

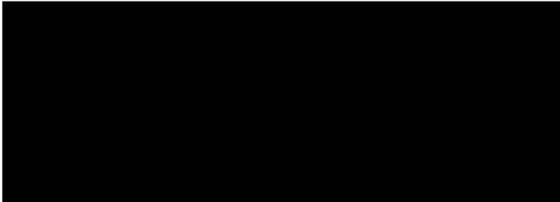
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U.S. Citizenship
and Immigration
Services

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FILE: LIN 04 192 51659 Office: NEBRASKA SERVICE CENTER Date: JUL 25 2008

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, 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 university. 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 "Sr. Research Associate/Research Assistant Professor." The director determined that the petitioner had not established that it had offered the beneficiary a permanent job as of the date of filing.

On appeal, counsel asserts that the petitioner does not have to guarantee continued employment and that the position offered is comparable to tenure-track. For the reasons discussed below, we find that the petitioner has not submitted the initial required evidence, the job offer that predates the filing of the petition. Beyond the director's decision, we further find that the petitioner has not established that the beneficiary is recognized internationally as outstanding in her academic field, as required for classification as an outstanding researcher.

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 did not initially address the issue of a job offer. On July 13, 2005, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary.

In response, the petitioner submitted an August 3, 2005 letter addressed to the beneficiary offering to "extend" her appointment as a senior research associate. The letter indicates that the position is "unclassified" and that a senior research associate "serves at the will of the appointing authority." Finally, the letter indicates that 90 days notice is required for termination unless termination is for cause. The petitioner also submitted Internet materials from its own website indicating that all faculty appointments are unclassified.

The director noted that senior research associates serve at the will of the appointing authority and concluded that such positions do not enjoy an expectation of continued employment without good cause for termination. The director further noted that the letter submitted is an "extension," suggesting that the initial job offer was only for a limited term.

On appeal, counsel focuses on the funding for the beneficiary's position. The petitioner submits materials about its budget policies. These materials reflect that the petitioner assigns "permanent base budget positions." [REDACTED] Associate Vice President, Human Resources, explains that permanent base budget positions are designed for employees at the university for over one year and who have an expectation of continued employment. [REDACTED] indicates that the beneficiary's position is a base budget position and that employees with such positions "have [an] expectation of continued 'permanent' employment."

Evidence of the petitioner's intent must be evaluated in the context of the actual job offer extended prior to the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). The job extension offer is dated after the date of filing. Thus, the petitioner has not established that the beneficiary's position was a base budget position at that time. Moreover, the petitioner has not established that the initial primary evidence required, the job offer itself, is unavailable or does not exist. As such, the petitioner cannot rely on secondary evidence of the terms of the job offer. 8 C.F.R. § 103.2(b)(2). In light of the above, we must uphold the director's decision that the petitioner has not established that it had offered the beneficiary a permanent job as of the date of filing the petition.

International Recognition

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.

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

While the petitioner has not claimed that the beneficiary meets this criterion, some of the beneficiary's references discuss her Core Research for Evolutional Science and Technology (CREST) fellowship in 1997 sponsored by the Japan Science and Technology Corporation. The petitioner did not submit a certificate or other confirmation from the Japan Science and Technology Corporation confirming the fellowship and its significance.

The record does not establish that the fellowship was anything other than a competitive job offer. A job offer, even a competitive one, is not an award or prize. Thus, 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 petitioner has never asserted that the beneficiary meets this criterion. It is acknowledged that the beneficiary lists four memberships on her curriculum vitae, but the record contains no evidence of these memberships or the membership criteria for the associations. 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.

As evidence to meet this criterion, the petitioner submits six articles that cite the beneficiary's work, two of which are articles by coauthors of the beneficiary. In general, articles which cite the beneficiary's work are primarily about the author's own work, not the beneficiary's work. The citations submitted do not appear to deviate from this general rule; the articles by the beneficiary are cited along with numerous other articles, mostly as one example of results obtained using similar techniques and not even as the foundation of the author's work. As such, they cannot be considered published material about the beneficiary's work.

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 record reflects that the beneficiary has refereed articles for *Crystallography Reports* and the *New Journal of Chemistry*. 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. Without evidence that sets the beneficiary apart from others in her field, such as evidence that she 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.

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."

The beneficiary received her Ph.D. in Physical Chemistry from the Karpov Institute of Physical Chemistry in Moscow. She has worked at the Institute of Crystallography in Moscow, the Ecole Centrale Paris and the Nagoya Institute of Technology in Japan and now works for the petitioner. The petitioner relies on reference letters to meet this criterion. Most of the letters are from the beneficiary's immediate circle of colleagues. We acknowledge the assertion by [REDACTED], Chair of the petitioner's Department of Chemistry, that his opinion is provided "as an authority in the field and is not biased." Professor [REDACTED] the petitioner's collaborator in Japan; [REDACTED] Antipin, a member of the beneficiary's thesis committee, and [REDACTED] a research scientist at the Institute of Crystallography in Moscow, provide similar statements.

We do not presume that colleagues, esteemed professionals in their field, are biased. The statutory standard, however, is that the alien is recognized internationally as outstanding. We do not understand this standard as requiring merely that the alien has colleagues in more than one country, as would be typical of many alien researchers. Rather, we understand this standard as requiring international recognition beyond the alien's immediate circle of colleagues. While evidence other than letters from independent sources, including but not limited to international media coverage or evidence that the alien is widely and frequently cited, could establish international recognition, letters from colleagues by themselves, without additional evidence of wider recognition, are insufficient.

