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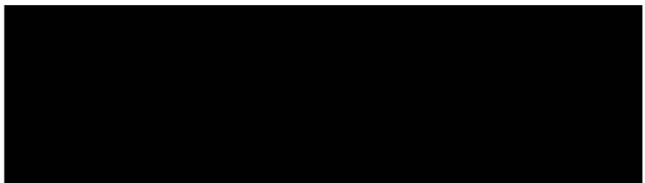
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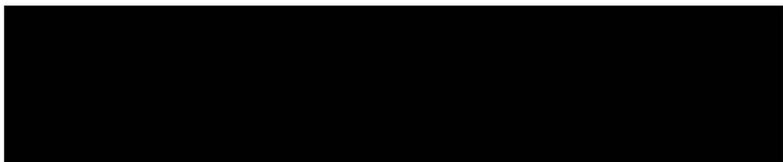
Date: MAY 01 2008

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:



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*  
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 non-profit education and research institution. 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 a Research Scientist II. The director 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, counsel provides a brief statement. For the reasons discussed below, we uphold the director's decision in this matter.

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 October 23, 2006 to classify the beneficiary as an outstanding researcher in the field of Forest Products, Pulp and Paper Science Engineering. 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.<sup>1</sup>

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

The petitioner submits evidence that the beneficiary is a member of Sigma Xi. The petitioner submitted evidence that full membership requires a “noteworthy” achievement and that Sigma Xi has 65,000 members, 200 of which are Nobel Laureates. We note that, according to these numbers, only three percent of Sigma Xi members are Nobel Laureates.

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<sup>1</sup> 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.

The director concluded that the petitioner had not demonstrated that Sigma Xi requires outstanding achievements for membership. On appeal, counsel asserts that, as a member of Sigma Xi, the beneficiary has demonstrated a level of experience consistent with the regulatory standards.

Counsel is not persuasive. The petitioner has not submitted evidence establishing how Sigma Xi defines “noteworthy.” Such “noteworthy” achievements as authoring one or two published articles are not “outstanding” such that the author stands apart in the academic community through eminence and distinction. The Department of Labor’s Occupational Outlook Handbook, 224 (2006-2007 ed.) reflects that university faculty spend a significant amount of their time doing research and often publish their findings. *Id.* at 224. In addition, the handbook acknowledges that faculty face “the pressure to do research and publish their findings.” *Id.* at 225.

We acknowledge that 200 of the 65,000 members of Sigma Xi are Nobel Laureates. The prestige of the Nobel Prize is not in dispute. It remains, however, that the petitioner is not a recipient of the Nobel Prize. Thus, its significance is irrelevant. That Sigma Xi includes members who have won the Nobel Prize does not impart that distinction to the vast majority (97 percent) of its members who have not been so recognized.

In light of the above, the petitioner has not demonstrated 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.*

The director acknowledged the submission of articles that cite the beneficiary’s work. The director concluded that articles which cite the beneficiary’s work are primarily about the author’s own work, not the beneficiary. As such, although they cannot be considered under this criterion as published material about the beneficiary, the articles will be considered under a separate, more relevant criterion below.

Counsel does not specifically challenge the director’s finding regarding this criterion and we concur with the director 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 record reflects that the beneficiary has refereed manuscripts for two journals. We note that the beneficiary’s immediate supervisor is an associate editor for one of the journals. In response to the director’s request for additional evidence, the petitioner submitted letters from the associate editors of the two journals asserting that reviewers are selected based on their international recognition in the field.

The director concluded that skilled researchers are routinely requested to review manuscripts and that the petitioner had not demonstrated that the beneficiary's reviewing responsibilities can serve to meet this criterion. On appeal, counsel does not specifically challenge this conclusion, but asserts generally that the director failed to consider the opinions of experts in areas where the director does not have expertise.

We cannot ignore that scientific journals 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, based upon the evidence submitted, 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 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, the 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.

