



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF T-C-S-C-

DATE: SEPT. 28, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a consumer products company, seeks to classify the Beneficiary as an outstanding researcher. *See* section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be sustained.

The Director determined the Petitioner had submitted evidence establishing that the Beneficiary satisfied the categories of evidence at 8 C.F.R. § 204.5(i)(3)(i)(C), (D), (E), and (F), but that the evidence did not demonstrate that the Beneficiary attained the outstanding level of achievement and international recognition required for classification as an outstanding researcher. On appeal, the Petitioner submits a brief and additional evidence and asserts that the record demonstrates the Beneficiary is recognized internationally as outstanding in his academic area. For the reasons discussed below, we find the Petitioner has shown that the Beneficiary meets the statutory and regulatory requirements for the classification sought.

I. LAW

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 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.

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 the following six criteria, of which the Beneficiary must submit evidence qualifying under at least two:

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

(B) Documentation of the alien’s membership in associations in the academic field which require outstanding achievements of their members;

(C) 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;

(D) 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;

(E) Evidence of the alien’s original scientific or scholarly research contributions to the academic field; or

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

The submission of evidence relating to at least two criteria does not, in and of itself, establish eligibility for this classification. *See Matter of Chawathe*, 25 I&N Dec. at 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," and that U.S. Citizenship and Immigration Services (USCIS) examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true"); *see also Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination).¹ *See generally Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 272-80 (1994) (explaining that the term "burden of proof" includes a burden of persuasion).

II. ANALYSIS

The Petitioner seeks to classify the Beneficiary as an outstanding researcher in the field of Chemical Engineering and Polymer Science, with a focus on light scattering and rheology (flow properties) of complex fluids. The Form I-140, Immigrant Petition for Alien Worker, was filed on July 1, 2014. The Beneficiary earned a Master of Science degree in Chemical Engineering (December 2006) and a Ph.D. degree in Chemical Engineering (August 2010) from the [REDACTED]. The Petitioner submitted letters and additional evidence indicating that it has employed the Beneficiary as a researcher in this field since 2010, and that it seeks to continue his employment in the position of senior scientist.

The above evidence demonstrates that the Beneficiary has the work experience and offer of employment required for this classification. It remains, then, to determine whether the Petitioner established that the Beneficiary is recognized internationally as outstanding in the academic field.

A. Evidentiary Criteria

The record supports the director's determination that the beneficiary has met the categories of evidence at 8 C.F.R. § 204.5(i)(3)(i)(D), (E), and (F).² Accordingly, the petitioner has submitted the requisite initial evidence that satisfies at least two of the six regulatory criteria.

¹ The immigrant visa classification at issue in *Kazarian*, section 203(b)(1)(A) of the Act, requires qualifying evidence under three criteria whereas the classification at issue in this matter, section 203(b)(1)(B) of the Act, requires qualifying evidence under only two criteria.

² The Director also found that the Petitioner submitted qualifying evidence under 8 C.F.R. § 204.5(i)(3)(i)(C), through its submission of articles from [REDACTED] and an [REDACTED] from the [REDACTED]. However, the [REDACTED] article did not identify an author per the regulatory requirements, and the [REDACTED] article was not an independent journalistic article but was written by the Beneficiary's supervisor about research on which the Beneficiary collaborated. We therefore withdraw the Director's finding regarding that criterion. Nonetheless, the record establishes that

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B. Final Merits Determination

The next step is a final merits determination that considers whether the evidence is consistent with the statutory standard in this matter, being recognized internationally as outstanding in the academic area. Section 203(b)(1)(B)(i) of the Act. The controlling purpose of the regulation at 8 C.F.R. § 204.5(i)(3)(i) is to establish that the researcher is recognized internationally as outstanding in the academic field, and any evidence that meets the preceding categories of evidence must therefore, as a whole, be commensurate with international recognition.

The submitted documentation, by a preponderance of the evidence, is sufficient to demonstrate the Beneficiary is internationally recognized as outstanding in the academic area. The Petitioner provided evidence of the Beneficiary's authorship of scholarly articles in the journals [REDACTED] and [REDACTED] and the record includes documentation demonstrating that these articles have garnered a significant number of citations internationally, many of which apply and build upon his work. The submitted evidence also reflects that the Beneficiary serves as a peer-reviewer for several academic journals in his field, including [REDACTED] and [REDACTED] in addition to serving on the [REDACTED] Committee for the petitioning organization.

