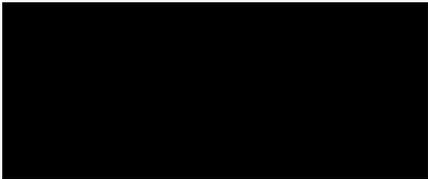


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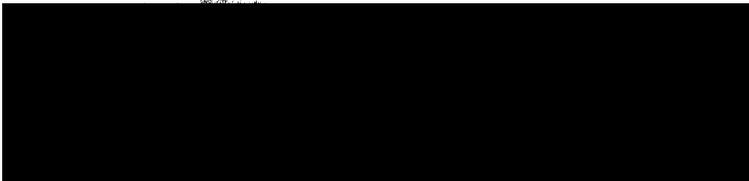
Bj

FILE: WAC 04 115 51317 Office: CALIFORNIA SERVICE CENTER Date: **OCT 14 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

(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 March 17, 2004 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 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 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. 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. 56 Fed. Reg. 30703, 30705 (1991). 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 director concluded that the evidence submitted to meet this criterion was not indicative of international recognition, as the awards were provincial. On appeal, counsel asserts that the regulation at 8 C.F.R. § 204.5(i)(3)(i)(A) does not include the word "international." Thus, according to counsel, regional or provincial awards are sufficient to meet this criterion.

The petitioner submitted the following awards:

1. Two Awards of Achievement in Science and Technology issued by the Committee of Achievement in Science and Technology, Hunan Province, and the Education Department of Hunan Province in May and October 1997 and
2. Two First Place and one Second Place Certificates of Experimental Technique Achievement in Central South University issued by Central South University in 1995 and 1997.

In the director's request for additional evidence, he did not merely assert that the evidence was deficient. Rather, he asserted that the petitioner must provide evidence of the significance of the above awards. In response, the petitioner submitted the Executive Guidelines for the Hunan Province Science and Technology Achievement awards. Nominations should recognize work that (1) is pioneering, (2) represents cutting edge that is considered a significant achievement or has significantly impacted the economy and society and (3) has been published and cited or applied. The guidelines provide the number of award winners for the following categories: technical benefit, society benefit, major engineering and management science, technology transformation and popularization, technology invention and fundamental research in science and technology. The petitioner's classification is listed as "science and technology."

We note that the proposed rule in July 1991 did require that the award be a major international award. 56 Fed. Reg. 30703-01 (1991). In the final rule, the word "international" was removed. The commentary explains that the word was removed "to accommodate *the possibility* that an alien *might* be recognized internationally as outstanding for having received a *major* award that is not international." 56 Fed. Reg. 60897-01, 60899 (1991) (Emphasis added). This language in no way suggests that a local, regional or provincial award may be considered "major," a word that remains in the final regulation. While some major national awards could serve to meet this criterion, we concur with the director that a regional or provincial award, where the beneficiary did not compete with the most experienced members of the field nationally, cannot be considered major such that it is indicative of or consistent with international recognition. Thus, we find that 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 director concluded that the petitioner had not established that any of the associations of which the beneficiary is a member require outstanding achievements of their members. On appeal, counsel asserts that the director ignored the evidence of the number of members of the associations of which the beneficiary is a member, that the director should have reviewed the websites of the associations and that the exclusive nature of the associations can be inferred from the low number of members.

The petitioner initially submitted evidence of the beneficiary's membership in the American Society for Nondestructive Testing (ASNT), the largest society for nondestructive testing professionals whose membership reflects "a wide cross-section of NDT practitioners working in manufacturing, construction, education, research, consulting, services and the military." The beneficiary is also a regular member of the American Ceramic Society (ACerS), an association with membership of 7,500 members including "engineers, scientists, researchers, manufacturers, plant personnel, educators, students, marketing and sales professionals and others in related materials disciplines." Regular members in the society must be 26 years old or older and pay a fee of

\$100. The beneficiary, in his official capacity for the petitioner, is a corporate member of the Consortium on Thermal Spray Technology (CTST). A fee of \$10,000 is required for this membership.

