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OCT 23 2007

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date:
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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:

SELF-REPRESENTED

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 a public 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). According to the petition, the petitioner seeks to employ the beneficiary in the United States as an 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. The director further determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher.

On appeal, the petitioner submits a statement and additional evidence. While we withdraw the director's finding that the petitioner had not offered the beneficiary a qualifying position as of the date of filing, we uphold the director's determination that the petitioner has not demonstrated that the beneficiary is internationally recognized as outstanding.

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 under section 203(b)(1)(B) of the Act 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 emplo ent was a permanent position. The petitioner submitted an April 6, 2000 letter from _____ President of the petitioning institution, addressed to the beneficiary offering him “a faculty appointment.” The letter continues that the beneficiary’s visiting appointment would be changed to a term appointment as an Assistant Professor for a three year period commencing September 1, 2000 and explicitly states that the position “is a tenure-track position.” On January 17, 2007, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary. The director did not provide any explanation as to why the letter from the petitioner’s president was insufficient.

In response, the petitioner submitted several letters advising the beneficiary that his appointment had been renewed and, on May 16, 2006, after the date of filing, that the beneficiary was being promoted to an Associate Professor “effective September 1, 2006.”

The director considered only the evidence submitted in response to the request for additional evidence and concluded that these letters did not address the issue of tenure. Once again, the director did not acknowledge the April 6, 2000 letter from the petitioner’s president officially offering the beneficiary a tenure-track position. On appeal, the petitioner submits another renewal of the beneficiary’s appointment and information on its continuing appointments.

The initial evidence submitted includes a job offer for a tenure-track teaching position pursuant to section 203(b)(1)(B)(iii)(I); 8 C.F.R. § 204.5(i)(3)(iii)(A). Thus, we withdraw the director’s finding that the petitioner has not established that it has offered the beneficiary a qualifying position.

International Recognition

The regulation at 8 C.F.R. § 204.5(i)(3) states, in pertinent part, 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 April 21, 2006, seeking to classify the beneficiary as an outstanding researcher in the field of linguistics. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching or research experience in the field of linguistics as of that date, and that the beneficiary's work has been recognized internationally within the field of linguistics 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. 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.

For the first time on appeal, the petitioner submits evidence that the beneficiary was selected to receive the petitioner's Chancellor's Award for Excellence in Teaching for the academic year 2006-2007. The letter advising the beneficiary of this award postdates the filing of the petition and cannot be considered. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

Moreover, 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.) 56 Fed. Reg. 60897-01, 60899 (Nov. 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.

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.

§ 204.5(h)(3)(i) (allowing for “lesser” nationally or internationally recognized awards for a separate classification than the one sought in this matter). An award from one’s own employer limited to professors at that university cannot serve to meet this criterion.

Documentation of the alien’s membership in associations in the academic field which require outstanding achievements of their members.

The beneficiary lists several professional affiliates on his curriculum vitae but the petitioner does not submit any evidence of these memberships or evidence that the associations require outstanding achievements of their members. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

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.

While the petitioner has listed this criterion as one the beneficiary meets, the record contains no evidence relating to 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.

Initially, [REDACTED], Senior Personnel Associate for the petitioner, asserted that [REDACTED] Brière, Chair of the petitioner’s Department of Language, Literature and Culture, was providing evidence that the beneficiary meets this criterion. [REDACTED] however, did not initially assert that the beneficiary has judged the work of others. [REDACTED] Director of the Graduate Studies in Linguistics at the Pontificia Universidad Catolica de Chile, asserts that the beneficiary is a book reviewer for *The Modern Language Journal* and a manuscript reviewer for *The International Journal of Basque Linguistics and Philology*. [REDACTED] asserts that she only knows the beneficiary through his published articles and does not claim any first hand knowledge of the beneficiary’s book or manuscript reviews. [REDACTED] an associate professor at the University of Minnesota, asserts that the beneficiary has “edited selected proceedings” for workshops that he organized. Dr. Klee’s only explanation as to how she knows of these editing duties is her assertion that she has “kept up with the proceedings” of the workshops he organized. As will be discussed below, the petitioner has now documented these responsibilities on appeal.

[REDACTED] a lecturer at Dublin City University, asserts that the beneficiary interviewed her for her former job with the petitioner as a member of the petitioner’s Search Committee Panel. Finally, [REDACTED] Westmoreland, an associate professor at the petitioning institution, asserts that the beneficiary has edited two books.

The petitioner is required by regulation to submit primary evidence unless it can be demonstrated that primary evidence is not available or does not exist. 8 C.F.R. § 103.2(b)(2)(i). Moreover, affidavits are only permissible where it can be demonstrated that secondary evidence is not available or does not exist. *Id.* The petitioner did initially provide one first-hand account. Specifically, [REDACTED] an associate professor at the Universidad del País Vasco, asserts that he personally has “asked [the beneficiary] to serve as the external reviewer of a number of articles within this field for the *International Journal of Basque Linguistics and Philology*.”

In response to the director’s request for additional evidence, the petitioner submitted more direct evidence of the beneficiary’s reviewing responsibilities. We note, however, that the petitioner must demonstrate the beneficiary’s eligibility as of the date of filing, in this case April 21, 2006. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. Thus, we will not consider any evidence relating to judging responsibilities after that date.

A 2003 letter from [REDACTED] Acting Chair of the Department of Spanish and Portuguese at Temple University, thanks the beneficiary for agreeing to review the scholarly production of a candidate for tenure at that university. The record contains no evidence that the beneficiary has had any professional affiliation with that university. A 2002 letter from Dr. Jeff MacSwan, Chair of the Fourth International Symposium on Biligualism (ISB4) Organizing Committee, thanks the beneficiary for assisting with the peer review of submissions for colloquia, papers and poster presentations.

