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U.S. Citizenship
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Services

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FILE: [REDACTED]
LIN 04 012 53167

Office: NEBRASKA SERVICE CENTER

Date: SEP 08 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 P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a chemical research and manufacturing corporation. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a senior synthesis specialist (chemist). 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. The director also questioned whether the petitioner had demonstrated that, as a corporation, it has achieved documented accomplishments in an academic field.

On appeal, counsel challenges the director's conclusions and the petitioner, through counsel, submits additional documentation.

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)(iii)(C) provides the following requirements where the job offer is from a private employer:

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 director concluded that while the petitioner and the limited liability company where the beneficiary was working were both subsidiaries of the same company and that the limited liability company had achieved documented accomplishments in an academic field, the petitioner had not demonstrated its own accomplishments. On appeal, the petitioner provides evidence that the limited liability company is a subsidiary of the petitioner. As the beneficiary is working for the petitioner at a subsidiary with documented accomplishments in an academic field, the petitioner has overcome the director's concerns on this issue.

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 October 16, 2003 to classify the beneficiary as an outstanding researcher in the field of chemistry. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field of chemistry as of that date, and that the beneficiary's work has been recognized internationally within the field of chemistry 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. As conceded by counsel on appeal, 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.¹

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 16 articles that cite the beneficiary's work. In the director's request for additional evidence, he noted that citations cannot serve to meet this criterion. In response, counsel asserts that the citations do not merely "cite" the beneficiary's work, they rely upon it. In his final decision, the director reiterated his conclusion that citations cannot serve to meet this criterion. On appeal, counsel asserts that the

¹ The petitioner does not claim that the beneficiary meets any criteria not discussed in this decision and the record contains no evidence relating to the omitted criteria.

research community's response to the beneficiary's work is important in determining the beneficiary's level of recognition in the field. Counsel continues to assert that the citations go beyond merely "citing" the beneficiary's work.

Counsel is not persuasive. While we concur that frequent citation is persuasive evidence of the significance of the cited articles, this office consistently finds that citations cannot be considered published materials about the author of the cited article. We do not find that the citations in the record are more significant than typical citations. The beneficiary is one of several authors cited for a single proposition in some articles and others cite the beneficiary as one of nearly two hundred citations for the whole article. These articles are primarily about the author's own work, not the beneficiary. As such, they cannot be considered published material about the beneficiary. Thus, we concur that the petitioner has not established that the beneficiary meets this criterion. We will, however, consider the beneficiary's citation record as a whole below as it relates to other, more relevant, criteria.

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

Counsel asserted for the first time that the beneficiary meets this criterion in response to the director's request for additional evidence. In support of this assertion, counsel references the witness letters provided at that time. These letters consist of one from the beneficiary's coauthor, Dr. [REDACTED] and eight others. Counsel also asserts that the beneficiary is listed as the inventor on two patent applications. In support of this final assertion, the petitioner submits an April 13, 2004 letter from the petitioner's patent counsel confirming the beneficiary's status as a named inventor.

The director noted that the eight reference letters as well as the letter from [REDACTED] all included significant amounts of boilerplate language. The director questioned the evidentiary value of such letters. The director further questioned whether the beneficiary was an author of a patent application filed prior to the filing of the instant petition and concluded that merely being a named inventor on an unapproved patent application was not sufficient to meet this criterion.

On appeal, counsel asserts that "each author was provided with a copy of the US regulations so that the author could write a letter expressly conveying their true understanding of 'Outstanding research' and its application" to the beneficiary. Counsel concludes that each reference "is sincere and should not be disregarded merely because the letters track the very regulations of the Immigration and Nationality Act, which are provided for guidance." Counsel is not persuasive. The reference letters do not merely "track the very regulations" at issue. Rather, all eight include the following three paragraphs verbatim:

I am familiar with [the beneficiary] by virtue of his outstanding and extraordinary research on organometallic synthesis and homogeneous catalysis. Moreover, [the beneficiary] has co-authored over sixteen (16) articles, which have been published in scholarly journals with international circulation. His research contributions in organometallic synthesis and homogeneous catalysis are internationally considered of major significance in the field of Chemistry.

