U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUL 13 2009
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IN RE: Petitioner:
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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

hn F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a pharmaceutical drug development 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 senior scientist. The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher.

On appeal, the petitioner submits additional evidence. For the reasons discussed below, the petitioner has not overcome the director's valid bases for 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):
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> * * *
>
> (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 current or former 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 July 11, 2007 to classify the beneficiary as an outstanding researcher in the field of pharmaceutics. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field as of that date, and that the beneficiary's work has been recognized internationally within the field as outstanding. The petitioner received his Ph.D. on December 17, 2004, less than three years before the petition was filed. Thus, he must demonstrate that his Ph.D. research was outstanding if that research experience is to be accepted as part of his requisite three years of 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 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. More specifically, outstanding professors and researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. *Employment-Based Immigrants,* 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)). The petitioner claims to have satisfied the following criteria.[1]

[1] The petitioner does not claim that the beneficiary meets any criteria not discussed in this decision and the record contains no evidence relating to the omitted criteria.

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.

Counsel has consistently listed articles that cite the beneficiary's work as evidence to meet this criterion. The director concluded that no evidence had been submitted to meet this criterion. On appeal, counsel discusses the nature of the citations themselves. While we concur with the director that the petitioner does not meet this criterion, more discussion is warranted. The regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) requires evidence of published material "about the alien's work." Research articles which cite the beneficiary's work are primarily about the author's own work, not the beneficiary's work. We acknowledge that the beneficiary's work has also been cited in review articles. These articles, however, are about recent published research in general. As such, they cannot be considered published material about the beneficiary's work.

While citations are relevant evidence and can be considered as evidence of the impact of the petitioner's contributions and the significance of his scholarly articles, they cannot serve to meet the plain language of 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.

Counsel asserts for the first time on appeal that the beneficiary meets this criterion. The petitioner submits a May 1, 2008 request for the beneficiary to review a manuscript for the *Journal of Pharmaceutical Sciences* and evidence that he completed the review. This review postdates the filing of the petition. Thus, it cannot be considered evidence of the beneficiary's eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

Regardless, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the beneficiary 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, and to presume that most research is "unoriginal."

As stated above, outstanding researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. 56 Fed. Reg. 30703, 30705 (July 5, 1991). Any Ph.D. thesis, postdoctoral or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. To conclude that every researcher who performs original research that adds to the general pool of knowledge meets this criterion would render this criterion meaningless.

On appeal, [redacted], the petitioner's former Ph.D. advisor at the University of Utah, and [redacted], the petitioner's Chairman, assert that the very act of publishing constitutes a scholarly contribution. The regulations, however, include a separate criterion for scholarly articles. 8 C.F.R. § 204.5(i)(3)(i)(F). Thus, the mere authorship of scholarly articles cannot serve as presumptive evidence to meet this criterion. To hold otherwise would render the regulatory requirement that a beneficiary meet at least two criteria meaningless. As will be discussed below under the last criterion, publication is inherent to the field of research. Thus, the interpretation proposed by these references would have the untenable result that every published researcher would qualify for the classification sought. By clarifying that this classification is limited to outstanding researchers with international recognition, Congress clearly did not intend for every published researcher to qualify.

In a similar vein, the evidence that the beneficiary is a listed inventor on a U.S. provisional patent application establishes that his work purports to be original, but the very existence of a patent application does not show that the beneficiary's invention is more significant than those of others in his field. To establish the significance of the beneficiary's work, we turn to experts in his field, whose letters we discuss below.

The petitioner relies on several reference letters. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of international recognition. U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread recognition and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with international recognition should be able to produce unsolicited materials reflecting that recognition.

a professor at Musashino University in Japan, asserts that he is a long time collaborator with [redacted] dental mineral research. [redacted] asserts that the beneficiary, as part of this team, investigated the solubility of dental minerals. According to [redacted], some of this work contradicted previous observations, supporting the use of fluoride toothpaste rather than requiring the ingestion of fluoride tablets during childhood. [redacted] does not cite any formal dental guidelines issued based on this work or other examples of its influence. None of the other references discuss this work and the record lacks evidence that this work is widely and frequently cited.

[redacted] a visiting professor at the University of Utah during the petitioner's studies at that institution, asserts that the petitioner "made significant contributions in the area of pharmaceutics in [the] solid drug formulation field." Specifically, the beneficiary "developed a triple layers matrix tablet formulation of a low solubility drug" while studying for his Master's degree. [redacted] concludes that the beneficiary's slow release formula was as good as the controlled release formulation of the same drug already on the market. While [redacted] asserts that this work "attracted a lot of global attention," the record lacks any media attention or significant coverage in the trade journals. [redacted] does not claim to have been impacted by this work and provides no examples of independent research groups or pharmaceutical companies interested in pursuing the beneficiary's formula.

