

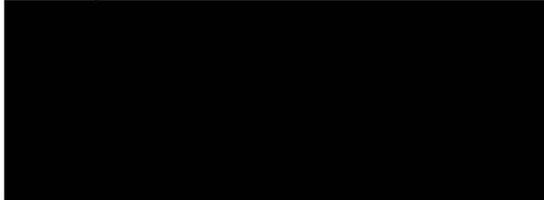
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U.S. Citizenship
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FILE: [Redacted]
LIN 04 255 50575

Office: NEBRASKA SERVICE CENTER

Date: AUG 01 2006

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.

Mari Johnson

S Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a cheese and whey-based food company. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary in the United States as a research scientist. The director determined that the petitioner had not established that it had offered the beneficiary a permanent job as of the date of filing. The director further 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.

On appeal, counsel challenges both conclusions.

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.

Job Offer

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.

(Emphasis added.) Black's Law Dictionary 1111 (7th ed. 1999) defines "offer" as "the act or an instance of presenting something for acceptance" or "a display of willingness to enter into a contract on specified terms, made in a way that would lead a reasonable person to understand that an acceptance, having been sought, will result in a binding contract." Black's Law Dictionary does not define "offeror" or "offeree." The online law dictionary by American Lawyer Media (ALM), available at www.law.com, defines offer as "a specific proposal to enter into an agreement with another. An offer is essential to the formation of an enforceable contract. An offer and acceptance of the offer creates the contract." Significantly, the same dictionary defines offeree as "a person or entity *to whom an offer to enter into a contract is made* by another (the offeror)," and offeror as "a person or entity who makes a specific proposal *to another (the offeree)* to enter into a contract." (Emphasis added.)

In light of the above, we concur with the director that the ordinary meaning of an "offer" requires that it be made to the offeree, not a third party. As such, regulatory language requiring that the offer be made "to the beneficiary" would simply be redundant. Thus, a letter addressed to Citizenship and Immigration Services (CIS) *affirming* the beneficiary's employment is not a job *offer* within the ordinary meaning of that phrase.

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.

On Part 6 of the petition, the petitioner indicated that the proposed employment was a permanent position. The petitioner submitted a letter from [REDACTED] Human Resource Manager for the petitioner, addressed to Citizenship and Immigration Services (CIS), asserting that the petitioner employed the beneficiary in good standing in a full-time regular position. This document does not constitute a job offer from the petitioner to the beneficiary. On May 10, 2005, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary.

The petitioner's response did not include the original job offer letter as requested. Rather, the petitioner submitted a letter from [REDACTED] Director of Research and Development for the petitioner, addressed "To Whom it May Concern." [REDACTED] asserts that upon the beneficiary's completion of his Ph.D. program, the petitioner "immediately offered him a permanent position." The director concluded that the record lacked initial required evidence, the job offer. On appeal, counsel asserts that the beneficiary's job is permanent, with no specified end date and that the job is not contingent upon the availability of research funding.

The initial required evidence is the job offer issued to the beneficiary. The petitioner has not complied with the regulation at 8 C.F.R. § 103.2(b)(2) regarding the submission of secondary evidence. Specifically, the petitioner has not demonstrated that the primary evidence required, the initial job offer letter issued to the beneficiary, is unavailable or does not exist. As such, we need not accept secondary evidence discussing the terms of a document the petitioner has failed to submit. Once the initial required evidence is submitted, letters from the petitioner to the director explaining any terms and conditions in that document are valuable evidence. Counsel has not persuasively explained, however, why we must accept a description of a document instead of the document itself.

In light of the above, we uphold the director's first basis of denial, the lack of a job offer letter issued to the beneficiary.

International Recognition

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 (July 5, 1991). The petitioner claims to have satisfied the following criteria.¹

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. Research work that is unoriginal would be unlikely to secure the beneficiary a master's degree, let alone classification as an outstanding researcher. Because the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher, it stands to reason that the beneficiary's research contributions have won comparable recognition. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

In a similar vein, the patent application for the beneficiary's innovation establishes that his work is claimed to be original, but the very existence of a patent application does not show that the beneficiary's inventions are more significant than those of others in his field. To establish the significance of the beneficiary's work, we turn to experts in his field, whose letters we discuss below.

██████████, a colleague from India, provides general praise. ██████████, former Professor and Head Emeritus of Dairy Science at South Dakota State University, discusses the beneficiary's Master's work at that institution. While ██████████ characterizes the beneficiary work as "truly great" he does not identify specific contributions made by the beneficiary or explain their significance.

██████████, a professor of Dairy Science at South Dakota State University, asserts that the beneficiary's "work on increasing Cheddar cheese yield by homogenizing only the cream was beneficial to the U.S. cheese industry." Noting the prevalence of osteoporosis, Professor ██████████ further asserts that the beneficiary's current work utilizing milk ingredients will benefit human health.

██████████, a Senior Scientist at Grande Cheese Company in Wisconsin who previously instructed the beneficiary in India, asserts that the beneficiary's work on Mozzarella and Cheddar cheeses "greatly benefited the US cheese industry."

