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20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: DEC 04 2007
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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:



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, 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 an agricultural/biotechnology research and 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 research 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, counsel submits a brief. For the reasons discussed below, while we find that the director did not accord sufficient weight to the beneficiary's scholarly articles, we uphold the director's ultimate decision that the record lacks sufficient evidence of the beneficiary's international recognition as outstanding.

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.

This petition was filed on September 27, 2006 to classify the beneficiary as an outstanding researcher in the field of plant molecular biology. 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 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 initially claimed that the beneficiary satisfies all of the criteria, which follow.

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

Initially, the petitioner asserted that the beneficiary's Science and Technology postdoctoral fellowships sponsored by the Japan Society for the Promotion of Science (JSPS) and his participation in securing grant funding for his laboratory serve to meet this criterion.

In response to the director's request for additional evidence, the petitioner submitted additional evidence about the JSPS. The director concluded that the beneficiary's postdoctoral fellowship was more akin to competitive employment than a major award or prize for outstanding achievement. On appeal, counsel does not challenge the director's conclusion on this criterion.

It is significant that the *proposed* regulation relating to this classification would have required evidence of a major *international* award. The final rule removed the requirement that the award be "international," but left the word "major." The commentary states: "The word "international" has been removed in order to accommodate the *possibility* that an alien might be recognized internationally as outstanding for having received a major award that is not international." (Emphasis added.) 56 Fed. Reg. 60897-01, 60899 (Nov. 29, 1991.)

Thus, the standard for this criterion is very high. The rule recognizes only the "possibility" that a *major* award that is not international would qualify. Significantly, even lesser international awards cannot serve to meet this criterion given the continued use of the word "major" in the final rule. Cf. 8 C.F.R. § 204.5(h)(3)(i) (allowing for "lesser" nationally or internationally recognized awards for a separate classification than the one sought in this matter). We concur with the director that a postdoctoral fellowship does not constitute a major prize or award for outstanding achievement.

Regarding the beneficiary's research grants, research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement.

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members.

The petitioner initially asserted that the beneficiary's participation on the steering committee for an international conference in 1999 serves to meet this criterion. In the request for additional evidence, the director inquired as to how a steering committee could constitute a membership in an association. In response, the petitioner submitted a letter from Dr. [REDACTED] Director of the Forage Crop Research Institute of Japan who served as Vice President of the 1999 conference. Dr. [REDACTED] asserts that the beneficiary was Deputy Chief of the steering committee and was selected "because he was recognized as a prominent scientist with [an] established reputation and was well known by many scientists in Japan, Russia, and other countries."

The director concluded that a short-term appointment for a four-day conference is commensurate with membership in an association that requires outstanding achievements of its members. Counsel does not challenge this conclusion on appeal and we concur with the director. Thus, the petitioner has not demonstrated that the beneficiary meets this criterion.

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.

On appeal, counsel does not challenge the director's conclusion that articles and the minutes of a scientific advisory panel that cite the beneficiary's work are not primarily about the beneficiary. As such, they cannot be considered published material about the beneficiary. Thus, the petitioner has not demonstrated that the beneficiary meets 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.

As stated above, the beneficiary served on the steering committee for a 1999 conference jointly sponsored by institutions in Japan and Russia. He also served as a session chair, which required him to review materials submitted for the workshop by other researchers, select speakers for the session based on submitted material and review and edit workshop proceedings.

The director concluded that the beneficiary's responsibilities for this single conference could not serve to meet this criterion. On appeal, counsel asserts that the beneficiary is not required to have judged the work of others a specific number of times.

The opening address for the conference reflects that the Hokkaido National Agricultural Experiment Station and the All-Russian Williams Fodder Research Institute, which jointly operate a cooperative project, sponsored the conference. Prior to 1999, the beneficiary worked as a postdoctoral researcher at the Hokkaido National Agricultural Research Center and as senior research scientist at the All-Russian Williams Fodder Research Institute. Thus, his selection by these entities, where he was already employed and well known, to serve on the steering committee and as a session chair is not indicative of or consistent with international recognition, which cannot be gained simply by having colleagues in more than one country.

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.

As stated by the director, 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."

We reiterate that 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.