Once again, in the request for additional evidence, the director did not simply assert the evidence was deficient. Rather, the director requested evidence of the membership requirements for the above associations, the primary consideration according to the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B). The director also requested the number of current members, the beneficiary's rank compared to others and the status in the international community.

In response, counsel discusses the benefits of membership in the CTST and asserts that only 12 representatives from leading industrial companies were selected for the consortium. Counsel notes that an employee at the petitioner's parent company requested the beneficiary's signature on a renewal proposal for "our center." The petitioner also submitted evidence of the beneficiary's membership in the American Society of Materials (ASM). Counsel notes that the beneficiary was invited to serve as a seminar organizer and is Vice Chairman of the San Diego Chapter. Counsel further notes the small number of members in ASNT, concluding it "represents a very small and elite segment of the scientific community worldwide." Finally, counsel notes that ACerS publishes prestigious journals.

We concur with the director that the record does not reflect that these organizations require outstanding achievements of their general membership. While we concur with counsel that a large membership suggests that an association is not exclusive, it does not necessarily follow that a small membership is always indicative of strict membership requirements. Other factors, such as an association's narrow focus, can also limit its membership. Further, the petitioner bears the burden of proof in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361. While Citizenship and Immigration Services (CIS) may, from time to time, review publicly available materials about an association, such as its website, the director was under no obligation to do so. If the association's website provides the membership criteria, it is the petitioner's burden to provide that information. As counsel notes, the petitioner provided some information about the associations downloaded from the Internet. Counsel provides no explanation as to why, if the associations mention their strict membership requirements on their website, the petitioner failed to provide that information as well as the unrelated Internet information actually provided.

Regardless, a review of the websites of ASM, ACerS and ASNT does not reveal any strict membership requirements. The websites and membership applications for ASM and ASNT merely tout the benefits of membership. It can be expected that if there were stringent membership requirements, those would be provided to applicants and they would be required to submit evidence of their accomplishments for evaluation. The Constitution and Bylaws of ACerS is available on its website. Article BIII of the society's bylaws indicates that regular members, the level held by the beneficiary, requires only that the applicant be a certain age and have an interest in the field, neither of which is an outstanding achievement.

The only relevant factors for this criterion are evidence of membership and the requirements for membership. Leading roles within the association are not relevant according to the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B).¹ The record does not establish that any of the associations of which the beneficiary

¹ "Leading or critical role" is not a criterion for the classification sought. Moreover, serving as an organizer for a single seminar or serving as the vice chairman of a *city* chapter is not a leading role for the association as a whole or indicative of *international* recognition. Moreover, the record reveals that the beneficiary was

is a member, requires outstanding achievements of the members at the beneficiary's membership level. Thus, the petitioner has not established 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

The director concluded that the evidence submitted to meet this criterion was insufficient as it did not mention the beneficiary by name and only mentioned the petitioner "remotely." On appeal, counsel notes that the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) does not require that the materials mention the beneficiary by name. Counsel asserts that the material submitted "specifically refers to work [the beneficiary] was performing through the petitioner."

The petitioner initially submitted a "Tech Brief" by the U.S. Department of Energy. The brief concerns industrial gas turbines and lists the petitioner as a partner company. The brief addresses efforts focusing on advanced materials research to further improve the efficiency of distributed generation technologies. The brief however, does not discuss the details of a specific program or development. In response to the director's request for additional evidence, counsel asserts that "DOE's promotion of [the beneficiary's] outstanding research contributions in the area of advanced materials clearly illustrates their scientific significance."