On appeal, counsel asserts that the director discounted the beneficiary's contributions "without basis" and notes the number of reference letters submitted. We will consider the letters in detail below. The opinions of experts in the field, however, 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 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.

The beneficiary received his Ph.D. from the South China University of Technology in 2000. Since that time he has worked as a postdoctoral researcher and finally a research scientist at the Institute of Paper Science and Technology (IPST), part of the petitioning university. The petitioner initially provided letters from colleagues who affirm, in general terms, the importance of the beneficiary's work without providing specific examples of how the work has impacted the field.

██████████, a professor at the South China University of Technology, asserts that he was the beneficiary's Ph.D. advisor. ██████████ notes that the beneficiary had already published three papers while studying for his Master's Degree. ██████████ explains that the beneficiary's Ph.D. research "focused on developing technologies of modified kraft pulping and ECF bleaching of southern China softwood resource as well as investigating the fundamental mechanisms." ██████████ notes that conventional kraft cooking techniques consume significant bleaching chemicals and produce organic pollutants in the effluent, prompting a search for low kappa modified kraft cooking and low pollution bleaching technologies. According to ██████████, the beneficiary "developed extended modified continuous cooking (EMCC) and ECF bleaching technologies" which "can allow pulp mills to cook to lower kappa number, reducing bleaching chemicals usage and decreasing bleaching effluent pollution." Finally, ██████████ asserts that the beneficiary "investigated the lignin structural characteristics during EMCC pulping and ECF bleaching," which "provided fundamental and deep

understanding of lignin structural changes which is the key to develop[ing] new pulping and bleaching technologies.”

While [REDACTED] confirms that the beneficiary’s work is “very important for pulp companies,” he does not identify any pulp company that is now cooking to a lower kappa number or reducing bleaching chemical usage based on the beneficiary’s work.

At IPST, the beneficiary works under the direction of [REDACTED]. The record does not include a general reference letter from [REDACTED]. The record does, however, contain letters from some of the beneficiary’s other collaborators and coauthors of his work at IPST.

[REDACTED], currently an associate professor at North Carolina State University, previously worked as an associate professor at IPST and was a co-principal investigator for two of the projects on which the beneficiary worked. Specifically, the beneficiary “demonstrated that the acetylation of lignin plays a crucial role in the photostability of mechanical pulp during light irradiation.” In a subsequent letter, [REDACTED] explains that mechanical pulping is an environmental friendly process that is currently only appropriate for low-value and short-life products such as newsprint due to its tendency to discolor.

According to [REDACTED] the beneficiary’s work added to the general pool of knowledge of structural characteristics and photo-behaviors of acetylated lignin and “provided a fundamental principle for viable, practical solution to the problems of brightness reversion of mechanical pulps.” While Dr. [REDACTED] asserts that this work contributes to the viability of low cost paper manufacture that would allow the United States to remain competitive with other low cost manufacturers, [REDACTED] does not identify any paper manufacturer that has utilized the beneficiary’s work to lower its costs. [REDACTED] further asserts that the estimated economic benefits of the beneficiary’s work on high kappa oxygen delignification technology “are on the order of 1-2 million dollars savings for a 100 ton/day mill implementing” this technology. [REDACTED] does not identify a mill that has recognized these savings and the record contains no letters from officials at a paper mill confirming such savings based on the beneficiary’s work.

[REDACTED], an Alumni Distinguished Professor at North Carolina State University, asserts that he is in a position to judge the beneficiary’s work “as a peer.” [REDACTED] further asserts that he knows the beneficiary “though his research work on extended oxygen delignification technologies.” We note that [REDACTED] is, in fact, a listed coauthor of this work and, thus, appears to be one of the beneficiary’s close collaborators. [REDACTED] asserts that the beneficiary demonstrated a relationship between pulp bleachability and residual lignin structures, providing “an in-depth understanding in chemistry of extended oxygen delignification of high kappa pulps.” In a subsequent letter, he asserts that the industry “has obtained improved guidance for developing optimal extended oxygen delignification technologies for U.S. pulping and bleaching operations.”

