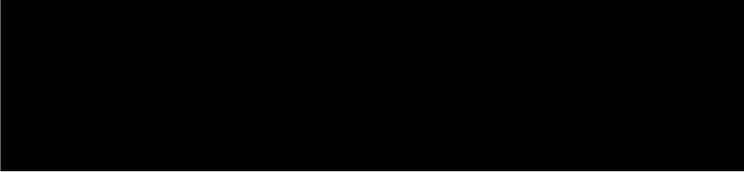




U.S. Citizenship
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FILE: [REDACTED]
EAC 02 282 52067

Office: VERMONT SERVICE CENTER

Date: **AUG 11 2005**

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

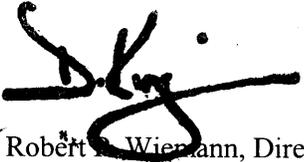
PETITION: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

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 Wienmann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a plastics engineering 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 process developer. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

The regulation at 8 C.F.R. § 204.5(i)(3) 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 former or current employer(s)

and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

This petition was filed on September 10, 2002 to classify the beneficiary as an outstanding researcher in the field of engineering. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field of engineering as of that date, and that the beneficiary's work has been recognized internationally within the field of engineering as outstanding.

The regulation at 8 C.F.R. § 204.5(i)(3)(i) states that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The regulation lists six criteria, of which the petitioner must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. The petitioner claims to have satisfied the following criteria.

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

The petitioner presented the beneficiary with two management awards in 2000 and 2001. The beneficiary also received the following scholarships: the Queen's Graduate Awards, given on a competitive basis to Queen's students; the Ontario Graduate Scholarship, a "provincial prize," and the National Sciences and Engineering Research Council of Canada (NSERC) PGS B Award, a national scholarship "awarded to top students in the areas of science and engineering."

The director concluded that the scholarships were based on academic achievements and that recognition from one's employer was not evidence of international recognition as an outstanding researcher.

On appeal, counsel asserts that the NSERC award was based on the beneficiary's research in the field. Counsel does not assert that the other scholarships and recognition are qualifying and we concur with the director that they are not.

The record does not support counsel's assertion regarding the criteria for the NSERC scholarship. Rather, the letter from NSERC submitted initially asserts that the beneficiary was selected based on his scholastic achievements and research *potential*.

Regardless, competition for scholarships is limited to other students. Experienced experts in the field are not seeking scholarships. As such, this office consistently finds that scholarships cannot be considered "major prizes or awards." Thus, 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 did not initially claim that the beneficiary meets this criterion and submitted no evidence relating to it. Thus, the director concluded that the record contained no evidence relating to this criterion. On appeal, counsel asserts that the beneficiary's membership in the Society of Plastics Engineers should be considered

under this criterion. Counsel acknowledges that “admission into the Society of Plastics Engineers is largely based upon payment of an annual fee,” but continues: “generally, those with distinguished reputations and notable accomplishments in the field serve as key members who help the organization to meet its goal of leading the plastics industry with novel research findings, such as [the beneficiary].” The petitioner submitted evidence of the beneficiary’s membership in the society, but not the requirements for joining.

Membership in an association that includes members with outstanding achievements is insufficient. The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B) requires memberships in associations that “require” outstanding achievements of their members. Thus, *all* members of a qualifying association would have been selected based on their outstanding achievements. The record does not reflect that the society of which the beneficiary is a member requires outstanding achievements of its general membership. Thus, the beneficiary’s membership in the society cannot serve to meet 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

The petitioner submitted announcements of recognition received by the beneficiary published in school publications. The director concluded that these announcements could not serve to meet this criterion. On appeal, counsel asserts that the petitioner is not submitting any additional materials relating to this criterion. We concur with the director that the school publications cannot serve to meet this criterion as their circulation appears limited to the beneficiary’s school and, thus, they are not indicative of international recognition.

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 does not challenge the director’s conclusion that no evidence was submitted to meet this criterion and we concur with the director.

Evidence of the alien’s original scientific or scholarly research contributions to the academic field.

At the outset of her decision, the director noted that the witness letters were from the beneficiary’s immediate circle of colleagues. In discussing this criterion, the director concluded that the record lacked evidence of the patents referenced in the witness letters or evidence that the beneficiary is considered to have advanced the field to a significant degree. On appeal, the petitioner submits evidence that the beneficiary is now the author of an approved patent and a pending patent and two letters from an independent member of the beneficiary’s 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.”

In a similar vein, the evidence that the beneficiary holds a patent for his inventions with other patents pending establishes that he is a prolific inventor, but the very existence of the patents does not show that the beneficiary's inventions are more significant than those of others in his field. This office has previously stated, with regard to a lesser classification, that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* To establish the significance of the beneficiary's work, we turn to experts in his field, whose letters we discuss below.

The beneficiary attended the University of Waterloo for his undergraduate degree and obtained his Master's degree and Ph.D. at Queen's University. Initially, the petitioner submitted a letter from one of the beneficiary's professors at the University of Waterloo and several professors at Queen's University.

██████████ Director of the Institute for Polymer Research at the University of Waterloo, asserts that the beneficiary was one of the university's best undergraduate students and that ██████████ has continued to follow the beneficiary's accomplishments. ██████████ further asserts that the beneficiary's publications on twin-screw extrusion analysis and grafting are of high quality and are based on innovative research. Dr. Penlidis attests to the positive reactions to the beneficiary's conference presentations and concludes that the beneficiary's work is "original, scholarly and significant."

