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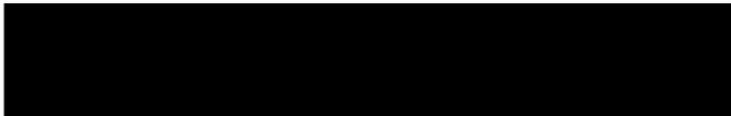
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Office: NEBRASKA SERVICE CENTER

Date: **AUG 14 2007**

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.

for 
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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is an academic medical center. 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 an assistant professor of medicine. 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.

On appeal, counsel submits a brief. For the reasons discussed below, we conclude that the petitioner has not overcome the director's grounds for denial. Specifically, while we withdraw the director's finding that the beneficiary does not meet the authorship of scholarly articles criterion, we uphold the director's remaining findings. The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate.

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) 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 current or former 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 August 10, 2006 to classify the beneficiary as an outstanding researcher in the field of gastroenterology. 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 beneficiary must satisfy at least two. In response to the director's request for additional evidence and on appeal, counsel cites *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994), for the proposition that once the petitioner submits evidence “in the required number of categories, the beneficiary is deemed to qualify” unless alternative reasons for ineligibility are identified.

In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. Regardless, counsel mischaracterizes the decision in *Buletini*, which stated that the alien must be deemed eligible once “it is established that the alien's evidence is sufficient to *meet*” (emphasis added) the requisite number of criteria. *Buletini v. INS*, 860 F. Supp. at 1234. The court fully acknowledges that Citizenship and Immigration Services (CIS) “must evaluate the quality, including the credibility, of the evidence presented to determine if it, in fact, satisfies the criteria.” *Id.*

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. *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991)(enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)). The petitioner claims to have satisfied the following criteria.¹

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

It is significant that the *proposed* regulation relating to this classification would have required evidence of a major *international* award. The final rule removed the requirement that the award be "international," but left the word "major." The commentary states: "The word 'international' has been removed in order to accommodate the *possibility* that an alien might be recognized internationally as outstanding for having received a major award that is not international." (Emphasis added.) *Employment-Based Immigrants, Final Rule*, 56 Fed. Reg. 60897-01, 60899 (November 29, 1991.)

Thus, the standard for this criterion is very high. The rule recognizes only the "possibility" that a *major* award that is not international would qualify. Significantly, even lesser international awards cannot serve to meet this criterion given the continued use of the word "major" in the final rule. *Cf.* 8 C.F.R. § 204.5(h)(3)(i) (allowing for "lesser" nationally or internationally recognized awards for a separate classification than the one sought in this matter).

The petitioner submitted the beneficiary's Best Plenary Session Paper Award issued by the Indian Society of Gastroenterology (ISG) in 2000. [REDACTED], formerly "Principal, Professor & Head" of Dayanand Medical College in Ludhiana, asserts that the paper award "is the highest award in the field of Gastroenterology related research in the country." [REDACTED], a professor at the G. B. Pant Hospital at the University of Delhi, asserts that the best paper award is given to only one "candidate" and "reflects the best scientific work presented during that period in the field of Gastroenterology." In addition, [REDACTED] asserts that the beneficiary was selected to present his work "in the Young Investigator Award session of the National Gastroenterology Conference."

In response to the director's request for additional evidence, counsel simply attests to the prestige of the ISG and refers the director to the society's website. The director concluded that the petitioner had not provided *documentary* evidence relating to the stature of the beneficiary's awards. On appeal, counsel simply references the letters from [REDACTED] and [REDACTED]

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.

While the best paper award is open to scientists worldwide insofar as scientists worldwide can submit papers for the conference, the actual pool of candidates includes scientists who presented their work at this particular conference. Even if we considered the pool of candidates to include those who submitted papers that were not accepted, the pool is still quite limited. Thus, we do not consider awards limited to papers at a given conference to be sufficient to meet this criterion.

While we acknowledge the opinions of two references, the record lacks corroborating evidence that this award is a *major* national award. For example, the record lacks evidence that the national media, either the general media or trade journals, announce the winners of this competition. More specifically, while counsel has attested to the prestige of ISG, it does not necessarily follow that every award issued by a prestigious entity is a major national award. Moreover, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner did not submit the Internet materials referenced by counsel and counsel provides no legal authority for the proposition that a petitioner can meet its burden of proof by advising CIS where to look for evidence.² Finally, the most experienced and renowned experts do not compete for awards limited to “young investigators.” Thus, such awards do not suggest that the recipients are internationally recognized.

In light of the above, 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 submitted evidence of the beneficiary's membership in the American Gastroenterological Association, the American Society for Gastrointestinal Endoscopy. The petitioner failed to submit official association materials listing the membership requirements for either association. Rather, the petitioner relies on the letter from [REDACTED], who states:

[The beneficiary] also presented his work at the Digestive Diseases Week at the Annual Conference of the American Gastroenterology Association in the US, and as a result, he became eligible to be a member of the American Gastroenterology Association. His outstanding work has given this prestigious membership to him at such a young age. International membership is bestowed on the Gastroenterologists [sic] who is a consultant in Gastroenterology and has published articles related to this field in the peer reviewed journals of repute and not just paying the fees.