In his initial letter, [redacted] asserts that the beneficiary has made significant contributions in the field of transdermal drug delivery using the novel method of alternating current (AC) iontophoresis. Specifically, the beneficiary developed a computer model that predicted flux enhancement over wide AC voltage and frequency ranges, confirmed that the model was in agreement with actual drug transport through human skin and developed a technology that can provide a constant drug delivery rate by controlling the magnitude of the AC current. While this work is clearly original in that it did not duplicate previous research, the petitioner must demonstrate that this work is internationally recognized as outstanding.

[redacted], the petitioner's Chief Scientific Officer and co-founder, explains that he developed the petitioner's core technologies, including the following transdermal drug delivery technology: the controlled heat assisted drug delivery (CHADD) and DuraPeel technology platforms. [redacted] asserts that the beneficiary "has made crucial contributions to the novel transdermal pain-relief drug formulation, which will be submitted to the FDA for consideration of human clinical trials." Dr. [redacted] does not explain specifically what the beneficiary added to the technology [redacted]

originally developed. While [redacted] also discusses the beneficiary's work on another transdermal drug delivery platform, the beneficiary's work on this platform had yet to be presented or published as of the date of filing and, thus, cannot be considered. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49.

[redacted], a professor at the University of Utah, asserts that the petitioner was instrumental in developing a new system to measure phenylalanine levels without blood draws in Phenylketouria (PKU) patients, many of whom are children. [redacted] does not provide examples of this system being used outside of the University of Utah where the beneficiary studied.

[redacted], an associate professor at the University of Cincinnati and one of the beneficiary's former coauthors, asserts that the beneficiary's research "can also help diabetic patients better maintain their blood glucose levels but provides no specifics as to the results of this research or whether it is being applied.

[redacted], a professor at the University of Cincinnati and a colleague of [redacted], explains that previous transdermal drug delivery efforts utilized direct current, which may cause skin damage. [redacted] further explains that alternating nature of AC current "will cause much less skin damage as has been shown by the Utah group." According to [redacted], while it was believed that AC current would provide little drug enhancement, the beneficiary demonstrated that it does, in fact, have a drug enhancing effect. [redacted] does not claim to be investigating AC transdermal drug delivery based on the beneficiary's results or identify research teams that have been impacted by the beneficiary's work.

On appeal, [redacted], Director of the Laboratory for Drug Delivery at Rutgers, the State University of New Jersey, asserts that he has never met the petitioner but knows of his work through his 2004 article in the *Journal of Pharmaceutical Sciences.* [redacted] states that he cited the beneficiary's work and utilized some of his mathematical equations, one of the contributions of the beneficiary's paper. While this work demonstrates that the beneficiary's work has applications, it does not demonstrate the widespread level of reliance that can be expected for work that is internationally recognized as outstanding.

[redacted], a professor at the University Queensland, positively evaluates the beneficiary's accomplishments based on a review of the beneficiary's curriculum vitae. He does not claim to have known of the beneficiary's work prior to being requested to provide a reference letter.

[redacted], a professor at Mercer University, explains that he met the petitioner in 2007 at a conference. asserts that he requested a copy of the beneficiary's poster presentation on microneedles, [redacted] own area of research. [redacted] concludes, based on his own research on transdermal drug delivery, that the beneficiary has made a significant contribution to the field, laying "the foundation" for understanding AC aided drug transport. None of the petitioner's articles on this subject, however, have been cited more than three times by independent research groups. The

citations provided by the petitioner do not single out the beneficiary's work as the foundation of this area of research. For example, [redacted] and [redacted] in their 2006 article in the *Journal of Pharmaceutical Sciences,* cited one of the petitioner's AC transdermal drug delivery articles as one of seven articles demonstrating that iontophoresis "has been investigated rather extensively." Similarly, [redacted] coauthored another article in the *Journal of Drug Delivery* citing the beneficiary's articles as one of eight articles for the proposition that extensive research on iontophoresis has demonstrated that it is possible to control the onset an the rate of the delivery of drugs to the body as well as the extraction of substances from the blood stream for the purpose of monitoring. [redacted] coauthored an article in *Pharmaceutical Research* citing the beneficiary's work as one of "several studies" demonstrating that low molecular weight heparin has more antithrombotic activity with less anticoagulant activity than UFH or high molecular weight heparin. This level of citation is not consistent with international recognition of the beneficiary's work as the foundation of AC iontophoresis. Finally, in discussing the beneficiary's work on phenylalanine monitoring, [redacted] concludes only that this work is "promising."

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. The record does not establish that the beneficiary's work has been recognized internationally as outstanding.

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

As of the date of filing, the petitioner had authored several published articles and presented his work at scientific conferences. The Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at www.bls.gov/oco on July 2, 2009 and incorporated into the record of proceedings), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See* www.bls.gov/oco/ocos066.htm. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field.

The record reflects that the beneficiary's article on slow release Nifedipine has been cited 10 times with the remaining articles cited no more than three times by independent research groups. This citation level is not consistent with international recognition of the beneficiary's scholarly articles. Even if we were to conclude that this criterion requires only evidence of authorship, and we reject such an interpretation as inconsistent with the statutory standard, for the reasons discussed above, the petitioner has not established that the beneficiary meets any other criterion.

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 the level of an alien who is internationally recognized 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.