██████████, a research forest products technologist with the U.S. Department of Agriculture's Forest Service, Southern Research Station, is another coauthor who provides similar information. Dr. ██████ also discusses the beneficiary's work with nanoparticles, speculating that this work "may lead to new product platforms for pulp products and directly address the technical challenges established by American Forest & Paper Association (AF&PA) Agenda 2020 to develop new Forest Based Materials." ██████ does not explain how this work has already impacted the paper industry. In a subsequent letter, ██████ asserts that the beneficiary's work on oxygen delignification has provided "guidance" for pulp mills and has had "a significant impact upon the industry."

██████████, an assistant professor at the University of Wisconsin-Madison and former postdoctoral researcher at IPST, confirms that the beneficiary "demonstrated that condensed phenolics at C-5 and *p*-hydroxyphenols in ligin were enriched during the residual oxygen and two-stage oxygen delignification, and that conjugated C-5 noncondensed phenolic structure can be used to determine the overall extent of oxygen delignification." ██████ concludes that this work is "critical for pulp mills to optimize oxygen delignification conditions to enhance reactivity of lignin towards delignification and to minimize carbohydrate degradation."

The petitioner also provided a letter from ████████████████████, an associate professor at the Swedish Pulp and Paper Research Institute. ████████████████████ acknowledges that he has been collaborating with ████████████████████' group since 1998 and his curriculum vitae shows that he and Dr. ████████████████████ have coauthored conference presentations. ████████████████████ asserts that the beneficiary's work "has given fundamental insight into the mechanisms of photobleaching of high-yield mechanical pulps and retardation of photoyellowing of acetylation of mechanical pulp ligins. Dr. Nilvebrant discusses the importance of this work, but concludes only that the beneficiary's results "may have an impact on future industrial applications."

In a subsequent letter, ████████████████████ asserts that the beneficiary's work on the photoreactivity of mechanical pulp has "already reverberated throughout the industry." ████████████████████ concludes only that the beneficiary's work on oxygen delignification "has been well documented in the literature and will certainly have an impact on future industrial applications." Similarly, ████████████████████ a principal scientist at International Paper, asserts that the beneficiary's work with nanotechnology has "reverberated throughout the industry."

██████████, an associate professor at the University of New Brunswick, asserts that he has "known" the beneficiary since 1999 when the beneficiary was an exchange student at IPST. Dr. Li states that he and the beneficiary continue to communicate frequently. ██████ does not explain how he initially became aware of the beneficiary's work. ██████ asserts generally that the beneficiary's work "has provided important insight into the understanding of the fundamentals of [the] photochemistry involved in the photodiscoloration of wood pulps." In addition, ██████ explains that the beneficiary has "characterized and identified structural features that enhance reactivity towards extended oxygen delignification of high kappa pulps, which provides important guidance for future development of new extended oxygen delignification systems." ██████ concludes:

His another [sic] research area relates to the supra-molecular structural features of cellulose during enzymatic hydrolysis using solid state <sup>13</sup>C nuclear magnetic resonance, for which he is a renowned expert. He is also one of the pioneering researchers worldwide in developing nano-cellulosic composites from natural wood/pulp sources, which is an emerging technology to be used in many industrial applications.

In a subsequent letter, [REDACTED] asserts that the beneficiary's research on high-yield pulp lignin "has made a significant difference for subsequent studies that have built on his pioneering work."

In his January 5, 2007 letter, [REDACTED] a former faculty member at IPST, asserts that the beneficiary's work "has profoundly impacted the paper industry" and that "many of the advances in this area may be attributed to [the beneficiary's] significant research discoveries." More specifically, [REDACTED] asserts that the beneficiary's research was critical for developing improved extended oxygen delignification (EOD) technologies for U.S. pulp mills and "helped to establish the next generation of processes for this crucial industry."

