

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

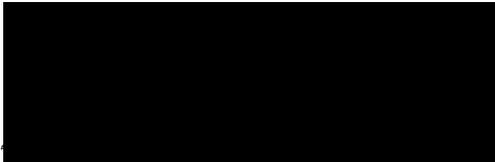
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

133



FILE:



Office: NEBRASKA SERVICE CENTER

Date: JUN 03 2005

IN RE:

Petitioner:

Beneficiary:



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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a state educational institution. It seeks classification of 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 an assistant professor. The director determined that the petitioner had not established that the beneficiary has attained the outstanding level of achievement required for the category of outstanding professor or researcher. The director also concluded that the beneficiary did not have three years of experience or a permanent job offer.

On appeal, the petitioner submits the original job offer letter and new information about the beneficiary's teaching experience and memberships. For the reasons discussed below, while we find the job offer to be qualifying, the petitioner has not overcome the director's other 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):

(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 final issue to be decided is whether the petitioner has made a qualifying job offer to the beneficiary. The regulation at 8 C.F.R. § 204.5(i)(3)(iii) provides that a petition must be accompanied by:

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.

The regulation at 8 C.F.R. § 204.5(i)(2), provides, in pertinent part:

Permanent, in reference to a research position, means either tenured, tenure track, or for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination.

(Bold emphasis added.) On Part 6 of the petition, the petitioner indicated that the proposed employment, as an assistant professor, was a permanent position. The petitioner submitted a letter from [REDACTED] confirming the beneficiary's employment as an assistant professor. [REDACTED] asserts that the position is "temporary" and for "a three-year period." This document does not constitute a job offer from the petitioner to the beneficiary. The director requested clarification of the discrepancy between the "permanent" indication on the petition and the "temporary" indication in [REDACTED]'s letter.

In response, the petitioner submitted a letter from [REDACTED] president of the petitioning university, asserting that the petitioner "intends to employ [the beneficiary] in a permanent, tenure-track position."

The director concluded that President [REDACTED] letter did not resolve the inconsistencies in the absence of the actual job offer letter.

On appeal, the petitioner submits an April 5, 2002 letter from President [REDACTED] to the beneficiary acknowledging the beneficiary's acceptance of the "tenure-track Assistant Professor of Statistics" position. President [REDACTED] indicates that the salary and benefits are "for a nine-month appointment commencing in August 2002."

While the director requested evidence that the petitioner had offered the beneficiary a permanent job, we note that the petitioner is not hiring the beneficiary as a researcher, but a professor. The definition of "permanent" in the regulations only applies to research jobs. A job offered to a professor need only be for a tenure or tenure-track position. The record is consistent that the position offered is tenure-track. Thus, we withdraw the director's finding that the job offer is not qualifying. Nevertheless, for the reasons stated below, the petitioner has not overcome the director's two other bases for denial.

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 April 28, 2003 to classify the beneficiary as an outstanding professor in the field of statistics. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching experience in the field of statistics as of April 28, 2003 and that he had full responsibility for the classes taught. The initial submission did not include such evidence. In response to the director's request for additional evidence, the petitioner submitted a letter from [REDACTED] Head of the Department of Statistics at Purdue University, who indicates the following teaching experience while the beneficiary was studying for his Ph.D. at Purdue University:

With respect to his teaching, he taught STAT 301: "Elementary Statistical Methods," in the Fall 2000 semester and STAT 3011: "Elementary Statistical Methods," in the Spring 2001, Fall 2001 and Spring 2002 semesters. For STAT 301, he was fully responsible for the LAB session. He gave lectures for the LAB session, demonstrated how to do statistical computing using standard software, held office hours and graded homework. For STAT 3011, he had full responsibility for the whole course. He supervised several undergraduate student tutors, coordinated the efforts of a graduate student grader, gave lectures to students as needed, held regular office hours and assigned final course grades to students.

The director concluded that this experience amounted to no more than one and a half years of experience with full responsibility for the courses taught. On appeal, [REDACTED] submits a new letter asserting that the beneficiary had "full responsibility for the courses he taught as I explained in my March 2, 2004 letter." She continues that the beneficiary started performing research on semiparametric regression using wavelets in the year 1999. She asserts, without explanation or examples, that this work has been recognized as outstanding. Based on the above, [REDACTED] concludes that the beneficiary has "at least three years of experience in research and/or teaching in Statistics at Purdue University."

For the reasons discussed below, the petitioner has not established that any research performed by the beneficiary has been recognized as outstanding as defined in the regulations. Moreover [REDACTED] merely reiterates on appeal the same information regarding the beneficiary's teaching experience provided previously. The beneficiary did not begin teaching until the Fall 2000 semester and did not assume full responsibility over the course, beyond the "LAB" section, until Spring 2001. As such, we concur with the director that the petitioner has not established that the beneficiary had the necessary three years of experience as of the date of filing.

