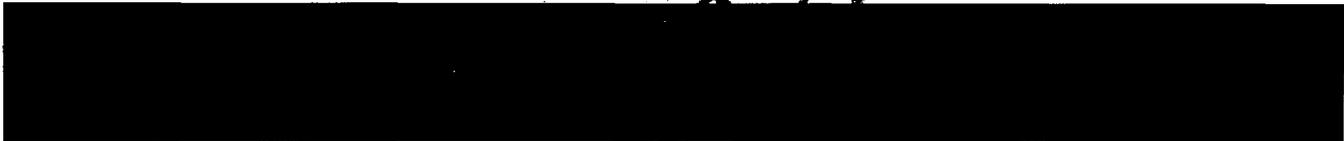


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Services

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FILE:

[Redacted]
SRC 03 213 52735

Office: TEXAS SERVICE CENTER

Date: **JAN 11 2005**

IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as an 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, Director
Administrative Appeals Office

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

The petitioner is a university. It seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B), as an outstanding professor or researcher. The petitioner seeks to employ the beneficiary as a "Research Scientist." The director found that the petitioner has not established that the beneficiary is recognized internationally as outstanding in his academic field.

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:

(iii) 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.

This petition was filed on July 29, 2003. 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 submits evidence pertaining to the following criteria.

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

The petitioner submitted the beneficiary's M.S. and Ph.D. degrees from Ohio University as evidence of his prizes and awards. The petitioner also submitted evidence of financial support the beneficiary received from Ohio University in the form of graduate scholarships and stipends. An advanced degree may indicate that the beneficiary has fulfilled certain academic requirements at his university, but it does not constitute a major, internationally recognized prize or award for outstanding achievement in the academic field. In respect to awards from universities and other learning institutions, Citizenship and Immigration Services (CIS) views academic awards as local or institutional honors rather than internationally recognized awards for the reason that they are limited to the individual school or institution presenting the awards. This criterion is intended to be restrictive and cannot be open to every scholar or scientist who has ever received an educational degree, grant, or stipend from his university. Documentation provided by the petitioner shows that the beneficiary's awards amounted to financial support for the beneficiary's then ongoing studies and scientific training at Ohio University. We conclude that the beneficiary's awards from Ohio University were presented for general scholastic achievements and other traits deemed praiseworthy by the university rather than outstanding achievement in his research field.

The petitioner also submitted a letter from [REDACTED] Assistant Editor, Society of Petroleum Engineers (SPE), stating:

[The beneficiary] has a history of service to our organization, including the recent publication of a technical paper in the prestigious *SPE Journal*.

* * *

The [beneficiary's] paper was well-received, garnering honors as the top-ranked presentation of the session for both its content and the remarkable quality of its slides, and will prove influential as research continues.

[redacted] letter states that the beneficiary garnered honors for his "top-ranked presentation," but the record contains no first-hand evidence of a "prize or award" presented directly to the beneficiary. The letter from [redacted] provides no information regarding the "session" in which the beneficiary's paper was presented. Nor is there any information about the other session participants or the system used to rank the presentations. The burden is on the petitioner to show that the beneficiary's award enjoys significant recognition beyond the context of the event where it was presented. Publication and presentation of one's work are inherent duties of scientific researchers and therefore such actions are not tantamount to winning a major prize or award for outstanding achievement in the field.

In sum, the petitioner has failed to show that the beneficiary has earned major prizes or awards that enjoy significant international stature.

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

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, test scores and recommendations do not constitute outstanding achievements. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted a certificate reflecting that the beneficiary became a member of Sigma Xi, The Scientific Research Society, in 2003. Information provided by the petitioner indicates that Sigma Xi currently has approximately 75,000 members and that "[e]ach year the Society initiates more than 5,000 new members."

The petitioner also submitted a January 6, 2004 letter from Dr. [redacted], Executive Director, Sigma Xi, stating:

[The beneficiary] was duly elected a Full Member of the Sigma Xi Society 2003, by the Committee on Qualifications and Membership. Membership in Sigma Xi is by nomination . . . Full membership is conferred upon those who have demonstrated noteworthy achievements in research. The Committee on Qualifications and Membership interpreted this qualification to include primary authorship of two papers. ("Paper" includes refereed journal articles, patents or internal reports. An earned doctoral degree may be substituted for one paper.)

Dr. [REDACTED] letter cites Section 2 of Sigma Xi's Bylaws, which describes "noteworthy achievement" as follows: "Noteworthy achievement in research specified for election or promotion to full membership, in accordance with article II, Section 3 A of the Constitution, must be evidenced by publications, patents, written reports or a thesis or dissertation..." According to these requirements, it is apparent that an individual who has published only two papers, or who has prepared a master's thesis and authored one additional paper, is eligible for membership in Sigma Xi. Publication of one's work, however, is inherent to scientific research. Thus, the mere act of publishing two scientific papers is not adequate to demonstrate outstanding achievement in one's field. For this reason, we do not accept counsel's argument that "noteworthy achievement" as defined in Sigma Xi's Constitution rises to the same level as "outstanding achievement" as required under this criterion. The record contains no evidence showing that Sigma Xi requires outstanding achievement as an essential condition for admission to membership in the same manner as highly exclusive associations such as (for example) the U.S. National Academy of Sciences.

