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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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FILE: LIN 06 042 51817 Office: NEBRASKA SERVICE CENTER Date: JUN 16 2008

IN RE: Petitioner:
Beneficiary:



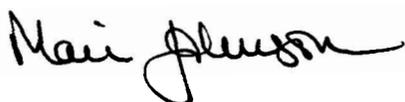
PETITION: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

ON BEHALF OF PETITIONER:

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: *The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter back to the director on appeal. The director subsequently denied the petition a second time on different grounds. The matter is now before the AAO on certification. The director's decision will be affirmed.*

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). According to the petition, the petitioner seeks to employ the beneficiary in the United States as a research associate. The director initially denied the petition based on a determination that the petitioner had not established that it had offered the beneficiary a permanent job as of the date of filing.

On appeal, the petitioner asserted that it has offered the beneficiary a permanent position as defined at 8 C.F.R. § 204.5(i)(2). The AAO concurred with the petitioner that the position offered is permanent as defined in the pertinent regulation. Upon review of the record, however, the AAO withdrew the director's finding that the beneficiary meets the necessary two regulatory criteria and remanded the matter for a full decision on that issue taking into account the considerations set forth at the end of its decision.

On December 19, 2007, the director issued a new request for additional evidence to address the AAO's concerns. Upon consideration of the petitioner's response, the director concluded that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher. Thus, the director denied the petition on April 7, 2008 and certified that decision to the AAO. The notice advised the petitioner that it was afforded 30 days in which to submit a brief or written statement to the AAO. As of this date, more than two months later, this office has received nothing from the petitioner addressing the director's final decision. Thus, we will review the director's decision based on the record.

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 December 21, 2005 to classify the beneficiary as an outstanding researcher in the field of DNA and protein structure research. 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. 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.

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

The petitioner initially asserted that the beneficiary meets this criterion through receipt of a 1985 "High Honor Award" from the USSR Academy of Sciences in Applied Sciences while the beneficiary was a doctoral student and a travel grant from the Commission of the European Union. The petitioner submitted letters from Estonian and Russian professors [REDACTED] and [REDACTED] attesting to the Russian award and a letter from [REDACTED] of the University of Manchester attesting to the travel award. [REDACTED] asserts that the "decision to provide support to participants was based on the acceptance of papers by the normal scientific review process." The petitioner did not, however, submit a copy of either award. In its remand order the AAO noted that neither award was in the record. The AAO cited the regulation at 8 C.F.R. § 103.2(b)(2)(i) for the proposition that the petitioner must submit primary evidence or, if relying on secondary evidence, submit evidence that primary evidence is either unavailable or does not exist. In addition, affidavits are only acceptable if the petitioner establishes that both primary and secondary evidence are unavailable or do not exist. 8 C.F.R. § 103.2(b)(2)(i).

On December 19, 2007, the director requested copies of the actual awards and evidence of their significance. In response, the petitioner submitted a letter from I [REDACTED] Head of the "Internationa [sic] Affairs Department" of the Russian Academy of Sciences, Siberian Branch. The letter confirms that the beneficiary received a 1985 award from the Academy of Sciences of the USSR, Siberian Branch in the discipline of Applied Sciences for his work entitled "New Methods for Metal Coating of Dielectric Materials." The letter further asserts that the award is an annual major award for researchers and scientists from Russian academic institutions and notes that awardees are issued diplomas.

The director noted that, despite the assertion by [REDACTED] that awardees receive diplomas, the petitioner had not submitted a copy of the award purportedly issued to the beneficiary. The director further concluded that the petitioner had not established that the award was a major award. We concur with both conclusions.

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. § 204.5(h)(3)(i) (allowing for “lesser” nationally or internationally recognized awards for a separate classification than the one sought in this matter).

It appears that the 1985 award was issued by the Siberian Branch of the Academy of Sciences of the USSR. Thus, the award appears regional rather than national. Moreover, as the award was issued while the beneficiary was a doctoral student, it appears that the award was an academic award. Academic awards limited to students who have not yet begun their careers cannot serve to meet this criterion. In addition, the award was apparently issued for work on metal coatings, which is unrelated to the beneficiary’s current field of DNA research. Thus, the award is not for achievements in the field for which he seeks to be classified as an outstanding researcher. Moreover, ██████████ implies that all Eastern European scientists whose papers were accepted for presentation received travel grants. We are not persuaded that travel grants designed to offset the cost of attending a conference are major awards.

In light of the above, we affirm the director’s conclusion that the petitioner has not submitted the necessary evidence to demonstrate 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 and the record contains no evidence relating to it.

Published material in professional publications written by others about the alien’s work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation.

The petitioner asserted that the beneficiary meets this criterion through articles that cite the beneficiary or acknowledge his participation in research at a level below that necessary for authorship credit. The director concluded that articles which cite the beneficiary’s work are primarily about the author’s own work, not the beneficiary. As such, they cannot be considered published material about the beneficiary. We concur with the director’s analysis and conclusion. We further note that authorship of scholarly articles is a separate criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(F). We cannot conclude that participation in research that is at a lower level than the level required for authorship credit can be considered sufficient to meet this criterion.

In light of the above, we affirm the director’s conclusion that 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 petitioner has never asserted that the beneficiary meets this criterion and the record contains no evidence relating to it.

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

The beneficiary received his Kandidat Nauk in Chemistry from the Russian Institute of Solid State Chemistry in 1989. The beneficiary then worked at that institution through 1993. In 1994, he began working for Grenon, Ltd. in Estonia. From 1997 through 1999, the beneficiary worked for the Department of Plant Biology at the Institute of Experimental Biology in Estonia. He then worked for the Department of Biotechnology at the Institute of Molecular and Cell Biology, also in Estonia, through 2000. In 2001, the beneficiary began working at Arizona State University and in 2004 he joined the petitioning medical center.

