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**U.S. Citizenship
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JUN 10 2005

FILE: [REDACTED]
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Office: NEBRASKA SERVICE CENTER

Date:

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

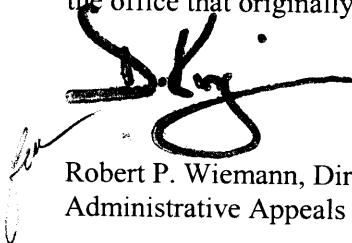
PETITION: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

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, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a university. 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). According to the petition, the petitioner seeks to employ the beneficiary permanently in the United States as a research associate. The director determined that the petitioner had not established that it had offered the beneficiary a permanent job as of the date of filing or 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, 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)(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 proposed employment was a permanent position. The petitioner did not initially submit a job offer. On March 18, 2004, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary.

In response, the petitioner submitted an October 18, 2000 letter from [REDACTED] offering the beneficiary a "full-time appointment as a Research Associate 1-B/H." The letter indicates that the position "is a twelve month position." The letter continues that after the initial twelve months, "the position is renewable annually, conditional upon satisfactory performance as determined by an annual review and the availability of funds."

In addition, the petitioner submitted letters addressed to the director from [REDACTED] affirming that the petitioner's position is a full-time regular permanent position. One of the letters is jointly signed by [REDACTED] Chair of the beneficiary's department. [REDACTED] notes that the position is for twelve months, not the nine months of the academic year. He further asserts that every full-time appointment at the petitioning university "is renewed annually, including mine as a Full Professor with tenure." [REDACTED] asserts that all permanent positions are subject to evaluation for performance and the availability of funds, "standard procedure for permanent research staff positions." Finally, [REDACTED] a human resources specialist at the petitioning university, asserts that the beneficiary "has been employed in a regular, full-time position since November 1, 2000. This position is considered permanent."

The director concluded that the petitioner had not met the regulatory evidentiary requirement of submitting a letter offering the beneficiary a permanent research position in his academic field.

On appeal, the petitioner submits letters from [REDACTED] asserts that the beneficiary has been employed in a regular, full-time and permanent position since November 1, 2000 and that there are no fixed end dates to his position. [REDACTED] further asserts that the annual evaluations are conducted to determine the amount of salary increase. With regard to continued funding, [REDACTED] asserts that the petitioning university pays the beneficiary. [REDACTED] states:

[The beneficiary's] position of Research Associate a B/H is a regular University title that may be used for an indefinite period of time, as opposed to "term" or "temporary" appointments that have a set end date.

Please note that all regular University positions are technically year-to-year, at will appointments. However, as with any such position in the U.S., continued appointment occurs upon satisfactory performance and availability of funding. Aside from those universal employment considerations, the University and the individual fully expect the employment to continue indefinitely (i.e., "permanently").

The use of general words like "permanent" and "indefinite" are not determinative when contradicted by the specific terms of employment, sometimes in the same letter. We concur with the director that the specific employment terms set forth in [REDACTED] job offer letter represent a limited term of employment renewable at the option of the petitioner.¹ It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record does not resolve the inconsistencies between the characterizations of the beneficiary's job by [REDACTED] and [REDACTED] and the limited term of the beneficiary's employment stated in the actual offer of employment, albeit renewable at the discretion of the petitioner. [REDACTED] letter confirms the temporary nature of the employment. Specifically, [REDACTED] defines regular positions as "at will."² "Employment at will" is defined as "Employment that is usually undertaken without a contract and that may be terminated at any time, by either the employer or the employee, without cause." Black's Law Dictionary 545 (7th ed. 2001).

In light of the above we concur with the director that the record lacks a qualifying job offer from the petitioner to the beneficiary. The lack of a permanent job offer is a sufficient basis for denial in and of itself. We will also, however, consider the director's other basis for denial below.

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:

¹ The petitioner's website, "Letters of Offer for Unclassified Staff" provides:

Language in letters of offer may create a contract. Because of this, letters should not include the following:

1. References to permanent employment, termination for just cause, probationary periods, specific expectations of performance, or salary increases. A copy of the position description can be provided to the employee after acceptance of the position.
2. Specific causes for termination or dismissal.