The final issue to be considered in this proceeding is whether the beneficiary's scientific accomplishments are internationally recognized as those of an outstanding researcher in his field. The regulation at 8 C.F.R. § 204.5(i)(3)(i) state 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 petitioner must meet at least two of six stated criteria. The petitioner claims to have met the following criteria:¹

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

The petitioner never claimed that the beneficiary meets this criterion. In his final decision, the director noted that the beneficiary lists several memberships on his resume, the American Statistical Association (ASA) as of 2002, the Institute of Mathematical Statistics (IMS) as of 2002, Interface as of 2002, the International Association for Statistical Computing (IASC) as of 2004 and the Society for Industrial and Applied Mathematics (SIAM) as of 2002, but concluded that the record did not establish that the associations require outstanding achievements of their members.

On appeal, counsel asserts that the petitioner is submitting evidence that the beneficiary was "an invited attendee of the AMS-IMS-SIAM Summer Research Conference on Maching [sic] Learning, Statistics and Discover in June 2003." The petitioner also submits membership requirements for the American Statistical Association, the Association for Statistical Computing, Interface and the Institute of Mathematical Statistics.

The record is absent any evidence that the beneficiary was actually invited to attend the AMS-IMS-SIAM conference. The unsupported 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). Regardless, an invitation to attend a conference is not a membership in an association. Finally, the conference apparently took place in June 2003, more than a month after the date of filing. Thus, this conference cannot be considered evidence of the beneficiary's eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Similarly, the petitioner submitted no evidence that the beneficiary is actually a member of any professional associations. The beneficiary's self-serving claims on his curriculum vitae are insufficient evidence of those memberships. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Regardless, the materials about these associations submitted on appeal make no reference to exclusive membership requirements. SIAM appears to be open to "individual mathematicians, computer scientists, numerical analysts, engineers, statisticians, physicists, educators and students." Interface appears to be open to "computational scientists, statisticians, mathematicians and individuals from related discipline interested in the interface between computing science and statistics." The materials submitted make no mention of any membership requirements for either SIAM or Interface other than dues payments.

¹ The petitioner did not claim to meet or submit evidence relating to criteria not discussed in this decision.

ASA has 19,000 members and appears to be open to “professionals and students working or studying in the field of statistics.” No mention is made of any membership requirements other than dues payments in the materials submitted. ASA does recognize as fellows “full members who have made outstanding contributions in some aspect of statistical work.” The record is absent evidence that the beneficiary has been selected as a fellow of this (or any) association.

The membership materials for IMS submitted on appeal merely discuss the benefits of membership and the dues, without referencing any membership requirements. Finally, IASC is “open to all individuals and organisations who are interested in promoting the theory, methods and practice of statistical computing.” (British spelling in original.)

In light of the above, the petitioner has not established that the beneficiary is a member of any professional association, let alone an association that requires outstanding achievements of its members, as required by the plain language of 8 C.F.R. § 204.5(i)(3)(i)(B). Thus, the petitioner has not established 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

The petitioner claimed for the first time that the beneficiary meets this criterion in response to the director’s request for additional evidence. In support of this claim, the petitioner submitted a 2004 request from the Associate Editor of Elsevier Science to review a manuscript for a statistics textbook. The director did not discuss this evidence. Counsel makes no reference to this criterion on appeal.

First, the request is dated after the date of filing and, as such, is not evidence of the beneficiary’s eligibility as of that date. A petitioner must establish eligibility as of the date the petition is filed. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. Second, the record contains no evidence regarding the significance of this request. The questions appear more akin to a survey of professors teaching the subject as to the value of the proposed text. If Elsevier Science merely contacted several professors in the field for opinions regarding its proposed textbook, its request is not indicative of the beneficiary’s 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 for an international journal, received independent requests from a substantial number of international journals, or served in an editorial position for a distinguished international 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.

Initially, the petitioner submitted reference letters from the beneficiary’s immediate circle of colleagues and articles that had allegedly been published. Counsel did not explain how the beneficiary meets this criterion. In response to the director’s request for additional evidence, counsel references the beneficiary’s articles as evidence of his contributions. The director, noting predictions of future contributions by the beneficiary’s references, concluded that the record did not establish that the beneficiary had already contributed to his field. On appeal, counsel submits the beneficiary’s “publication list” as evidence to meet this criterion.

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."

The beneficiary obtained his Ph.D. from [REDACTED] in August 2002. He then accepted a position as an assistant professor at the petitioning university. Initially, the petitioner submitted three articles authored by the beneficiary. While counsel references these articles as "publications," they all begin on page one with no reference to the publication in which they appeared. The beneficiary's curriculum vitae submitted initially reflects that one paper had been submitted to *Statistics and Computing* and two others were "refereed" papers of *Interface*. The beneficiary listed two other papers "in progress." In response to the director's request for additional evidence, the beneficiary submitted an article published in *Applied Stochastic Models in Business and Industry*, accepted for publication in July 2003, after the date of filing. In addition, the Science Direct website posted an "in press" article accepted for publication in *Computational Statistics and Data Analysis*. This article was available on-line on December 3, 2003, after the date of filing. As discussed above, eligibility must be established as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. The list of publications submitted on appeal does not include any full-length articles published prior to the date of filing. The record confirms that the beneficiary had presented two papers at *Interface* conferences as of the date of filing, abstracts of which appeared in the proceedings of these conferences, apparently prior to the date of filing.