Moreover, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of international recognition. 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 international recognition or outstanding ability 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 petitioner through her reputation and who have applied her work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. 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.

██████████ discusses the beneficiary's work as it relates to understanding breast cancer and explosives. Specifically, the beneficiary has applied "low temperature X-ray diffraction methods in examining the sub-molecular electronic details of estrogenic molecules as a preliminary attempt to understand fundamental steps in the initiation of breast cancer." While ██████████ asserts that the beneficiary has presented this work at leading meetings and published the results in an article, Dr. ██████████ does not explain how this work has already impacted the field, such as leading to new directions in treating breast cancer. ██████████ a research associate professor at the petitioning university, speculates that the beneficiary's work provides the "possibility of intelligently designing better drugs for breast cancer treatment based on solid physical evidence." The record lacks letters

from high-level officials (or anyone else) at a pharmaceutical company expressing an interest in applying the beneficiary's work. While the petitioner did submit a letter from ██████████ Abramov, a former classmate of the beneficiary's¹ currently working as a senior research scientist for Pfizer, he does not assert that Pfizer has expressed any interest in applying the beneficiary's work.

Regarding explosives, the beneficiary is "currently evaluating this problem from the energy density distribution in such molecules using a cutting edge extension of her previous crystallographic studies." While ██████████ asserts that the Office of Naval Research, which funds this work, considers it to be "of major strategic importance," the record lacks letters from a high-level official (or anyone else) at the Office of Naval Research explaining how the beneficiary's work has already impacted the military.

Professor ██████████ explains that the beneficiary has unique expertise in newly developed two-dimensional detectors measuring electron density distribution (EDD) by multipole refinement and then analyzing the data with a method "proposed by Prof. ██████████ Professor ██████████ asserts that the beneficiary has contributed to EDD measurements by X-ray diffraction and speculates that the beneficiary's contribution "is expected to be greater to characterize the nano-materials from atomic and electronic point of view." Finally, Professor ██████████ asserts that the beneficiary is unique in applying her techniques to organic compounds.

██████████ the beneficiary's supervisor and coauthor in Russia, asserts that the beneficiary was the first to apply "an approach which relates the electron energy density with properties of organic compounds." ██████████ characterizes these results as "highly important for the development of the novel ferroelectric materials, understanding the nature of the intermolecular interaction in biological systems and [the] search for new energetic materials."

Professor ██████████ of the University of Buffalo is the only independent reference; he met the beneficiary at a conference. He asserts that her contributions include "the derivation of physical properties important for the interactions between molecules in solid materials and in biological macromolecules such as proteins, and the analysis of the electronic structure of estrogen hormones, which are important in cancer prevention." He does not, however, assert that he has applied the beneficiary's work in his own work or explain how the beneficiary's work has already impacted the field.

The petitioner's field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field. To be considered a contribution indicative of international recognition in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the beneficiary's work.

¹ While ██████████ does not acknowledge any previous connection with the beneficiary, his curriculum vitae reflects that he obtained his Ph.D. at the Karpov Institute of Physical Chemistry in Moscow one year after the beneficiary graduated from this institute with the same degree.

██████████ and ██████████, a former classmate of the beneficiary's, assert that the petitioner's articles have been cited 62 times. While ██████████ refers to citations in a "citation index," the petitioner did not submit the index itself, the primary evidence of citations. The petitioner has not established that the citation index is unavailable or does not exist. As such, we need not accept secondary evidence of the beneficiary's citations. 8 C.F.R. § 103.2(b)(2). Moreover, without the citation index, we cannot determine the number of citations for an individual article and how many of the citations are self-citations by the beneficiary or a coauthor. Assuming 62 citations for a total of 24 articles as claimed, the beneficiary averages less than three citations per article.²

Regardless, the petitioner only provided six citations, two of which are self-citations by coauthors. This citation record is not indicative of original contributions that have garnered international recognition.

Several references assert that the beneficiary has been an invited speaker at important conferences. The petitioner did not submit the invitation letters. As such, we cannot determine whether the beneficiary was personally solicited to prepare a presentation based on her own recognition in the field, as opposed to the recognition of her collaborators, or merely collaborated with a solicited speaker or had a submitted manuscript accepted for presentation.

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 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, producing original results with techniques proposed by others, has garnered international recognition. Thus, the petitioner has not established that the beneficiary meets this criterion.

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

While several references attest to the beneficiary's authorship of 24 published articles, the petitioner submitted evidence that the beneficiary has authored 14 published articles and one abstract. 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

² This office reviewed the beneficiary's citation record as available at www.scholar.google.com. This review revealed no more than eight citations for any one of the beneficiary's articles and seven of those citations were self-citations by the beneficiary or coauthors. The most independent citations for any one article was five. While Google Scholar is not comprehensive, it is the petitioner's burden to establish the beneficiary's eligibility. We note this information not as derogatory evidence in this matter, but in support of our contention that 62 citations in the aggregate, some of which may be self-citations or duplicates of a single article citing multiple articles by the beneficiary, are not indicative that any individual article has been widely and frequently cited by independent research groups.

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 discussed in more detail above, the beneficiary’s references attest to a total of 62 citations for 24 articles. Moderate citation could bolster the petitioner’s claim that the beneficiary meets this criterion. The record, however, does not support this number of citations. The petitioner only provided six citations, two of which are self-citations by coauthors. Self-citation, while normal and expected, cannot establish recognition beyond one’s collaborators. The citation record as submitted is not indicative of international recognition.

The petitioner has shown that the beneficiary is a talented and prolific researcher, who has won the respect of her collaborators, employers, and mentors, while securing some degree of international exposure for her 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.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved. 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.