The regulation provides that the materials must be "about the alien's work." Obviously, the most persuasive evidence that an article is about the alien's work is credit given to the alien in the article itself. An article that does not mention the alien by name is typically not indicative of international recognition, the ultimate standard for the classification sought. In some extremely limited cases, however, an individual may be so widely recognized for a particular achievement that an article about that achievement without mention of the individual's name could be perceived as about that individual's work. For example, while an alien need not demonstrate the type of international recognition enjoyed by Albert Einstein, an article that was about the theory of relativity but failed to mention Mr. Einstein could still be considered an article about his work, as he is widely known to have been the pioneer of that theory.

The Tech Brief discusses the beneficiary's area of work and lists the petitioner as one of several partners, but does not identify any specific breakthrough for which the beneficiary is known to be primarily responsible or even single out projects at the petitioning company. It is simply not a credible assertion that this Tech Brief can be considered to be "about" the beneficiary's work, as opposed to his area of work in general. Rather, it appears to be about the types of projects DOE is funding. 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

the Vice Chairman for the 2004-2005 year. The bylaws for the chapter, submitted by the petitioner, reveals that a term of office begins in June of that year. The petition was filed in March 2004. The record contains no evidence that the beneficiary was the Vice Chairman at that time. Thus, we cannot consider it evidence of 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).

The director concluded that the petitioner had not demonstrated that the beneficiary's reviewing responsibilities did not "rise to the level" of judging the value or relevance of others in the field. On appeal, counsel asserts that the evidence establishes the significance of the work reviewed by the beneficiary.

Initially, the petitioner submitted a letter from Jeffrey Price, its Group Manager of Surface Engineering and Technology. Mr. Price asserts that the beneficiary is the petitioner's "focal point" for thermal barrier coating development under the petitioner's contract with DOE. In this capacity, the beneficiary "reviewed and judges the proposals and reports submitted by the companies, and makes recommendations on the basis of their consistency with and support of the DOE's overall goals." Dr. Subramaniam Shanmugham, Senior Program Manager of Goodrich Corporation, asserts that while working at MicroCoating Technologies, he discussed the preparation of his proposal for DOE with the beneficiary, who was "eminently suitable to judge and review the work." Dr. Shanmugham asserts that the beneficiary's assistance was crucial to the eventual funding through DOE's Small Business Innovation Research program (SBIR). The petitioner also submitted the beneficiary's letter addressed to Dr. Shanmugham supporting MicroCoating Technologies' coatings for use in gas turbine applications, expressing the petitioner's interest in testing the coatings once developed. In a second letter, the beneficiary endorsed another research proposal from the Department of Mechanical Engineering at the University of Pittsburgh as being "innovative and consistent with the long-term needs of" the petitioner.

Finally, Dr. Richard Bellows, another of the petitioner's employees, asserts that as Chair of the San Diego Chapter of ASM, he invited the beneficiary to serve as an organizer of the chapter's Fall 2004 seminar. In this position, the beneficiary served as a peer reviewer.

In response to the director's request for additional evidence, which requested evidence of the significance of the work judged and criteria used to select the judges, the petitioner submitted a February 3, 2005 e-mail addressed to the beneficiary and 283 other "materials experts" seeking volunteers to review SBIR proposals. The beneficiary is also listed as one of 35 "authors, reviewers and other contributors" to a 2004 handbook. The petitioner also submitted a December 7, 2004 "auto-generated e-mail" requesting that the beneficiary review a technical publication for an upcoming conference. Finally, the petitioner submitted evidence that the beneficiary served as a mentor to one of the petitioner's summer hires.

Much of the evidence submitted in response to the director's request for additional evidence relates to reviews after the date of filing and cannot be considered. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*; 14 I&N Dec. 45, 49 (Comm. 1971). Review responsibilities that are inherent to one's job duties are not necessarily indicative of international recognition. As such, reviewing proposals as one of his duties for the petitioner is not persuasive. Moreover, being requested to organize a local ASM chapter seminar by one's own coworker is not evidence of international recognition. Finally, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. The large number of individuals who received the same e-mail request to serve as a reviewer supports our position on this issue. 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.