The significance of the beneficiary's publication record will be discussed below. We note, however, that the publication of scholarly articles is a separate criterion and that a beneficiary must meet two criteria in order to establish eligibility. While the two criteria may be somewhat related, a presumption that publication of a scholarly article is sufficient to meet the contributions criterion would render the requirement that a beneficiary meet at least two criteria meaningless. That the beneficiary has presented his work is not presumptive evidence that the work presented is a contribution sufficient to meet this criterion. To establish the significance of the beneficiary's work, we turn to the beneficiary's references whose letters we discuss below.

[REDACTED] Director of Affirmative Action for the petitioner, asserts that the beneficiary "has a strong research record in the areas of statistical computing, nonparametric and semi-parametric regression, wavelets in nonparametric regression and Bayesian modeling, with numerous publications in professional journals." As will be discussed below, the record does not demonstrate that the beneficiary had published numerous publications as of the date of filing. Regardless, [REDACTED] does not appear to be an expert in the beneficiary's field and her letter appears to have been submitted as evidence of the beneficiary's job with the petitioner, which is not contested.

[REDACTED] a professor at the petitioning university, praises the beneficiary's teaching experience and employment of sophisticated statistical methods in his research. [REDACTED] asserts that the beneficiary is proficient in several statistical computer languages. [REDACTED] does not explain how the beneficiary's experience and skills constitute an original contribution to the field of statistics. For example [REDACTED] does

not provide examples of how the beneficiary has influenced the work of other statisticians internationally, or at all.

Chair of the beneficiary's department at the petitioning university, asserts that the beneficiary "is the most active statistician whom [the petitioner] has ever employed." notes the beneficiary's ability to "apply the cutting edge technology of wavelets to study partially linear models." concludes that the beneficiary "will make substantial contributions to the United States scientific community in future years." These statements do not establish that the beneficiary has already made original contributions to the academic field of statistics.

the beneficiary's Ph.D. advisor at Purdue University, provides more detail about his work. affirms that the beneficiary's work "has great significance for future development of the field of statistics and its applications." More specifically, explains that the beneficiary "proposed, developed, and implemented a novel wavelet nonparametric regression for partially linear models." explains that a partially linear model (PLM) consists of a linear part and a nonparametric component and is more flexible than the standard linear model. A PLM has many practical applications and has been "successfully applied in analyzing the relationship between weather and electricity sales, agricultural field experiments and financial time series." Such models, however, are based on assumptions that may not be satisfied. According to applying "wavelet nonparametric regression methods to the partially linear models is a natural extension to the traditional methods." Regarding the beneficiary's work asserts:

[The beneficiary] proposed regularized wavelet estimation methods for partially linear models. He derived the necessary and sufficient conditions for the minimum points of the object function. When there is only one variable in the linear part, he developed a simple numerical bisection search algorithm for the solution. When there are more than one predictors in the linear part, he developed an iterative nonlinear backfitting algorithm.

predicts that these innovations "will find important application in signal processing, image processing, et al." While she explains how these innovations are relevant, she does not provide any examples of how the beneficiary's work has already influenced the field of statistics.

The record is absent letters from experts who are independent of the beneficiary but recognize his work. The record is also absent evidence that the beneficiary's work is widely cited. Without such evidence or comparable evidence of the beneficiary's influence on the field of statistics, we cannot conclude that he has made original contributions in his field sufficient to meet this criterion. The petition was filed before the beneficiary's work was published in full, beyond abstracts, and disseminated in the field. Thus, the influence of his work is difficult to gauge.

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

As stated above, at the time of filing, the beneficiary's work had been presented but not published in full-length articles. The director concluded that the beneficiary's publication record was not indicative of international recognition. On appeal, counsel quotes summary of the beneficiary's publications. Specifically, stated that the beneficiary "already has two refereed presentations to prestigious conferences, a

refereed publication which has appeared in a good journal, another publication in press in a refereed journal, and two more papers submitted to high quality journals.”

The regulation at 8 C.F.R. § 204.5(i)(3)(i)(F) requires publication in journals with an international circulation. The Interface materials submitted on appeal reference annual meetings, but do not specifically characterize them as international. We acknowledge, however, that the 2002 meeting was in Canada and that the program identifies the association as the Interface Foundation of North America. Thus, Interface’s conferences and proceedings appear to have some recognition outside the United States.

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 or presentations of one’s work at a conference is not automatically evidence of international recognition; we must consider the research community’s reaction to those articles.

The record does not contain evidence that the beneficiary’s presentations have been widely cited or other comparable evidence of the significance of the beneficiary’s published or presented work.

The petitioner has shown that the beneficiary is a talented statistician, who has won the respect of his collaborators, employers, and mentors, while securing a minimal degree of international exposure for his work. The record, however, stops far 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.