The prohibition against using the word "permanent" and references to termination for just cause supports our determination based on the record that regular positions are not permanent, subject to termination only for just cause.

² That characterization is consistent with the information available on the petitioner's own website. Specifically, rule 4.20(I) of the petitioner's Appointments Policy provides: "Regular, unclassified appointments are at will."

(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 September 24, 2003 to classify the beneficiary as an outstanding researcher in the field of animal science. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field of animal science as of that date, and that the beneficiary's work has been recognized internationally within the field of animal science 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 that the beneficiary has satisfied the following criterion.³

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

Initially, counsel asserted that Section D of the initial submission included “[d]ocumentation of [the beneficiary's] published material in professional publications written by others about [the beneficiary's] work in the field of Molecular and Microbiology in Animal Science.” Section D, however, is entitled “Letters of recommendation submitted in verification of the Beneficiary's outstanding research in [sic] highly significant contributions to the fields of Molecular and Microbiology in Animal Science.” Recommendation letters are not published materials. None of the other exhibits address this criterion. In response to the director's request for additional evidence, counsel no longer asserts that the beneficiary meets this criterion.

The director concluded that the record lacked evidence relating to this criterion. On appeal, counsel does not address this criterion, but the petitioner submits five articles that cite the beneficiary's work, only three of which were published prior to the date of filing. Articles which cite the beneficiary's work are primarily about the author's own work, not the beneficiary. As such, they cannot be considered published material about the beneficiary. In light of the above, we concur with the director 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.

³ The petitioner did not claim or submit evidence relating to criteria not discussed in this decision.

Throughout the proceedings, the petitioner has submitted reference letters in behalf of the beneficiary. All but two of these letters are from the beneficiary's collaborators and immediate circle of colleagues. The petitioner also submitted evidence of four published articles as of the date of filing and seven published abstracts in conference proceedings. The director concluded that the beneficiary's single first-authored article was sufficient to meet this criterion.

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."

The beneficiary obtained his Master's degree at the University of Nebraska, where he worked in the laboratory of [REDACTED] summarizes that work. Specifically, using skills acquired in [REDACTED] Morrison's laboratory, the beneficiary "was able to create and isolate several mutant strains of *Ruminococcus albus* that are defective in adhesion to cellulose." [REDACTED] Morrison then accepted a position at the petitioning university and chose the beneficiary as the only individual to accompany him. The move disrupted the beneficiary's work, but [REDACTED] affirms that it will soon be published. [REDACTED] fails to explain the significance of this work. At the petitioning university, the beneficiary "was instrumental in helping me [REDACTED] Morrison] set up the laboratory, from essentially nothing, an achievement in itself." While this assistance was clearly beneficial to [REDACTED] the record does not establish its importance to the field as a whole.

At the petitioning university, the beneficiary switched to the laboratory of [REDACTED] where he now supervises the ruminant nutrition laboratory. According to [REDACTED] the beneficiary "initiated a number of new procedures" and produced research that helped secure \$300,000 in competitive grants. [REDACTED] concludes that his laboratory "expect[s] to use this information to improve the efficiency of converting feed protein into ruminant animal products (meat and milk), decreasing the impact of excreted nitrogen on the environment."

The predictions of future benefit are reiterated in other letters. [REDACTED] a collaborator at The Rowett Research Institute, asserts that the beneficiary's work "will ultimately benefit the agricultural industry" and that the beneficiary's key paper "should ultimately provide us with the tools required to accurately measure the contribution of protozoa to nitrogen flow at the duodenum and thus optimize the nutrition of both dairy and beef animals."

[REDACTED] asserts that the beneficiary has produced reliable methods and anticipates "a long and valuable scientific career ahead" for the beneficiary, concluding that he is an "excellent early career scientist, with a growing reputation for the quality of his research and technical development of methodology among his peers." These qualifications of the beneficiary's status in the field are not persuasive evidence that the beneficiary already enjoyed international recognition as of the date of filing.

