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**U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

A3

FILE:

Office: NEBRASKA SERVICE CENTER

Date: **MAY 03 2005**

IN RE:

Petitioner:

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:

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.


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 research institute. 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 fellow. The director determined that the petitioner had not established that it had offered the beneficiary a permanent job as of the date of filing. On appeal, the petitioner submits a new job offer. We uphold the director's decision and further find that the petitioner has not established that the beneficiary is recognized internationally as outstanding in her 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 position of research fellow was permanent. The petitioner submitted a letter from [REDACTED] stating that the beneficiary "conducts original research as a full time permanent Postdoctoral Fellow in my laboratory." This document does not constitute a job offer from the petitioner to the beneficiary. On November 14, 2002, the director requested "a copy of the letter from [the petitioner] to the beneficiary offering her a permanent research position in her academic field." (Emphasis in original.)

In response, the petitioner submitted a joint letter from [REDACTED] and [REDACTED] Chairman of [REDACTED] department, asserting that [REDACTED] will continue to work for the petitioner "for the foreseeable future, including providing for a position for [the beneficiary] in his program." The letter further states that the petitioner "does not provide permanent or tenured appointments for employees, which are on year to year renewable contracts. The letter concludes that it is "contrary to [the petitioner's] policy to indicate in any letter describing an employee that their position is 'permanent.'" The petitioner also submitted its reappointment letters dated November 15, 2001 and November 15, 2002 addressed to the beneficiary. These letters state that all "appointments are for one year or less, and may be renewed at the discretion of the institution upon continued evidence of satisfactory performance."

The director concluded that the petitioner had not met the regulatory evidentiary requirement of submitting a letter offering the beneficiary a position for a term of indefinite or unlimited duration.

On appeal, the petitioner asserts that although the beneficiary's position is renewable every year, "she has always had the expectation of continued employment unless there is a good cause for termination." The petitioner further asserts that the permanent nature of the beneficiary's position is evident from the regular renewals of her contract. The petitioner notes that the beneficiary is "now included in our staff-level position of Research Associate." The petitioner submits a May 22, 2003 letter to the beneficiary from [REDACTED] Chairman for the petitioner, offering the beneficiary a position as a Research Associate. The letter defines the position as "a permanent research position" in [REDACTED]. While the letter indicates that the beneficiary's performance will be reviewed annually and that continued employment is "contingent upon continued evidence of satisfactory performance during these reviews and availability of

continued research funding,” it does not indicate that the contract is subject to renewal at the discretion of the petitioner.

While the new letter appears to offer the beneficiary a more permanent position as defined in the regulations, it is dated well after the petition’s date of filing. Thus, it is not evidence of the beneficiary’s eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Therefore, we cannot consider this letter.

We concur with the director that the prior offers were not permanent as defined in the regulations quoted above. While the beneficiary may have had an expectation of continued employment, the use of the word “and” in the regulation at 8 C.F.R. § 204(i)(2) indicates that such an expectation is required *in addition to* an offer for a job with a term of indefinite or unlimited duration. The prior job offers are unambiguously for a one-year term subject to renewal at the discretion of the petitioner. Thus, the job offer was not for a position with a term of indefinite or unlimited duration. The lack of a permanent job offer from the petitioner to the beneficiary is sufficient grounds for denial.

Beyond the decision of the director,¹ 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 claims the beneficiary has satisfied the following criteria.²

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

The petitioner asserts that the beneficiary’s full scholarship for her postgraduate studies, based on her performance on her baccalaureate degree examination; her performance on a national entrance examination; her Ph.D. and her postdoctoral research fellowship all serve to meet this criterion. These assertions are unpersuasive as none of these accomplishments constitute a prize or an award and are certainly not “major” or in recognition of an achievement in the academic field.

Scholarships are generally based on past *academic* achievement, not for accomplishments in a field of endeavor. While the regulation at 8 C.F.R. § 204.5(i)(3)(A) references outstanding achievements in one’s academic field, the regulation at 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, class standing or examination results. It remains, academic study is not a field of endeavor, academic or otherwise.

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

² This decision will only discuss those criteria that the petitioner has claimed the beneficiary meets or for which evidence was submitted.

Rather, academic study is training for a future career in an academic field. As such, scholarships in recognition of academic achievement, including examination results, are insufficient. Scholarships are simply not evidence of international recognition in the field. Rather, they represent high academic achievements in comparison with fellow students.

In addition, a doctoral degree, while requiring the completion of original work demonstrated by a dissertation, is the expected outcome upon the completion of coursework and the dissertation. It is not a major award or prize and it is not indicative of international recognition.