The director requested “documentation” of the membership requirements for any association of which the beneficiary is a member that requires outstanding achievements. In response, counsel

² This office did, however, review the website, www.isg.org.in, which reveals that ISG issues several orations and awards in addition to the best paper award issued to the beneficiary, listed under “other awards.” The organization of the list of awards does not suggest that the best paper award is a major national award.

acknowledges that membership in the American Gastroenterological Association is “open” but asserts that the beneficiary meets this criterion because he has served as a reviewer for one of the association’s conferences and its journals.

The director concluded that the petitioner had not established that the American Gastroenterological Association, or any other association of which the beneficiary is a member, requires outstanding achievements of its members. On appeal, counsel references the letter from [REDACTED] and reasserts that the beneficiary’s services for the American Gastroenterological Association serve to meet this criterion.

The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B) provides that qualifying memberships are those in associations that require outstanding achievements of their members. Even if we accepted [REDACTED]’s assertions regarding the membership requirements in the absence of official association materials, [REDACTED] does not explain what he means by “consultant” or how such claims are evaluated and we are not persuaded that the mere publication of articles in the field is an outstanding achievement. The beneficiary’s review responsibilities within the association will be considered below pursuant to the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(D), to which they relate. Nothing in the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B) suggests that any considerations other than the actual membership criteria are relevant to this criterion.

The record does not reflect that the associations of which the beneficiary is a member require outstanding achievements of their general membership. 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.

Counsel initially asserted that the minimal citations of the beneficiary’s articles serve to meet this criterion. The director noted in the request for additional evidence that citations could not serve to meet this criterion and requested articles written by others about the beneficiary’s work.

In response, counsel asserts that citations are an indication of the importance of the cited work. Counsel further asserts that a book review of a book containing a chapter by the beneficiary serves to meet this criterion. Finally, counsel asserts that the purpose of this criterion is to demonstrate recognition of the beneficiary’s work and, thus, the fact that other physicians use the beneficiary’s methods can serve to meet this criterion.

In his decision, the director reiterated his conclusion that citations cannot serve to meet this criterion. On appeal, counsel simply reiterates the statements contained in the response to the director’s request for additional evidence.

While we do not contest counsel's assertion that citations can serve as a useful indicator of the cited work's importance, especially for a widely cited article, such evidence is better considered pursuant to the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(F). It remains, articles which cite the beneficiary's work are primarily about the author's own work, not the beneficiary's work. As such, they cannot be considered published material about the beneficiary.

The book review notes that there are 53 contributors to the book in which the beneficiary authored a chapter. The review, a page and a half long, contains only one sentence pertaining to the beneficiary's chapter and even that sentence focuses more on a different chapter. It simply cannot be credibly asserted that this book review constitutes published material about the beneficiary's work.

Finally, the statutory standard for the classification sought is international recognition. Thus, the purpose of all six criteria is to demonstrate such recognition. While we are not persuaded that adoption of the beneficiary's methodologies by others is comparable to *published materials* about the beneficiary's work, the regulation at 8 C.F.R. § 204.5(i)(3) does not permit the submission of "comparable" evidence. Cf. 8 C.F.R. § 204.5(k)(3)(iii); 8 C.F.R. § 204.5(h)(4). While adoption of the beneficiary's methodologies by other physicians would be notable if documented, such evidence could not be credibly considered "published material" about the beneficiary as required by the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C). Rather, such adoption would be far more relevant to the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(E) and will be considered in that context below.

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

Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field.

The record reflects that the beneficiary has refereed articles for three journals and abstracts for a conference. The director concluded that occasional service as a reviewer was commensurate with the beneficiary's occupation and could not serve to meet this criterion. On appeal, counsel reiterates the beneficiary's services as a reviewer, noting the prestige of the journals and conference. We cannot ignore, however, that scientific journals and conferences are peer reviewed and rely on many scientists to review submitted articles. Thus, we concur with the director that peer review is routine in the field; not every peer reviewer enjoys international recognition. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, 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.

The beneficiary received his Doctor of Medicine degree from Dayanand medical College and Hospital in Ludhiana, India. The beneficiary then had three years of clinical fellowship training at the G.B. Pant Hospital in New Delhi, India. The beneficiary subsequently worked as a senior lecturer at the Government Medical College and Hospital in Chandigarh, India. Finally, the beneficiary has worked as an instructor and now works as an assistant professor for the petitioner.

The beneficiary's references note that the beneficiary has published and presented his work, asserting that such work must be original to be accepted for publication or presentation. 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."

As stated above, outstanding 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. *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991)(enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)). Any Ph.D. thesis, postdoctoral or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. To conclude that every researcher who performs original research that adds to the general pool of knowledge meets this criterion would render this criterion meaningless.