The petitioner initially relied on the beneficiary's patents and letters from the beneficiary's immediate circle of colleagues to meet this criterion. Specifically, the beneficiary patented "The Method for Preparation of Copper Paste for Metal Coating," patent number [REDACTED]; "The Method for Production of Offset Printing Form," patent number [REDACTED]; "The Composition for Preparation of Thermosensitive Material," patent number [REDACTED]; "The Solution for Metal coating of Dielectric Material," patent number [REDACTED]; "The Method for Metal Coating of Dielectric Material," patent number [REDACTED] and "The Method for Printed Circuit Production," patent number [REDACTED]. Notably, all of the beneficiary's patents appear to derive from his earlier work synthesizing new complex copper compounds. They do not relate to the beneficiary's current field of DNA research.

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. 56 Fed. Reg. 30703, 30705 (July 5, 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.

Furthermore, the regulations include a separate criterion for scholarly articles. 8 C.F.R. § 204.5(i)(3)(i)(F). Thus, mere authorship of scholarly articles cannot serve as presumptive evidence to meet this criterion. To hold otherwise would render the regulatory requirement that a beneficiary meet at least two criteria meaningless.

In addition, the evidence that the beneficiary holds six patents for his inventions establishes that he was a prolific inventor several years ago in a separate field. The very existence of the patents, however, does not show that the beneficiary's inventions are more *significant than those of others in his field*. As stated in the AAO's remand order, the significance of a patent must be considered on a case-by-case basis. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 221, n.7 (Commr. 1998) (involving a lesser classification but discussing the case-by-case evaluation necessary when reviewing a patent). To establish the significance of the beneficiary's work, we turn to the evidence submitted in response to the director's December 19, 2007 request for additional evidence and letters from experts in the beneficiary's field.

In response to the director's request for additional evidence, the petitioner submitted two documents to demonstrate the impact of the beneficiary's patents. The first is a 1990 "Conclusion of the Leading Technological Organization." The original foreign language document is not on letterhead and does not appear to have been copied from an internal report or a published journal. The translation of this document is not certified as required under 8 C.F.R. § 103.2(b)(3). The second document, entitled "Energostroi-komplekt," is downloaded from an Internet website. The translation, however, is also not certified as required under 8 C.F.R. § 103.2(b)(3). As noted by the director, neither document identifies the beneficiary's patents by number or the beneficiary himself. Moreover, as stated above, they do not relate to the beneficiary's current field. Thus, they cannot be considered contributions to that field.

In considering the opinions of experts in the field, we note that while not without weight, these opinions 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 beneficiary 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 beneficiary 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.

The petitioner submitted five letters from the beneficiary's collaborators and colleagues. One reference, [REDACTED], a professor in Arizona State University's Department of Physics and Astronomy, does not appear to be an expert in any of the beneficiary's fields, past or present. The beneficiary's current supervisor at the petitioning medical center, [REDACTED], lists all of the beneficiary's current projects and asserts that the results are important and have been published or presented. But he does not indicate that any of this work has resulted in contributions that have already been internationally recognized as outstanding. In general, the references praise the beneficiary and note the unique nature of his experience. While they assert that he has contributed to the general pool of knowledge in the field, they do not provide concrete examples of how the field has been impacted by the beneficiary's work.

As stated above, the regulations include a separate criterion for scholarly articles. 8 C.F.R. § 204.5(i)(3)(i)(F). If the regulatory requirement that an alien meet at least two criteria is to have any meaning, meeting the scholarly articles criterion does not create a presumption that the alien also meets this criterion, especially in fields where publication of one's research results is inherent to the field. The record contains evidence that the beneficiary's published work in his current field has been moderately cited in the aggregate. The citation level for individual articles, however, is not consistent with contributions that have been recognized internationally 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 Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. The record does not establish that the beneficiary's work represented a groundbreaking advance in DNA research.

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

At the outset, we note that the petitioner responded to the director's December 19, 2007 request for additional evidence with articles by the beneficiary and citing the beneficiary published after the date of filing. The petitioner must establish the beneficiary's eligibility as of the date the petition was filed,

December 21, 2005. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Moreover, we cannot “consider facts that come into being only subsequent to the filing of a petition.” *Matter of Izummi*, 22 I&N Dec. 169, 176 (Commr. 1998)(citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981)). Thus, we will only consider the published articles and citations that had been published as of the date of filing.

The petitioner submitted evidence that the beneficiary has authored several published articles. The Association of American Universities’ Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that “the appointment is viewed as preparatory for a full-time academic and/or research career,” and that “the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment.” Thus, this national organization considers publication of one’s work to be “expected,” even among researchers who have not yet begun “a full-time academic and/or research career.” This report reinforces our position that publication of scholarly articles is not automatically evidence of international recognition; we must consider the research community’s reaction to those articles.

As of the date of filing, the beneficiary’s articles had been moderately cited. While the moderate number of citations does not rise to a level indicating that the beneficiary’s contributions have been internationally recognized as outstanding, we are persuaded that he meets this criterion. For the reasons discussed above, however, the beneficiary falls far short of meeting any other criterion.

The petitioner has shown that the beneficiary is a talented and prolific researcher, who has won the respect of his collaborators, employers, and mentors, while securing some degree of international exposure for his work. The record, however, stops short of elevating the beneficiary to 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 decision of the director denying the petition will be affirmed.

ORDER: The director’s decision of April 7, 2008 is affirmed; the petition is denied.