Finally, a postdoctoral fellowship or “associateship,” even if competitive, is not an award or prize in recognition for an achievement in a field. It is a training subsidy based on academic achievements. This conclusion is consistent with the materials from the Council of Scientific and Industrial Research (CSIR) submitted by the petitioner. These materials state that CSIR Research Fellowships and Associateships are designed for “bright young men and women for training in methods of research under the expert guidance of faculty members / scientists working in University Departments / National Laboratories and Institutes in various fields of Science & Technology and Medical Sciences.” The materials further state that the selection for research associateships is conducted “through [an] assessment of academic achievements of candidates and interviews of those screened by high level disciplinewise.” Thus, the associateship is not an award or prize for achievements in the beneficiary’s academic field.

In light of the above, the petitioner has not demonstrated that the beneficiary has received a prize or award for achievements in the field, much less a major prize or award. Thus, the beneficiary does not 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 notification of the beneficiary’s associate membership in the American Society for Biochemistry and Molecular Biology (ASBMB) upon receipt of her dues payment, her “registration” with the American Society for Matrix Biology (ASMB) requesting the payment of membership dues and her listing in the FASEB membership directory. The petitioner submitted information about these societies and their publications. The materials reveal that FASEB is a coalition of independent member societies. The petitioner did not indicate which member society the beneficiary joined or the membership requirements of that society. While the petitioner submitted materials regarding ISMB membership, the petitioner submitted no evidence that the beneficiary is a member of ISMB. Regardless, the materials indicate that an application form must be submitted with signatures from two ISMB members. They further indicate that the “officers are happy to sponsor applications.” In response to the director’s request for additional evidence, the petitioner asserted that the beneficiary “needed the recommendation of other members to become a member in” ASBMB and ASMB.

This office consistently finds that obtaining a recommendation from a current member is not an outstanding achievement. The record does not reflect that these organizations require outstanding achievements of their general membership. Moreover, the beneficiary is only an associate member of ASBMB.

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 asserts that the citations of the beneficiary's articles meet this criterion. Initially, the petitioner submitted two articles that cite the beneficiary's 1994 article. The petitioner also submitted the results of a search at www.ohiolink.edu resulting in four records, all articles authored by the beneficiary. The relevance of this document to this criterion is unknown. The petitioner also submitted materials from another Internet site regarding articles by [REDACTED] the author of a review article that cites the beneficiary's work. The relevance of these materials to the beneficiary's recognition in the field is not explained.

In the director's request for additional evidence, he noted that mere reference to the beneficiary's work in a footnote was insufficient to meet this criterion. In response, the petitioner asserted that the beneficiary's contributions to her field "are highly regarded by the scientific community as judged by citations in articles published by others." The petitioner also submitted evidence that a 2001 article by the beneficiary had been cited 23 times and copies of some of those articles. Of the 23 articles, all but one were published after the date of filing, March 2002, and eight are self-citations by coauthors and collaborators.

The post-filing citations are not evidence of the beneficiary's recognition as of the date of filing and cannot be considered. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Regardless, articles which cite the beneficiary's work are primarily about the author's own work, not the beneficiary. Even the review articles cite the beneficiary's work as one of a number of recent studies in the area under review. Thus, they are also not primarily about the beneficiary's work and cannot serve to meet this criterion.

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

Initially, the petitioner asserted that Attachment 6 included evidence to meet this criterion. As noted by the director in his request for additional evidence, that attachment did not include evidence relevant to this criterion. In response, the petitioner no longer asserts that the beneficiary meets this criterion. We find no evidence relating to it in the record.

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, and to presume that most research is "unoriginal."

The petitioner submitted ten reference letters, all from the beneficiary's immediate circle of colleagues. We will consider the content of these letters below. At the outset, however, we note that letters from the beneficiary's immediate circle of colleagues cannot, by themselves, establish the beneficiary's international recognition beyond those with whom she has worked. We note that "international recognition" is not acquired simply by

working in different countries and, thus, having collaborators willing to provide reference letters originating from more than one country. Such letters are more persuasive when supported by letters from independent experts in the field who were aware of the beneficiary's contributions prior to being contacted for a reference letter and objective evidence of the beneficiary's influence in the field internationally.

The beneficiary received her Ph.D. from Calcutta University in 1996 and in 1997 began working as a guest scientist at Heinrich Heine University in Duesseldorf, Germany. Subsequently, the beneficiary accepted a postdoctoral fellowship at the petitioning institution.