The petitioner did not submit evidence to support the assertions of Professor ██████████ and ██████████, such as letters from major cheese manufacturers confirming the beneficiary's influence on increasing Cheddar or other cheese yield. For example, ██████████, Site Manager and Director of Culture & Media Research and Development at DSM Food Specialties, asserts only that DSM has "followed" the

¹ While the director addressed additional criteria that the petitioner has never claimed, on appeal, counsel does not challenge the director's conclusion that the petitioner submitted no evidence to meet those criteria. This decision only addresses those two criteria claimed initially, in response to the request for additional evidence and on appeal.

beneficiary's work. [REDACTED] does not suggest that DSM actually increased their yield based on the beneficiary's work. Similarly, [REDACTED] of Brewster Dairy affirms that his company offered the beneficiary a job and predicts that the beneficiary's research of casein micelle "will change what we have always believed the structure to be." [REDACTED] does not, however, indicate that [REDACTED] has already been impacted by the beneficiary's work.

Professor [REDACTED], Head of the Dairy Science Department at South Dakota State University, praises the beneficiary's academic abilities. Professor [REDACTED] notes that the beneficiary presented his work with Cheddar yield at the American Dairy Science Association's annual meeting and published this work in *Le Lait*. Professor [REDACTED] further asserts that the beneficiary expanded this work, which originally applied only to cheese, to dairy products more generally.

Professor [REDACTED], the beneficiary's mentor at Utah State University, praises the beneficiary's work at that institution. Professor [REDACTED] notes that the beneficiary presented his work at conferences and asserts that "images of casein micelle structure from his work are being published in the latest textbooks on dairy food chemistry." The petitioner did not submit copies of pages of any textbooks crediting the beneficiary as an author. Professor [REDACTED] explains that while the beneficiary's field has been studied for many years, the beneficiary provided the first "answer on the supramolecular structure of the casein micelles." Professor [REDACTED] concludes, however, only that this research has the "potential" to make a "lasting contribution to our understanding of dairy foods."

[REDACTED] asserts that while studying for his Ph.D., the beneficiary was assigned a project for the petitioner. Specifically, the petitioner resolved a gelling problem encountered by the petitioner with its starter cultures. "Through [the beneficiary's] research, we were able to gain a clear understanding of the casein hydration properties that allowed us to solve the problem and we have been using secondary starter media for several years now without issue." After coming to work for the petitioner, the beneficiary "was a key driver on the team that developed GelMax, a yogurt ingredient for Asia to give smooth bodied, non-syneresing yogurt." The beneficiary also "developed two methods for concentrating the ACE inhibitory peptide from inactive peptides," "managed a project looking at new up-flow chromatography for improved isolation of lactoferrin," and "developed a method for obtaining a crystal clear protein solution that can be heated at pH 7 without protein precipitation." The beneficiary also created a computer model to allow the petitioner "to see the changes in cheese yield and the economic outcome of such changes." As part of the petitioner's Connect & Develop program, the beneficiary linked two products developed by the petitioner before the beneficiary arrived to research programs on bone health.

[REDACTED] Head of Research and Development for the petitioner, asserts that the beneficiary participated "in top-tier EU and US peer-based think tank committees designed to leverage the expertise of commercial and academic leaders in the areas of food research, protein chemistry and relationships between diet and well-being." [REDACTED] does not identify the committees and the record does not include invitations from these committees to participate, the agenda for these committees or evidence of the selection process for these committees.

The director concluded that most of the beneficiary's work was done as a graduate researcher and that the witness letters did not establish any recognition beyond his circle of mentors and collaborators. On appeal, counsel quotes from several letters, noting the number of years of experience in the field for each author. Counsel further asserts that not "all" of the authors are mentors or collaborators, noting that [REDACTED] was only a prospective employer.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also 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)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the beneficiary through his reputation and have applied his work are the most persuasive. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with international recognition should be able to produce unsolicited materials reflecting that acclaim.

We acknowledge that the beneficiary has presented and published his work. Publication of scholarly articles, however, is a separate criterion. The proposition that an alien who submits evidence directly relating to one criterion also presumptively meets a second criterion with the same evidence undermines the requirement that an alien meet at least two criteria. The record lacks evidence that these presentations or publications have been widely and frequently cited to the extent that would be expected of a published contribution consistent with international recognition. The record also lacks other evidence of the impact of these articles, such as industry letters affirming the impact of the beneficiary's presentations or publications on their industry practices, such as improving their yields.

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 other 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 garnered any international recognition.

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 had authored four published articles and eight abstracts. References attested to conference presentations. The director concluded that the publication was inherent to the research profession and that the beneficiary's publication record was minimal compared with that of his references. The director also noted the lack of evidence of any international attention garnered by the beneficiary's published work.

On appeal, counsel references the witness letters as evidence of the significance of the beneficiary's published work. The petitioner submits evidence of the international circulation of the journals that included the beneficiary's articles. Counsel notes that the witnesses have been in the field longer than the beneficiary. Counsel quotes Professor ██████'s assertion that publishing 11 papers between 2001 and 2004 "is outstanding by any standards in the Dairy Science area." The majority of those "papers," however, are abstracts.

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 record contains no evidence that any independent researchers have cited the beneficiary's work or comparable evidence of the impact of the beneficiary's work. Even if we were to conclude that the beneficiary meets the basic requirements of this criterion, it is only one criterion. The evidence 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.