[REDACTED] senior research associate at the petitioning university, asserts that the beneficiary "is the first to use DNA cloning and sequencing to examine the protozoan diversity in rumen." Any research must be

shown to be original and present some benefit if it is to receive funding and attention from the scientific community. [REDACTED] also states that the beneficiary's molecular ecology tools "should advance our fundamental understanding of ruminal protozoal ecology. This knowledge would explain how protozoa affect ruminant nutrition and, when coupled with quantitative approaches like real-time PCR, should allow for a more accurate prediction of the microbial protein flow to the duodenum of high producing dairy cows." These statements are highly speculative. While the letters submitted on appeal reference additional work in this area that will soon be published, this work does not relate to the beneficiary's eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). We are unable to gauge the impact of work that has yet to be subject to peer review and dissemination in the field for application and citation.

The remaining letters from collaborators and fellow researchers formerly at the University of Nebraska and the petitioning university provide similar information. The record contains two independent references that we will now consider.

[REDACTED] of the College of Veterinary Medicine at Kansas State University notes the "highly specialized" nature of the beneficiary's area of work and his training in both veterinary science and animal husbandry. [REDACTED] reiterates that the beneficiary is the first researcher to utilize certain methods, concluding that the beneficiary's work "will ultimately lead to increased productivity of dairy or beef cattle." Once again, speculation as to the ultimate impact of the beneficiary's work is not persuasive.

Finally, on appeal, the beneficiary submits a letter from [REDACTED] at the National Institute for Agricultural Research in Clermont-Ferrand, France. [REDACTED] cited the beneficiary's 1998 work with [REDACTED]. [REDACTED] notes the distinguished nature of the journals that have published the beneficiary's work and concludes "innovative young scientists like him can improve Animal Production without adverse effects on the environment."

The record shows that the petitioner 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. As stated above, it does not follow that every researcher producing "original" work has produced original contributions indicative of or uniquely consistent with international recognition.

In light of the above, we withdraw the director's finding that a single first-author article is sufficient evidence to meet this criterion without evidence of that article's impact in the field. The letters, all but two of which are from the beneficiary's immediate circle of colleagues (current and former) are not indicative of or consistent with international recognition. The two independent letters are not persuasive that the beneficiary's contributions are more notable than the progressive increase in knowledge typical in the sciences. Thus, we find that the petitioner has not established that the beneficiary meets this criterion. Even if we were to uphold the director's contrary finding, the beneficiary would meet only one criterion. A beneficiary must meet two in order to be eligible for the classification sought.

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

The petitioner submitted evidence that the beneficiary had authored four published articles and had presented his work at seven conferences, resulting in seven published abstracts. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set 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 our position that publication of scholarly articles is not automatically evidence of international recognition; we must consider the research community's reaction to those articles.

Initially, the petitioner submitted "copies of email and [a] letter verifying international requests for reprint of beneficiary's publication." This evidence consists of a single e-mail request from abroad and a single postcard request addressed to "Dear Colleague" from the University of Washington.

In response to the director's request for additional evidence, the petitioner submitted a fifth published article and a journal ranking indicating that the beneficiary's work has been published in high-ranking journals. The director concluded that the beneficiary's publication record was minimal compared with his references and that the record lacked citation evidence demonstrating the significance of the beneficiary's work.

On appeal, the petitioner submits five articles that cite the beneficiary's articles, abstracts and articles submitted for publication. Only three of the articles citing the beneficiary's work were published prior to the date of filing. Two of those are self-citations by the beneficiary's coauthor.

We will not presume the impact of an article from the journal in which it appears. Rather, we look for evidence of the article's actual impact. A single independent citation as of the date of filing is not indicative of international recognition.

The two additional post-filing citations are also not significant. Regardless, a petitioner must establish eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. As such, we will not consider the post-filing citations or the beneficiary's articles and abstracts published or submitted for publication after the date of filing.

In light of the above, we concur with the director's conclusion that the beneficiary's publication record 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.