In addition to the above, the Petitioner submitted reference letters describing the Beneficiary's specific contributions to his academic field and explaining their importance.³ For example, several letters attested to the significance of the Beneficiary's graduate research on single walled carbon nanotubes (SWCNTs), in which he developed a technique to determine their dimensions and dynamics in solvent media. [REDACTED] a professor at the [REDACTED] of [REDACTED] in Switzerland, stated that the Beneficiary's technique has become "the accepted way of measuring the size of nanoparticles suspended in a solution," and that his research constitutes a "critical step" toward being able to manipulate individual nanotubes and organize them into structures that take full advantage of their strength and flexibility properties.

Another focus of the Beneficiary's graduate research was poly ethylene oxide (PEO), a "little known" but widely used commodity polymer employed in drag reduction, oil drilling and recovery, paper production, wastewater treatment, and pharmaceutical formulations. The Petitioner submitted letters from several individuals who have cited the Beneficiary's PEO research in their own publications. [REDACTED] a professor at [REDACTED] in Korea, stated that the Beneficiary's work resulted in an "increased micro level understanding" of flow effects on dilute water-soluble polymers, and that the impact of this "ground breaking" research was "felt internationally." [REDACTED] an assistant professor at [REDACTED] in France, characterized the Beneficiary as one of the few experts on PEO, and stated that his research "was important to furthering my own research." In addition, [REDACTED] a professor at the

the Beneficiary still meets at least two of the regulatory criteria.

³ We discuss only a sampling of these letters, but have reviewed and considered each one.

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██████████ in Brazil, described ways his research team has been able to “leverage” the Beneficiary’s findings, and provided sample passages from his own published article to demonstrate that he “relied heavily” on the Beneficiary’s research.

With regard to his employment with the Petitioner, the record includes letters from ██████████ Senior Director of Research and Development, and ██████████ Vice President of Research, Development, and Innovation, Specialty Division, describing the Beneficiary’s most significant research contributions. Among other projects, the letters described the Beneficiary’s research on “films technology” and stated that it has been used across multiple businesses and product lines within the company. In addition, they discussed the Beneficiary’s research to reduce the use of binders in charcoal. ██████████ stated that the Beneficiary “[i]denified a potential alternate binder for briquetting which has the potential to reduce binder usage up to 30% in charcoal briquettes and save around \$1.5 million per year.” The petitioner submitted evidence that the Beneficiary is listed as first inventor on the Petitioner’s patent application for “Coated Charcoal,” and ██████████ attested that the Beneficiary has contributed to several other patents filed by the Petitioner.

Several of the submitted letters regarding the Beneficiary’s graduate research also state that his work for the Petitioner continues to contribute to the field as a whole. In addition, the petitioner submitted a letter from ██████████ associate professor at the ██████████ in Australia, who states that he is currently collaborating with the Beneficiary on research regarding “arrested dynamics and rheology in a model rod system.”

The submitted letters attest to the Beneficiary’s standing as a recognized expert in his field and to the widespread use of his work by other researchers internationally. These statements are supported by documentary evidence including citation data. In light of the evidence discussed above and other corroborating evidence of record, we find that the Beneficiary’s achievements in the aggregate are commensurate with being recognized internationally as outstanding in the academic field.

III. CONCLUSION

The record demonstrates that the Beneficiary meets at least two of the six criteria listed at 8 C.F.R. 204.5(i)(3)(i). In addition, the Petitioner has shown that the Beneficiary’s achievements are consistent with those of an individual who is internationally recognized as an outstanding researcher. Based on the evidence submitted, the Petitioner has established that the Beneficiary qualifies under section 203(b)(1)(B) of the Act as an outstanding researcher.

In visa petition proceedings, it is a petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

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ORDER: The appeal is sustained.

Cite as *Matter of T-C-S-C-*, ID# 13183 (AAO Sept. 28, 2015)