The petitioner also submitted the beneficiary's membership card for the Society of Petroleum Engineers (SPE). Information provided by the petitioner from the SPE's website indicates that this organization has "more than 55,000 members." The information provided also indicates that an individual who is employed "in work related to the petroleum industry" and who possesses a 4-year bachelor's degree in the sciences or "a 2-year science or engineering degree" is eligible for membership in the SPE.

The petitioner also submitted the beneficiary's membership card for the American Society of Mechanical Engineers (ASME). Information provided by the petitioner from the ASME's website indicates that this organization has a "membership of 125,000." The information presented also indicates that an individual who has attained "eight years of active practice in the profession of engineering" or who holds "a baccalaureate degree in an approved engineering technology curriculum" is eligible for membership in the ASME.

Based on the evidence presented, we cannot conclude that the ASME, Sigma Xi, or the SPE require outstanding achievement as an essential condition for admission to membership.

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, the petitioner submits evidence showing that [REDACTED] of Ohio University, a co-author of the beneficiary's, cited the beneficiary's work in a master's thesis dated August 2001.¹ Counsel asserts that [REDACTED] thesis was published, but the record contains no evidence to support this claim. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In general, in order for published material to meet this criterion, it must be primarily about the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media.

¹ The beneficiary and [REDACTED] co-authored a paper entitled "[REDACTED]" on the [REDACTED].

Articles which cite the beneficiary's work are primarily about the author's own work, not the beneficiary's work. As such, they cannot be considered qualifying published material about the beneficiary's work. We cannot ignore that [REDACTED] paper similarly referenced numerous other authors. In the beneficiary's field, it is the nature of research work to build upon work that has gone before. In some instances, prior work is expanded upon or supported. In other instances, prior work is superseded by the findings in current research work. In either case, the current researcher normally cites the work of the prior researchers. Clearly this is not the same thing as published material written about an individual's work in the field. This type of material does not discuss the merits of an individual's work, the individual's standing in the field, or any significant impact that his or her work has had on work in the field. The citation of the beneficiary's work by his collaborator from Ohio University will be addressed under a separate 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.

The petitioner submitted a letter from Dr. Cem Sarica, Associate Professor of Engineering, University of Tulsa, and Associate Technical Editor of the *Journal of Energy Resources Technology (JERT)*.² Dr. Sarica states: "As Associate Technical Editor of *JERT*, I have asked [the beneficiary] to review manuscripts submitted by other researchers because he is an expert in the fluid flow in pipes topic, has published high-quality articles, and is well qualified to evaluate the others' scholarly work."

We accept Dr. Sarica's claim that he "asked [the beneficiary] review manuscripts," but the record contains no first-hand evidence of the specific manuscript reviews completed by the beneficiary as of the filing date of this petition. Even if the petitioner were to provide such evidence, we note that reviewing manuscripts is recognized as a professional obligation of scientists who publish themselves in research journals. In certain instances, authors who repeatedly decline requests to review will be asked to submit their own manuscripts to other journals. Thus, peer review of manuscripts is a routine element of the process by which articles are selected for scientific conferences and publication in scholarly journals. Occasional participation in peer review of this kind does not automatically demonstrate that the beneficiary has achieved international recognition as outstanding in his academic field. The petitioner has not submitted evidence to show that only outstanding, internationally recognized researchers review papers in this manner.

Without evidence that sets the beneficiary apart from others in his field, such as (for example) evidence that he has peer-reviewed an unusually large number of manuscripts for publication in scientific journals, received multiple independent requests for his services from a substantial number of journals or conference committees, or served in an editorial position for distinguished journals (in the same manner as some of his witnesses), we cannot conclude that he 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.

² We note that the beneficiary submitted "Investigating the Influence of Liquid Viscosity on the Flow Characteristics and Effectiveness of Drag Reduction in Horizontal Slug Flow" to *JERT* in January 2003 and that Dr. [REDACTED] was the technical editor from *JERT* who oversaw the review process for this article.

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, as well as to presume that most research is "unoriginal."

The petitioner submitted several letters in support of the petition. The petitioner's witnesses discuss the beneficiary's published and presented work as evidence of his original contributions. The record, however, contains no documentation showing that presentation or publication of one's work is unusual in the beneficiary's field or that independent researchers have heavily cited the beneficiary's findings their research. Without evidence reflecting independent citation of the beneficiary's published articles, we find that the petitioner has not significantly distinguished the beneficiary's results from those of other researchers. It can be expected that if the beneficiary's published research were internationally recognized, it would be widely cited.

In regard to the beneficiary's conference presentations, there is no indication that the invitation to participate was a privilege extended to only outstanding researchers. Many professional fields regularly hold conferences and symposiums to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, is not adequate to demonstrate that the beneficiary is recognized internationally as outstanding in his field. The record contains no evidence showing, for example, that the beneficiary has served as a keynote speaker at an international chemical engineering conference or that his presentations often command larger audiences.