I hereby certify that [the beneficiary] has reached that level of achievement, which in my opinion, demonstrates that he is one of the small percentage that has risen to the very top of his

field of endeavor. Specifically, [the beneficiary] is at the top of his profession as an Outstanding and Extraordinary Researcher in the field of Chemistry. [The beneficiary] has sustained national and international acclaim, and his achievements are recognized in the field of Chemistry. It is my opinion that [the beneficiary] possesses outstanding and extraordinary ability in this field.

I wish to reiterate that [the beneficiary] qualifies as an Outstanding Researcher pursuant to 8 C.F.R. 204.5(i) of the US Citizenship and Immigration Services regulations. I wholeheartedly and enthusiastically support the petition on behalf of [the beneficiary].

The *only* divergence from the above language appears in Dr. [REDACTED] letter, which includes quotes around “Outstanding and Extraordinary Researcher” in paragraph two and replaces “wholeheartedly and enthusiastically” in the final sentence with “unreservedly.” None of the eight letters include any additional information about the beneficiary, such as how the reference became aware of the beneficiary’s work, a detailed explanation of the beneficiary’s work and its significance or the beneficiary’s influence on the author’s own work. It is simply not credible to conclude that these identical paragraphs, word for word, are the result of these references merely being advised of the regulatory criteria.

We do not question the “motives” of the authors, as the director does. Rather, we simply note that while the signatures of the references suggest that they endorse the information in the letters, they did not compose it. Thus, we concur with the director that these letters have reduced evidentiary value. Moreover, we also concur with the director that the content of the letters themselves does not support a finding that the beneficiary has international recognition for original contributions to the field. Letters from independent researchers² in the field that attest to the significance of the alien’s work and its impact on the author are far more persuasive than general attestations of international recognition with little basis provided for that conclusion other than the beneficiary’s published articles.

Even the letter from Dr. [REDACTED] lacks sufficient information to reach any conclusion about the significance of the beneficiary’s work. In addition to including the final two boilerplate paragraphs quoted above, Dr. [REDACTED] simply identifies the focus of the beneficiary’s work, acknowledges that he coauthored the beneficiary’s articles, and lists the articles. Such information does not explain the significance of the beneficiary’s work or how it has impacted the field of chemistry or plastics.

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

² We do not challenge the answer provided at the AILA conference documented on appeal regarding letters from independent sources. We concur that such letters are not required. That said, where other evidence of international recognition, such as major awards, exclusive memberships or journalistic coverage of the alien and his work, are not available, such letters can bolster the value of letters from colleagues, which cannot, by themselves, establish an alien’s claim of international recognition.

definition, “outstanding” is to weaken that adjective beyond any useful meaning, and to presume that most research is “unoriginal.”

Further, the beneficiary’s citation history is not persuasive. The most citations received for any one articles is seven, with no other article receiving more than two. Such a citation history is not indicative of international recognition.

Finally, counsel is not persuasive that the intellectual property protection provided by patents elevates all patented innovations to significant contributions in a field. Patents are issued to the inventors of original processes or devices that are useful. No evaluation as to the significance of the invention is made. It is a property right, not a recognition of the significance of the innovation. We note that this office has previously stated 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). If a patent is not sufficient to establish eligibility for a lesser classification, the national interest waiver for aliens with exceptional ability or advanced degree professionals, it is certainly not evidence 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. The record does not establish that the beneficiary’s work represented a groundbreaking advance in chemistry.

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

The petitioner submitted evidence that the beneficiary has authored 16 published articles and presented his work at conferences. While the director noted the lack of evidence that the journals publishing the beneficiary’s work are circulated internationally, the petitioner has overcome that concern on appeal.

We will not infer the significance of a specific article, however, from the journal in which it appears. 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.

As stated above, we do not find that the beneficiary’s citation record is consistent with international recognition. Even if we were to conclude that the beneficiary meets this criterion, the only criterion for which the beneficiary has submitted meaningful evidence, it is only one criterion. A beneficiary must meet two in order to be eligible

for the classification sought. For the reasons discussed above, the beneficiary falls far short of meeting any other 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.