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

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

The director noted that the reference letters were from the beneficiary's immediate circle of colleagues and determined that the evidence relating to this criterion did not distinguish the beneficiary from others in the field. On appeal, counsel asserts that the fact that the petitioner hired the beneficiary in addition to the evidence of awards and memberships are evidence of the beneficiary's international recognition. Counsel further asserts that the beneficiary's colleagues are in the best position to evaluate his work, notes the distinguished reputation those colleagues enjoy and cites nonprecedent decisions from this office for the proposition that a beneficiary's reputation can be inferred from those with whom he works.

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 nonprecedent decisions cited by counsel are not binding on us. A single quote in isolation of the entire decision and the evidence included in the record of proceeding is not useful. In general, we will not infer an individual's recognition from the prestige of his collaborators. Moreover, while the letters are from experts in the field with impressive credentials, they are not from Nobel Laureates, National Academy members, extremely high-level government officials or those with similarly unusually high notoriety in the field.

We recognize that the beneficiary's colleagues are in the best position to provide information about his duties and responsibilities and the importance of such letters in establishing the beneficiary's role on various projects. By themselves, however, such letters cannot establish the beneficiary's international recognition. Given the context of the statute and regulations, international recognition implies recognition beyond one's colleagues even if those colleagues reside in more than one country due to the beneficiary's education or employment in more than one country. Not every student who studies abroad has international recognition in the field. Similarly, simply finding employment outside one's native country is not indicative of international recognition in one's field.

Professor K. Z. Zhuo, a professor at Central South University (CSU) in China, indicates that at CSU he worked with the beneficiary on a project to develop advanced, high-temperature materials for gas turbines. While Titanium Aluminid was selected as the best candidate to replace the current nickel-based superalloy, it is brittle and has low fracture toughness at room temperature. The beneficiary "led the alloy design and investigation of the relationship between microstructure and process." According to Professor Zhou, "the project resulted in significant breakthroughs in understanding the brittle mechanism and toughening process" based on the beneficiary's leadership. This work was published and recognized by the government of Hunan Province as discussed above. The record, however, lacks evidence that gas turbine producers are using or considering the use of Titanium Aluminid instead of the nickel-based superalloy.

Professor G. M. Newaz, the beneficiary's Ph.D. thesis advisor at Wayne State University, discusses the beneficiary's U.S. Air Force sponsored work to develop a method for evaluating the damage to coatings. Professor Newaz lists the following four contributions:

- 1) [The beneficiary] was the first researcher in his field to develop and conduct a special etching technique to study the degradation of the bond coat in thermal barrier coating systems. His success is a breakthrough in this area. The success of his research has provided scientists in the field of materials science with a quantitative method to assess the degradation of the bond coat in thermal barrier coatings, thus optimizing functionality and safety.
- 2) [The beneficiary] was the first scientist in his field to develop and propose "vacuum heat treatment" to the thermal barrier coating system. Because of his success, the thermal barrier coating lifetime can be increased by 40%. This represents a substantial and significant improvement for the material in terms of functionality and industrial cost effectiveness and safety.
- 3) [The beneficiary] proposed a micro-decohesion failure mechanism for thermal barrier coating based on his outstanding research and his best knowledge.
- 4) [The beneficiary] made the original discovery that the oxidation mechanism of bond coat in thermal barrier coating at different temperatures has a spindle effect on coating failures, leading to the greater understanding of degradation of the thermal barrier coating and enabling scientists to address problems related to this.

While Professor Newaz concludes that this work has earned the beneficiary "recognition and stature within the materials science scientific community world-wide," his only example of such recognition is that "part" of this work has been published in journals that only accept "pioneer" or "breakthrough" work. We will not, however, infer the influence of a particular article from the journal in which it appeared. Rather, we look for evidence of the impact of the individual article, such as evidence that it has been widely cited. The record contains no evidence that other researchers have cited the beneficiary's work. The record also contains no evidence from the U.S. Air Force explaining how the Air Force has applied the beneficiary's work and the significance of the beneficiary's results in comparison with the other research projects they fund.