The director failed to consider the above evidence, stating that the evidence consisted mostly of letters prepared in support of the petition. On appeal, the petitioner submits *Selected Proceedings of the First Workshop on Spanish Sociolinguistics* as well as the proceedings for the second workshop listing the beneficiary as the sole editor for the first workshop and one of two editors for the second workshop. The beneficiary’s introductions to the proceedings reflect that the workshops were held at the petitioning institution in 2002 and 2004.² The petitioner also submitted the beneficiary’s two book reviews published in *The Modern Language Journal* in 2001 and 2005 and the beneficiary’s book review of another book in *Linguist List*.

As of the priority date, the beneficiary reviewed manuscripts for publication or presentation, authored book reviews, provided guidance to an external tenure panel and edited proceedings for workshops held at the petitioning institution. Individually, many of these responsibilities appear inherent to the beneficiary’s position as a professor. In the aggregate, however, we are persuaded that the beneficiary’s review responsibilities are at least consistent with international recognition. Thus, the petitioner has established that the beneficiary meets this criterion.

² The beneficiary is also listed as one of three editors for the fourth workshop held in 2007, but this workshop postdates the filing of the petition and cannot be considered. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49.

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."

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. *See* 56 Fed. Reg. 30703, 30705 (July 5, 1991). Any [REDACTED] 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 beneficiary received his [REDACTED] in Linguistics from the Universidad Complutense de [REDACTED] in 1999. He then joined the faculty of the petitioning institution where he remains. The petitioner submitted several support letters.

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 (Commr. 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. 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread 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 acclaim.

Dr. Brière provides general praise of the beneficiary's work, asserting that it is "opening up new territory" and "actually broadening the field" of contact-linguistics. Specifically, the beneficiary has focused on the relations between Spanish, Arabic and other languages in Northern Africa but has expanded his work to include Valencia, Spain, Tunis, Tunisia and New York City. [REDACTED] asserts that the type of research the beneficiary is pursuing is rare in the United States and in the English-language literature. Assuming this statement to be true, it would not establish that the beneficiary's contributions are internationally recognized as outstanding.

[REDACTED], Chair of the Department of Spanish and Portuguese, asserts that he has known the beneficiary for five years and that they interact at conferences. [REDACTED] asserts that the beneficiary brings a unique perspective to the field of sociolinguistics as an Arabic speaker working with Spanish and English. Beyond the beneficiary's unique perspective, [REDACTED] asserts that the beneficiary's research "is well grounded both methodologically and theoretically." In addition, the beneficiary is "equally comfortable working in areas of phonological and lexical development, bilingual contact and codeswitching, and the interface between social identity and language use." Thus, his work has relevance to a broad spectrum of linguists.

[REDACTED] who asserts that she knows of the beneficiary through his published work, asserts that the beneficiary's work on Spanish in contact with Arabic "is considered the reference on the topic." [REDACTED] further asserts that the beneficiary's research is the first to analyze in detail the macro-sociolinguistic aspects of the Spanish/Arabic contact, including "the degree of Arabic/Spanish bilingualism, the processes of naturalistic language acquisition, and the role language identity and ideology play in the area." [REDACTED] explains that at the micro-sociolinguistic, the beneficiary provides a comprehensive structural account of the "understudied" Spanish in North Africa. Specifically, the beneficiary discovered almost 2,000 Spanish loanwords used in Moroccan Arabic, "representing a serious element of change of this variety of Arabic from other dialects in North Africa."

[REDACTED] asserts that he first learned of the beneficiary's work in 2000 when the beneficiary submitted an abstract for a seminar in Helsinki, which was accepted. [REDACTED] asserts that he continues to follow the beneficiary's work and has collaborated with the beneficiary to organize an international meeting in 2003 on language contact and codeswitching in Spain. [REDACTED] praises the beneficiary's ability to combine theory and field work as well as his ability to draw from different linguistic and non-linguistic disciplines. While [REDACTED] asserts that the citations of the beneficiary's work attest to his leading role in the field, the record contains no evidence of any citations of the beneficiary's work.

Finally, the petitioner submitted four independent letters solicited in relation to the beneficiary's promotion and tenure. Of the four authors, only two concede that they had ever heard of the beneficiary prior to being solicited for an opinion on his promotion and tenure based on a review packet that accompanied the request. [REDACTED] a professor at the University of Pennsylvania, asserts that he plans to feature one of the beneficiary's papers in one of his classes and states that the beneficiary "has already made a name for himself internationally." The record lacks evidence, however, that use of the beneficiary's articles in course curricula is more widespread. The remaining letters support the beneficiary's promotion to a tenured position but do not suggest that his contributions are internationally recognized as outstanding.

The petitioner submits for the first time on appeal several articles authored by the beneficiary. The petitioner submitted no evidence that any of these articles have been widely or frequently cited.

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 academic community. The record does not establish that the beneficiary's contributions are consistent with international recognition as outstanding in his field.

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

For the first time on appeal, the petitioner submitted evidence that the beneficiary has authored several published articles and has presented his work. The regulation at 8 C.F.R. § 204.5(i)(3)(i)(F) requires the submission of evidence of beneficiary's authorship of scholarly books or articles. A self-serving list of articles is insufficient. See 8 C.F.R. § 103.2(b)(2)(i). The director specifically requested evidence of scholarly articles in the request for additional evidence. Thus, the petitioner was put on notice of required evidence in the regulation and the director's notice and was given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. The director correctly concluded that the record lacked evidence of the beneficiary's published articles.

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.