The witnesses offering letters of support consist of the beneficiary's research supervisors from the Hemispheric Center for Environmental Technology at Florida International University, an individual who the beneficiary is assisting on a project for the South Florida Water Management District, the beneficiary's M.S. and Ph.D. advisors from Ohio University, and individuals who participated in advisory board meetings with the beneficiary at the Institute for Corrosion and Multiphase Technology at Ohio University. The narrow range of witnesses offering these letters is not adequate to demonstrate that the beneficiary's reputation has traveled outside of these organizations, let alone internationally as the statute requires. A researcher who is recognized internationally as outstanding should be able to produce ample unsolicited materials reflecting such a reputation. The absence of substantial independent testimony raises doubt as to the extent of the beneficiary's recognition. In conclusion, we find that the evidence presented under this criterion is not adequate to demonstrate that the beneficiary is directly responsible for scientific or scholarly contributions that have been unusually influential or internationally renowned within his field.

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

The petitioner has shown that the beneficiary is the co-author of published papers in journals such as the *JERT* and the *SPE Journal*. We do not find, however, that publication of one's work is presumptive evidence of international recognition. To assert that publication itself is indicative of outstanding recognition, one must establish that it is a comparatively rare achievement for a researcher's work to be published at all. The petitioner

in this case has made no such showing. By way of analogy, CIS sometimes requires copies of income tax returns to establish that the petitioner has the ability to pay the proffered wage to the beneficiary. The petitioner, however, does not automatically meet this requirement by submitting a copy of an income tax return. Rather, we must consider the content of that income tax return; if it does not show that the petitioner can afford to pay the beneficiary, then the petitioner cannot credibly argue that it met its obligation merely by supplying the copy of the tax return. Similarly, while an alien's publication record can form part of the body of evidence in this matter, it does not follow that every article out of the hundreds of thousands published every year carries equal weight.

Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is internationally recognized as outstanding if there is little evidence that other researchers have relied upon the beneficiary's findings. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the beneficiary's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the beneficiary himself has cited sources in his own articles. Numerous independent citations would provide firm evidence that other researchers have been influenced by the beneficiary's work. Their citation of the beneficiary's work demonstrates their familiarity with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the larger research community, then it is reasonable to question how widely that alien's work is viewed as being noteworthy. It is also reasonable to question how much impact — and international recognition — a researcher's work would have, if that research does not influence the direction of future research. In the present case, the record contains evidence of a single article citing the beneficiary's work, authored by one of the beneficiary's research collaborators from Ohio University. While heavy independent citation of the beneficiary's published articles would carry considerable weight, the petitioner has not presented such citations here. Without evidence showing that the beneficiary's works are widely cited beyond the walls of Ohio University, we cannot conclude his publications are internationally recognized as outstanding.

The petitioner in this case has submitted evidence under six of the regulatory criteria at 8 C.F.R. § 204.5(i)(3)(i); however, based on the preceding discussion of the evidence, we find that none of those criteria have been fulfilled.

Beyond the beneficiary's failure to satisfy at least two of the regulatory criteria at 8 C.F.R. § 204.5(i)(3)(i), we note that the record contains no formal job offer letter, i.e., a letter from the petitioner addressed to the beneficiary that sets forth a binding offer of employment, including specific terms thereof. The initial submission includes a letter from [REDACTED] Human Resources Coordinator, Hemispheric Center for Environmental Technology, Florida International University, dated July 7, 2003 and addressed "To Whom it May Concern," which states: "We would like to confirm that our organization . . . has employed [the beneficiary] . . . since 11/20/01 as a Research Scientist. His position is full-time faculty position with a current salary of \$42,435." In response to the director's request for evidence, the petitioner submitted a December 30, 2003 letter from [REDACTED] Personnel Representative, Division of Human Resources, Florida International University, addressed "To Whom it May Concern," which also verifies the beneficiary's employment. In contrast to the July 7, 2003 letter, the December 30, 2003 letter indicates that the beneficiary's position title is "Faculty, Administrative/Coordinator" rather than "Research Scientist." The December 30, 2003 letter further states: "[The beneficiary] works for Sponsored Research Development. He

is a full time, permanent faculty member." The July 7, 2003 and December 30, 2003 letters indicate that the beneficiary is employed by Florida International University, but neither letter is an offer of employment addressed to the beneficiary. Rather, they are letters addressed "To Whom it May Concern," which simply verify the beneficiary's current employment at the university. Neither of these letters constitutes a formal offer of employment; indeed, they imply that the beneficiary has already accepted an offer made earlier. The record does not contain any documentation, pre-dating the petition's filing date, that initiated an employer-employee relationship between the petitioner and the beneficiary or otherwise extended a permanent job offer from the petitioner to the beneficiary.

In this case, the petitioner has shown that the beneficiary is a skilled chemical engineering scientist, who has won the respect of individuals who know him from projects involving Florida International University's Hemispheric Center for Environmental Technology and Ohio University's Institute for Corrosion and Multiphase Technology, while securing some degree of international exposure for his published and presented 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 visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.