In a similar vein, the evidence that the beneficiary holds a patent for his invention establishes that his work is original, but the very existence of the patent does not show that the beneficiary's invention is more significant than those of others in his field. Moreover, while the petitioner submitted a letter from the petitioner's patent attorney, Thomas Kelley, confirming that he filed four patent applications for inventions by the beneficiary, the record does not reflect that the patent applications have been published or approved. While intellectual property rights must be taken into account, the petitioner cannot establish that the beneficiary is already internationally recognized for inventing technology where the patents have yet to be published or granted. To establish the significance of the beneficiary's work, we turn to experts in his field, whose letters we discuss below.

At the outset, however, we note that the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of international recognition. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS 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; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795. CIS 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of international recognition and vague claims of original contributions are less persuasive than letters that

specifically identify contributions and provide specific examples of how those contributions have already 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 acclaim.

The beneficiary received his [REDACTED] k from the Moscow Tymyryzhev Agricultural Academy in 1994. In 1997, the beneficiary began working as a postdoctoral researcher for the Hokkaido National Agricultural Research Center in Japan. On his curriculum vitae, the beneficiary lists concurrent employment at the All-Russian Williams Fodder Crop Research Institute in Moscow and the Hokkaido National Agricultural Research Center in Japan from 1999 through 2001. The beneficiary then lists his employment as the Head of the Plant Genome Laboratory at the All-Russian [REDACTED] Research Institute and Leading Researcher at the Institute of Agricultural Biotechnology, Moscow, from June 2002 through March 2003. The beneficiary then joined the University of Minnesota as a postdoctoral research associate where he later became a senior research associate until June 2005. As of the date of filing, the beneficiary was working as a senior research scientist for the petitioner.

The petitioner did not submit any letters from the beneficiary's colleagues in Russia confirming the beneficiary's role on various projects in that country. The record contains letters from the beneficiary's colleagues in Japan and the United States as well as independent references who know the beneficiary through his publications or conference presentations. None of the independent references, however, claim to have been personally influenced by the beneficiary or to have adopted the techniques he has developed. While we recognize that intellectual property rights may be a factor, the record lacks evidence of widespread interest in licensing the beneficiary's patented techniques.

Dr. [REDACTED], Director of Genebank in Tsukuba, Japan, discusses the beneficiary's work in Japan, including work on a joint project with a Russian team. During the first two years of his research in Japan, the beneficiary "developed two new approaches to study differentially regulated genes in plants that are subjected to stress conditions." Dr. [REDACTED] notes that this work was published in U.S. and British journals. The beneficiary then focused on epigenetic regulation of gene expression under abiotic stress conditions, identifying a repetitive element activated by low temperature in cold tolerant cultivars. Dr. [REDACTED] asserts that the beneficiary organized a workshop in Moscow supported by the Japanese government and established the Plant Genome Analysis Laboratory at the All-Russian Williams Fodder Crop Research Institute. The petitioner did not submit letters from officials in Russia confirming this information. The record does contain the proceedings from this workshop identifying the beneficiary as a member of the steering committee and expressing appreciation to the beneficiary "for his enthusiastic efforts as the key-person between Russia and Japan." The beneficiary is not, however, identified as the founder or head of the Plant Genome Analysis Laboratory. Dr. [REDACTED] further asserts that in collaboration with the National Agricultural Research Center for the Hokkaido Region in Japan, the beneficiary's laboratory (presumably in Russia) "played a primary role in an international project that contributed to the development of [the] first genetic map [for] red clover."

Dr. [REDACTED], a professor at Cornell University and collaborator with the beneficiary's supervisor at the University of Minnesota, discusses the significance of the beneficiary's work in Japan as follows:

During his time in Japan he published 5 research papers and became known internationally. In his papers he demonstrated creative thinking that led to the development of two new methods to study differentially regulated genes in legumes. However, the most interesting results of his work were published in 2002 in one of [the] top ranked journal[s] in our field, *The Plant Journal*, where he described a new stress/temperature regulated retroelement and predicted the involvement of such repetitive elements in coordinated regulation of endogenous genes expression during stress conditions. Later it was proven by other researchers that this repetitive element may affect endogenous gene expression and now it is becoming a very promising field of study with important implications for the regulation of gene expression.

The petitioner submitted evidence that the beneficiary's 2002 article in *Plant Journal* has been cited, but only five times.

At the University of Minnesota, the beneficiary worked in the laboratory of Dr. [REDACTED]. Dr. [REDACTED] explains that the beneficiary refined and streamlined "a system that could be used to identify plant genes that are involved in the plant-bacterial symbiosis that leads to biological nitrogen fixation." According to Dr. Gantt, the resulting data was cited extensively in the laboratory's grant application to the National Science Foundation and "was a critical aspect" of the approval of that grant.

