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JAN 26 2005

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 03 044 52473

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.

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 is a computing and imaging solutions and services 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 software design engineering scientist (research scientist). 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 petitioner submitted sufficient evidence. The petitioner submits a new reference letter and resubmits materials regarding the beneficiary's publication history. For the reasons discussed below, we concur with the director's ultimate decision and find that the record lacks evidence of a permanent job offer.

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 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 November 22, 2002, to classify the beneficiary as an outstanding researcher in the field of computer science. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field of computer science as of that date, and that the beneficiary's work has been recognized internationally within the field of computer science as outstanding.

On his curriculum vitae, the beneficiary indicates that he had worked for the petitioner since September 1998, more than three years prior to the date of filing. In a cover letter accompanying the initial petition, an "immigration specialist" with the petitioning company affirms that the beneficiary has worked for the petitioner since September 1998. A letter from human resources at the petitioning company would have been more persuasive and the letter submitted could have provided more of an explanation as to how the year spent as a software engineer (December 1999 through December 2000 according to the beneficiary's C.V.) constitutes research experience. Nevertheless, given the evidence in the record that the petitioner gained additional research experience while working towards his degrees, we do not contest that the petitioner has three years of research experience.

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.[1]

> *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 relies on citations of the beneficiary's work to meet this criterion. The director concluded that the citations were not "about" the beneficiary. On appeal, the petitioner asserts that the citations are not "nominal." The petitioner references an article entitled "Symbolic Model Checking of Software" asserting that the authors were inspired by the beneficiary's TWOPHASE algorithm and an article entitled "An Overview of Test Model-checking for Verifying Conformance to Shared Memory Models." The first article was published in 2003, after the date of filing, and cannot be considered evidence of the beneficiary's eligibility as of that date. The second article is an unpublished manuscript by the beneficiary's Ph.D. collaborator. An unpublished manuscript is not published material. Moreover, recognition from one's own collaborator is not indicative of or uniquely consistent with international recognition.

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[1] The petitioner does not claim that beneficiary meets the criteria not discussed below and the record contains no evidence relating to those 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 director concluded that the beneficiary meets this criterion. While we disfavor reversing determinations in favor of the beneficiary, the evidence does not support this conclusion. The petitioner submitted evidence that the beneficiary served as "Tool Chair" for the 1998 Formal Methods in Computer-Aided Design (FMCAD) Conference. The General Chair of the conference, however, was the petitioner's Ph.D. supervisor, Dr. In 2000, Dr. again invited the beneficiary to assist with a conference. Being invited by one's advisor and collaborator to assist with the organization of a conference is not indicative of or uniquely consistent with international recognition.

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

Dr. the beneficiary's Ph.D. thesis advisor, asserts that the beneficiary has made three significant contributions. Specifically, the beneficiary "developed a new approach for overcoming capacity limitations during the formal verification of concurrent protocols." Dr. explains that the beneficiary's algorithm improves on two previous algorithms, one of which is distributed by AT&T. According to Dr. the beneficiary's verification tool, Protocol Verifier (PV), was "demonstrated at the NASA Langley Workshop on Formal Methods" in 1996 and another conference in 1998. The beneficiary's second contribution consists of his development of "an algorithm to derive protocols in an error-free manner starting from higher level specifications." According to Dr. this algorithm has been "shown to be correct" and "derives protocols comparable in quality to handwritten ones." Finally, the beneficiary "developed a method based on finite-state reachability analysis for establishing memory orderings in shared memory systems." Dr. attests to the success of this method when applied to commercial memory systems.

The petitioner submitted other letters from University of Utah faculty and the beneficiary's mentor, Dr. who provide similar information and rank the beneficiary highly in his field.

Dr. an associate professor at the University of British Columbia, asserts that he first "noticed" the beneficiary while he was completing his Ph.D., but does not explain how. Dr. asserts:

> [The beneficiary's] breakthrough was to create [a] system of relatively simple tests that, when combined together, prove that the memory system protocol is correct. This elegant insight simplifies a problem that was unmanageably difficult into a series of smaller, more manageable verification tasks. Furthermore, the flexibility of combining different tests allows the same verification framework to be applied to a wide range of memory systems. [The beneficiary's] approach combines deep theoretical understanding of the problem with highly practical knowledge of the kinds of memory system protocols needed in actual systems. This work continues to be highly influential and highly cited in the research community, and is used in industry as well.

Dr. does not assert, however, that he personally uses the beneficiary's verification tests. As stated above, none of the manuscripts citing the beneficiary's work had been published as of the date of filing and do not confirm the assertion that the beneficiary has been "highly cited." Similarly, Dr. Vice

President of Ayaya Labs, asserts that the beneficiary's protocol verifier is "widely used," but provides no examples and does not assert that it is used successfully at Ayaya Labs.

The record shows that the beneficiary is respected by his colleagues and has made useful contributions in his field of endeavor. It can be argued, however, that most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. The record does not establish that the beneficiary's work represented a groundbreaking advance in computer science such that it has impacted the field as a whole.

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

The petitioner's presentation at the 1998 FMCAD conference was published in *Lecture Notes in Computer Science*. In 2002, *Formal Methods in System Design*, an international journal with a circulation of 400, published two articles by the petitioner. The petitioner also presented his work at conferences. Finally, the petitioner submitted several manuscripts, some of which indicate that they were copyrighted by IFIP and published by Chapman and Hall.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, sets 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." This report reinforces CIS's position that publication of scholarly articles is not automatically evidence of international recognition; we must consider the research community's reaction to those articles.

As discussed above, the petitioner submitted manuscripts that cite his work, none of which had been published as of the date of filing. We cannot conclude that the petitioner's publication and citation history is 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.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(i)(3)(iii) provides that a petition must be accompanied by:

> 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.

The regulation at 8 C.F.R. § 204.5(i)(2), provides, in pertinent part:

> *Permanent,* in reference to a research position, means either tenured, tenure track, or for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination.

On Part 6 of the petition, the petitioner indicated that the job would be permanent. HP Immigration Specialist, signed the petition. The petitioner initially submitted a cover letter signed by Ms. confirming that the petitioner "wish[es] to extend permanent employment to [the beneficiary] as a Software Design Engineer Scientist." Ms hen outlines the duties of the job.

The most persuasive evidence of a job offer is a letter from the petitioner to the beneficiary setting forth the title, terms and conditions of the position offered. We cannot conclude that a letter addressed to Citizenship and Immigration Services (CIS), or anyone other than the prospective employee, affirming a "wish" to offer permanent employment constitutes an "offer of employment" as the phrase is commonly understood.

Moreover, the record contains no evidence that the petitioning institution has authorized Ms. to make legally binding offers of permanent employment.

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.