiary has been "widely published in leading professional journals." Dr. asserts that some of these journals publish only the top five percent of papers. The petitioner also

submits a new article. Counsel further asserts that the beneficiary has been cited "numerous times."

While we concur with the director that publication is inherent to the beneficiary's field, more analysis is warranted. In response to Dr assertion that the beneficiary has been published in journals that only publish the top five percent of papers, we do not infer the impact or significance of a paper from the publication in which it appears. Rather, we look at the impact of the particular article. While we concur with the beneficiary's references that citations are an excellent means of determining the impact of the cited article, we do not agree with counsel that the beneficiary has been cited "numerous times." Rather, the record reflects no more than nine independent citations for each article. Such moderate citation is not indicative of or uniquely consistent with international recognition.

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 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 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.