[REDACTED] the beneficiary's Ph.D. advisor, discusses the beneficiary's academic achievements and states:

[The beneficiary] isolated, characterized and purified fatty acid binding protein (FABP) from human fetal brain. FABPs belong to a family of low-molecular weight (14-15 kDa) non-enzymic, cytosolic proteins which are involved in the uptake, transport and intracellular trafficking of fatty acids and acyl-CoA esters. [The beneficiary] showed that FABP play a vital role in [the] brain by regulating fat synthesizing enzymes either by directly enhancing the delivery of substrates in their usable form, targeting substrates to particular metabolic fates or eliminating – inhibitory effects of long chain fatty acids and CoA esters.

Professor [REDACTED] fails to explain the significance of this work or how it has influenced the field to a degree indicative of the beneficiary's international recognition. [REDACTED] a former fellow graduate student at the University of Calcutta and postdoctoral student at the petitioning institution, notes the prestigious institutions where the beneficiary has studied and worked, but fails to explain how her work has impacted the field.

[REDACTED] the beneficiary's supervisor at Heinrich Heine University, asserts that the beneficiary tested the effects of palladium from car exhaust systems on brain slices in vitro. The beneficiary "found some typical and irreversible depressant effects, at concentrations much above those possibly occurring in exposed people." The beneficiary also performed electrophysiological testing on brain slices of the amino acid taurine, which is involved in the maintenance of osmolarity. Professor Haas asserts that the beneficiary has "submitted" manuscripts reporting these studies. He concludes that the beneficiary "has thus made significant contributions to the understanding of physiological and pathophysiological functions with clear relevance to environmental questions and disease states such as brain edema and hepatic encephalopathy." He does not explain how results that have yet to be subject to peer review and disseminated to the field can be considered contributions of major significance such that they have garnered the beneficiary international recognition.

[REDACTED], the beneficiary's supervisor at the petitioning institution, discusses the beneficiary's work with hyaluronan, the principle structural unit of a matrix necessary for ovulation and fertilization. Specifically, the beneficiary focused on two protein molecules known to cause infertility in mice when defective. The beneficiary "identified a novel mechanism in which these two molecules interact with each other, rearrange and immobilize the hyaluronan." [REDACTED] asserts that these results were published in a major biochemical journal and are "already having an impact on researchers involved in matrix biology, particularly those working on the role of hyaluronan matrices in inflammatory diseases such as Crohn's disease of the bowel and asthma." [REDACTED] does not identify the researchers working on Crohn's disease or asthma applying the beneficiary's

work and the record does not include letters from them. As of the date of filing, the beneficiary's work at the petitioning institution had only been cited by a coauthor.

[REDACTED] explains that this work is also relevant to human infertility. [REDACTED] a professor at the University of Rome and a coauthor of the beneficiary's work, explains that research on hyaluronan is relevant to other diseases because it is up regulated in cartilage and synovium in rheumatoid arthritis and osteoarthritis. [REDACTED] and [REDACTED] both of whom have coauthored articles with the beneficiary, and [REDACTED] another staff member at the petitioning institution, provides similar information.

[REDACTED] further asserts that the beneficiary's work "has formed the foundation for a proposal we [h]ave now submitted to the National Institutes of Health to continue the important work. [REDACTED] does not explain how the efforts of his laboratory to continue to build on their own research results is unique in the field or indicative of the beneficiary's international recognition.

[REDACTED] research group leader at the University of Geneva who keeps in regular contact with [REDACTED] indicates that he reviewed the research proposal the beneficiary submitted to the Lalor Foundation. [REDACTED] concludes that the "results of this study will provide useful insights on [the mechanism involved in hyaluronan matrices] with very interesting potential for applications in human medicine." Predictions of future contributions are not necessarily indicative of past contributions. [REDACTED] does not indicate that he had ever heard of the beneficiary prior to her association with someone he already keeps in contact with. As such, his letter is not indicative of the beneficiary's international recognition.

[REDACTED] a professor at the University of Insubria in Italy, indicates that he met the beneficiary while visiting the petitioning institution in 2000. He discusses the importance of the beneficiary's research focus, but fails to explain how the beneficiary has already impacted the field. Similarly, [REDACTED] a staff scientist at the petitioning institution concludes that the beneficiary's work "should have [an] impact medically and economically."

The record shows that the beneficiary is respected by her colleagues and has made useful contributions in her 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. It does not follow that every researcher working with a government grant and whose work is referenced in a grant application has made a contribution indicative of international recognition in the field. Finally, we note that the beneficiary's importance to future research is not an element for the classification sought. Rather, the petitioner must demonstrate that the beneficiary is already recognized internationally.

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, as of the date of filing, the beneficiary had authored six published articles and six 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.

As of the date of filing, the beneficiary had one article that had been cited twice and another article that had been cited once. As stated above, we cannot consider evidence of any recognition obtained after the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner has shown that the beneficiary is a talented and prolific researcher, who has won the respect of her collaborators, employers, and mentors, while securing some degree of international exposure for her 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.