Dr. Jiangang Sun, a research engineer with Argonne National Laboratory who has also worked with the petitioning company, asserts that he first learned of the beneficiary's work at a conference in 2001. While Dr. Sun asserts that other researchers performed "follow-up" work to the beneficiary's work presented at that conference, the record contains no evidence that the beneficiary's presentation has been cited. Discussing the beneficiary's work at the petitioning company, Dr. Sun asserts:

[The beneficiary] is the first researcher to use synchrotron x-ray source to measure residual stress distribution in TBC (residual stress is a major cause of coating failure) and verified the results by finite element analysis. He modified the "delamination-buckling" model and discovered that delamination-buckling is the final event in the coating failure. He also proposed a "microdecohesion" failure mechanism for thermal barrier coatings. This original

researches [sic] will have significant impact to TBC development and lifetime prediction and are critical to the design and manufacturing of next generation gas-turbine engines for both aircrafts and power generators.

Dr. Maurice Gell, a professor at the University of Connecticut and a fellow of ASM International, indicates that he knows the beneficiary through meeting at conferences and that they correspond about regarding thermal barrier coating development. Dr. Gell asserts that the beneficiary was “one of the first researcher[s] in this field to use thermal wave imaging as a non-destructive technique to monitor the health of thermal barrier coatings in engine service and to predict the coating life.” Dr. Gell explains that this work “is critical for thermal barrier coating applications since coating failures will subject components to overly high temperatures and can result in component and engine failure.” While Dr. Gell asserts that engineers “throughout the world can use” the beneficiary’s methods for evaluating coatings, he does not assert that any engineers *are* using these methods. Finally, while Dr. Gell asserts that the beneficiary has already impacted the development and improvement of thermal barrier coating materials, he provides no examples.

Finally, Mr. Price asserts:

Following [the beneficiary’s] research and recommendation, [the petitioner] invested nearly \$200,000 in 2003 in thermal wave imaging equipment for thermal barrier coating inspection and lifetime prediction. This equipment will help prevent unscheduled engine removal and subsequent production downtime of power plants due to loss of the thermal barrier coating.

While the petitioner’s investment reflects its view that the beneficiary’s work holds significant promise, it does not reflect that the beneficiary’s contributions to the field as a whole rise to such a level as to be indicative of international recognition.

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. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. There are no letters from independent engineers who have adopted or are considering adopting the beneficiary’s methods. The petitioner submits no evidence that the beneficiary’s articles have been cited. The record does not establish that the beneficiary’s original work in the field rises to a level of contributions to the field consistent with international recognition. Thus, we cannot conclude that the beneficiary meets this criterion.²

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

The director concluded that the beneficiary’s publication record did not distinguish him from others in the field. On appeal, counsel asserts that under the director’s analysis, no Ph.D. recipient would be able to meet this criterion. While counsel concedes that publication is common for Ph.D. recipients, she asserts that the

² While the evidence for this criterion is somewhat more persuasive than the evidence for the other criteria, even if we were to conclude that the beneficiary meets this criterion, the beneficiary would only meet one criterion. A petitioner must establish that the beneficiary meets at least two criteria.

acceptance of his dissertation for publication and the manner in which the scientific community has received the beneficiary's work sets him apart from other Ph.D. recipients.

The petitioner submitted evidence that the beneficiary has authored 11 published articles and two conference presentations. 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 director implies that the beneficiary's work has been cited and dismisses such evidence in his discussion of the previous criterion. We withdraw the director's implication that citations are not valuable evidence. Rather, frequent and wide citation is an excellent indication of international recognition and can serve to set the beneficiary apart from others in his field. In this matter, however, the petitioner has not provided evidence that the beneficiary has been cited. Thus, the record does not support counsel's assertion that the beneficiary's published work has been well received in the field. 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). 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.