██████████ a member of the beneficiary's graduate thesis defense committee at Queen's University, asserts that the beneficiary's research there "led to important breakthroughs in reactive polymer processing technology." Specifically, the beneficiary's "exploration of the use of styrene as a comonomer for maleic anhydride grafting to polyethylene was comprehensive, providing insight into the mechanism and utility of this approach." In addition, the beneficiary performed "detailed model compound research on maleic anhydride grafting which has provided insight into the factors that influence commercial grafting processes. ██████████ characterizes the beneficiary's "discovery of the effects of unsaturation on grafting selectivity" as important, providing a basis for overcoming challenges to solving a longstanding problem in the industry.

██████████ professor emeritus at Queen's University, asserts that while grafting of maleic anhydride to polyolefins has been the subject of many studies, "the influence and mode of action of a second monomer have not been widely studied." The beneficiary's work has "considerably increased our understanding of this process." ██████████ concludes that the beneficiary's "use of the twin-screw extruder enables commercial aspects of the grafting maleic anhydride and styrene to polyethylene to be assessed."

Two other professors at Queen's University ██████████ provide similar information to that discussed above. ██████████ adds that the beneficiary's "research was of significant value to the US military in safely preparing shear sensitive propellants," but the record lacks letters from high-level officials with any of the armed service divisions confirming the impact of the beneficiary's work in the military.

██████████ the Human Resources Manager for the petitioner, describes the beneficiary's work for the petitioner. Upon joining the petitioner, the beneficiary "applied his knowledge of reactive polymer processing and Materials Chemistry/Polymer Science in general to the development and commercialization of several products." Specifically, the beneficiary worked on the development and commercialization of "the first

environmentally compliant (ECO) wear resistant polyester formulation used in the fabrication of data cartridge housings for the computer industry.” This work “led to various commercial polycarbonate resin formulations that are used in a variety of applications, including business equipment, telecommunications, consumer electronics, and housewares.” The beneficiary also worked on the development of the petitioner’s platform and collaborated with an Indian affiliate to discover novel methods to enhance electrical conductivity and to design a five-sigma product for HP Shanghai that resulted in \$550 K of new business opportunities for the petitioner. asserts that the beneficiary’s work “led to the filing of two U.S., A-1 status, patent invention disclosures.” According to A-1 status is the highest priority awarded by the petitioner. The petitioner, however, did not submit letters from the beneficiary’s supervisor, management at the petitioning company or any engineers with the petitioning company confirming these assertions. As noted by the director, the petitioner also failed to submit the patent applications.

On appeal, the petitioner submits an approved patent and a patent application. The approved patent was filed February 11, 2003, after the petition was filed, and approved January 29, 2004. The pending patent was filed April 28, 2003, also after the petition’s filing date. The petitioner also submits two new witness letters.

indicates that his letter is based on a review of the beneficiary’s credentials and publications but does not assert that he had ever heard of the beneficiary or his work prior to being approached for a reference letter. raises the beneficiary’s work as novel and significant, but concludes only that “the implications of his work may have a profound effect on the electronic packaging and medical industries, as well as on a host of other industries.” Similarly, concludes that the beneficiary’s patented innovation “is both original and has the potential of transforming the electronics packaging industry.” Dr. final conclusion that the beneficiary has contributed outstanding innovations that have impacted the field and offer promise for applications is qualified with the phrase, “considering his young age.” We will not narrow the beneficiary’s field to those within his age group or career stage. does not assert that he personally has been influenced by the beneficiary’s work.

Managing Engineer for Exponent, asserts that he met the beneficiary at a conference. Significantly asserts that his research laboratory at the Massachusetts Institute of Technology (MIT) utilized the beneficiary’s technique for using small micro-spheres to monitor and indicate the shear stresses in a viscous polymer flow field. While this letter, in addition to the limited citations submitted on appeal, demonstrates that the beneficiary’s work is now gaining some recognition beyond his immediate circle of colleagues, the remaining evidence is insufficient to establish the beneficiary’s international recognition at the time of filing to which the other references attest.

While the beneficiary’s research clearly has value and practical applications, it can be argued that any Ph.D. thesis, published article, or patented innovation, in order to be accepted, published or granted, must offer new and useful information to the pool of knowledge. The record, however, does not establish that the beneficiary’s work, while promising, is already recognized internationally as a groundbreaking advance in polymer science, let alone that it was so recognized at the time of filing. Thus, we cannot conclude that the beneficiary meets this criterion.

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

Initially, the petitioner submitted evidence that the beneficiary had authored four published articles and had presented his work as a poster and orally at three conferences. While counsel discusses the beneficiary's conference presentations as a separate criterion, the regulations do not provide for such consideration. Rather, we find conference presentations to be comparable evidence relating to the scholarly articles criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(E).

The director concluded that citations are an important gauge of the influence of a researcher's published work. On appeal, the petitioner submits a list of eight articles that cite the beneficiary's work, copies of seven of the articles and a reference letter attesting to the significance of the citations. Of the eight citations, only two could have been published prior to the date of filing, September 10, 2002. Of the seven articles submitted, three cite one of the beneficiary's articles and four cite a second article by the beneficiary. Thus, as of the date of appeal, none of the beneficiary's articles had been cited more than four times.

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.

The petitioner must demonstrate the beneficiary's eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*; 14 I&N Dec. 45, 49 (Comm. 1971). As of that date, the beneficiary had been cited, at most, twice. Even on appeal, the petitioner submits evidence of no more than four citations for any one of the beneficiary's articles. This citation record is not indicative of international recognition in the field. As such, the petitioner has not established that the beneficiary 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 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.