Dr. [REDACTED], a research leader for the U.S. Department of Agriculture – Agricultural Research Service (USDA-ARS) Plant Science Research Unit and a professor at the University of Minnesota, provides more specifics. Dr. [REDACTED] asserts that the beneficiary was "the first to develop high throughput [RNA interference (RNAi)] gene silencing in roots to determine gene function." Dr. [REDACTED] further asserts that the beneficiary "developed constructs for more than 100 genes, silenced the genes in roots or symbiotic root nodules and evaluated the resulting phenotypes." As an example of the beneficiary's recognition for these achievements, Dr. [REDACTED] references "invitations to speak at several recent plant genome venues." Finally, Dr. [REDACTED] asserts that the beneficiary's work is crucial for understanding root development, nitrogen fixation, can improve crop growth and quality with less fertilizer and is applicable beyond the legumes with which he worked.

Dr. [REDACTED], a research leader with USDA-ARS and a professor at Washington State University, asserts that he invited the beneficiary to present a research paper at a plant and animal genome conference attended by 150 research scientists. The beneficiary presented his work on RNAi at this conference as part of a session on legume crop genomics. Other references imply the beneficiary was invited to present his work at other conferences with approximately 2000 researchers in attendance. The record does not include the actual invitation letters and it is unknown whether the conference organizers identified the beneficiary as a potential speaker based on his reputation and invited him to

prepare a presentation or whether the beneficiary simply submitted a manuscript that was ultimately accepted.

Dr. [REDACTED] Research Director of a division of the Victorian Department of Primary Industries in Melbourne, Australia and a professor at La Trobe University, asserts that he has met the beneficiary at two conferences and characterizes his work as "truly impressive." Dr. [REDACTED] explains:

The innovative approach presented by [the beneficiary] provides a powerful alternative to [the] traditional (often laborious and time consuming) mutant screen. The system he described is [a] powerful tool to understand [the] function of plant genes in roots and improve crop production. Later in the Plant Cell publication, he further demonstrated [the] efficiency of this system by describing a novel function for calcium dependent protein kinase in root development and plant-microbe symbiotic interaction. Furthermore, his research work provided a critical insight into a complex interaction between developmental and symbiotic signaling cascades mediated by calcium in plant root, a key process in formation of efficient interaction between legume root and soil bacteria.

Dr. [REDACTED], Deputy Director of the [REDACTED] Research Institute in Japan, asserts that he met the beneficiary at a conference in 2005 in the United States, although he was aware of the beneficiary's prior work in Japan. Dr. [REDACTED] states:

[The beneficiary] conducted [the] first in the world large-scale RNAi-based functional analysis in plant. In this screen, he was able to identify signal transduction genes that regulate and control plant development and symbiotic interactions, [an] extremely important biological process on our planet. These findings will have significant economic value when applied to legume crop improvement. I am really impressed by his work and his significant contribution to the field.

Dr. [REDACTED] a professor at the University of Missouri, asserts that he knows of the beneficiary through the beneficiary's publications and reputation in the industry. Dr. [REDACTED] praises the importance of the beneficiary's work on RNAi and the potential of an RNAi screen and notes that the beneficiary's 2005 article was cited 10 times in the first year. [REDACTED], Director of Development at Icon Genetics in Germany, provides similar information, speculating that the beneficiary's work "will undoubtedly benefit plant science research and facilitate crop improvement process[es]."

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. The record adequately establishes the importance of the beneficiary's area of research, the potential of the beneficiary's techniques to benefit agricultural research and his

international exposure in the field. The record is less persuasive that the beneficiary has already influenced the field such that his contributions can be considered to have garnered international recognition as outstanding. The beneficiary's articles had only been moderately cited as of the date of filing and the independent references do not provide specific examples of the beneficiary's work being applied beyond his circle of collaborators or attest to the beneficiary's influence on their own work.

In light of the above, while the evidence submitted to meet this criterion is not insubstantial, it is ultimately insufficient to meet this criterion.

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 has authored 10 published articles and has presented his work at conferences. We concur with the director that publication is inherent to the field of research even at the entry-level stage. Thus, the petitioner must demonstrate that the beneficiary's publication record sets him apart from others in the field. While no one article by the beneficiary has been widely and frequently cited, the beneficiary's articles have been consistently moderately cited. Thus, we are persuaded that the petitioner meets this 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.