The record contains several letters discussing the significance of the beneficiary's work. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of international recognition. 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. *Id.* at 795. 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.*; *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 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 his reputation *and who have applied his 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 recognition.

asserts that the beneficiary gained international recognition when his work in India was accepted for presentation in abstract at a U.S. conference and publication in an internationally circulated journal. International exposure, however, is not the same as international recognition.

asserts that the beneficiary performed the first human trial of using cisapride, a pro-kinetic drug, in addition to the traditional antibiotic treatment, to prevent the occurrence of spontaneous bacterial peritonitis (SBP), a complication of liver disease. This work served as the basis for the beneficiary's best paper award. While asserts that this work is an important contribution to the field of gastroenterology, this assertion is vague. does not provide specific information indicative of the type of contributions consistent with international recognition as outstanding. For example, does not name hospitals now using cisapride treatment to prevent SBP or reference widespread published standards for the treatment of liver disease with cisapride.

notes that the beneficiary demonstrated that administration of the anti-viral drug Lamivudine in a pulse form benefits patients with Hepatitis B who were not good candidates for the traditional administration of the drug. As noted by the beneficiary presented this work in a young investigator award session. expresses the hope that the beneficiary's studies will lead to other trials, but does not identify any other such trials.

the petitioner's Medical Director of its Liver Transplant Program, asserts that the beneficiary is among the ten percent of gastroenterologist physicians who can perform the endoscopic retrograde cholangiopancreatogram (ERCP). asserts that beneficiary also trains interns, residents and fellows in this procedure.

In addition, asserts that the beneficiary started a program at the petitioning institution for treatment of gastric varices, a serious and deadly complication of cirrhosis. The beneficiary is "pioneering a program in which effective treatment is being provided by injection of a tissue glue via endoscopy thus avoiding the need for surgery or TIPS in this population of sick patients." While asserts that this procedure is saving lives in Virginia, he does not assert that the beneficiary has increased the "minimal experience with glue injection in the United States." Thus, it would appear that the beneficiary's procedure has yet to influence the field beyond his employer.

Chief of the Division of Gastroenterology, Hepatology and Nutrition at the University of Pittsburgh School of Medicine, asserts that while he has collaborated with the beneficiary,

this collaboration is not evidence of his bias but an indication of the beneficiary's abilities as [REDACTED] is "in the fortunate position of choosing my collaborations only with the most talented and respected physicians and researches in this field." We do not presume that those within the beneficiary's immediate circle of colleagues are biased. Rather, international recognition as *outstanding*, as we interpret Congressional intent and our own regulation, implies that the beneficiary is known beyond that circle of colleagues. [REDACTED] affirms the importance of the beneficiary's studies and asserts that the significance of these studies is apparent from the conferences and journals that have accepted this work for presentation or publication. [REDACTED] provides no specific examples, however, of how the beneficiary's contributions are consistent with the necessary international recognition as outstanding. For example, [REDACTED] does not identify hospitals or clinics that have adopted the beneficiary's methodologies.

The independent references indicate that their opinions are based on a review of the beneficiary's credentials and publications. They do not specifically indicate that they had ever heard of the beneficiary prior to being asked to provide a reference letter. [REDACTED] Director of the Advanced Pancreaticobiliary Endoscopy Fellowship at the University of Minnesota Medical School, asserts generally that the beneficiary's method for preventing SBP "has now been adopted as a management strategy by physicians in these complex cases." None of the independent references indicate that the beneficiary's work reflects outstanding international recognition. For example, they do not indicate that they or their employers have adopted the beneficiary's methodologies as standard practice or that they teach the beneficiary's methods and assign his articles to their medical students. Finally, the record does not reflect that the beneficiary's articles are widely and frequently cited as might be expected of the original contributions of a researcher who is internationally recognized as outstanding.

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 has garnered international recognition as outstanding. 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.

The petitioner submitted evidence that the beneficiary has authored published articles and has presented his work at conferences. We take administrative notice of the fact that the Association of American Universities' Committee on Postdoctoral Education includes in its recommended definition of a postdoctoral appointment an 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." Association of American Universities' Committee on Postdoctoral Education, *Report and Recommendations* 5 (March 31, 1998). 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.” *Id.* 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 petitioner must demonstrate that the beneficiary enjoyed international recognition as of 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). As of that date, the beneficiary had only been minimally cited. That said, we acknowledge that the beneficiary’s presentation was selected for the Best Plenary Session Paper award. Given the beneficiary’s publication and presentation record as a whole, we find that the beneficiary meets this criterion.

Finally, the conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the beneficiary within the academic community through eminence and distinction based on international recognition. The beneficiary’s accomplishments include memberships in professional associations and volunteer review responsibilities commensurate with his occupation as well as letters from the beneficiary’s immediate circle of colleagues and independent references who attest to the beneficiary’s international recognition without affirming, for example, their own previous knowledge of the beneficiary’s work, adoption of his procedures or specific examples of the beneficiary’s international recognition as an outstanding researcher. The most notable accomplishment is the beneficiary’s publication record, including a best plenary session paper award. While the beneficiary’s publication record is indicative of international exposure, it is insufficient by itself to establish eligibility.

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 the level of an alien who is internationally recognized 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.