None of the above references identifies a mill that is utilizing the beneficiary's work and the record contains no letters from mill officials affirming their reliance on the beneficiary's work and attesting to their economic savings. While [REDACTED] works for International Paper and asserts generally that the beneficiary's work has "reverberated" throughout the industry, he knows the beneficiary from their collaboration in China and does not affirm that International Paper is adopting the beneficiary's techniques.

In response to the director's request for additional evidence, the petitioner submitted letters from more independent members of the field. [REDACTED], a research associate at the State University of New York (SUNY) College of Environmental Science and Forestry, asserts that he is "rather familiar with [the beneficiary's] pioneering work" but does not explain how he became aware of the beneficiary's work. While [REDACTED] praises the beneficiary's work and reputation, he generally concludes only that the beneficiary's research "has significant positive environmental and economic implications for the paper industry."

[REDACTED] Director of the Laboratory of the Chemistry of Natural Products at the Université Bordeaux in France, asserts that he has recently cited the beneficiary's research in his own published article. The citation evidence in the record does not include an article by [REDACTED]. Thus, it is not clear that he had already cited the beneficiary as of the date of filing, the date as of which the petitioner must establish the beneficiary's eligibility. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Regardless, [REDACTED] does not explain the context in which he cited the beneficiary's work. [REDACTED] further asserts that the beneficiary's work on mechanical pulp "has had a tremendous economic and environmental impact upon the field." If true, it can be expected that several pulping mills would have already

implemented the beneficiary's results leading to economic benefits. As stated above, the record does not contain testimonials from mill operators affirming the impact of the beneficiary's work on their industry.

Finally, [REDACTED] a professor at Mississippi State University, affirms that he is familiar with the beneficiary's work and is providing an independent reference letter. On the final page of his letter he indicates his opinion is based on a review of the beneficiary's accomplishments and notable publications. While [REDACTED] affirms that the beneficiary's work is an important addition to the general pool of knowledge, he concludes only that, as of yet, the beneficiary's work "has significant economic implications for the pulp and paper industry as a whole."

We acknowledge that the beneficiary is a prolific author of scholarly research articles and that his articles individually have been minimally cited. However, as stated above, the regulation at 8 C.F.R. § 204.5(i)(3)(i)(F) provides a separate criterion relating to the authorship of scholarly articles. Thus, we cannot conclude that evidence relating to the criterion at 8 C.F.R. § 204.5(i)(3)(i)(F) is also presumptive evidence that the beneficiary meets the original contributions criterion at 8 C.F.R. § 204.5(i)(3)(i)(E). To hold otherwise would render the regulatory requirement that an alien meet at least two criteria meaningless.

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 research is internationally recognized as outstanding.

*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 several published articles and has presented his work at several conferences. Many of the petitioner's references affirm that his publication record is remarkable for a young researcher of similar experience. While the petitioner need not demonstrate that the beneficiary is one of that small percentage at the top of his field as required for classification pursuant to section 203(b)(1)(A) of the Act, the petitioner must demonstrate that the beneficiary stands apart in the academic community through eminence and distinction based on international recognition. 56 Fed. Reg. at 30705.

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.” Moreover, as stated above, the Occupational Outlook Handbook, 224, also provides that university faculty spend a significant amount of their time doing research and often publish their findings. In addition, the handbook acknowledges that faculty face “the pressure to do research and publish their findings.” *Id.* at 225.

The above information 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.

Initially, the petitioner submitted 11 articles that cite the beneficiary’s work. Two of those articles were self-citations from the beneficiary’s coauthors. The citations submitted do not establish that any one of the petitioner’s articles had been cited more than three times as of the date of filing. In response to the director’s request for additional evidence, the petitioner submitted evidence of 16 citations of the beneficiary’s English-language articles and 39 citations of his Chinese-language articles. Of the 16 English-language citations, seven are from the beneficiary himself or [REDACTED]. While self-citations are a normal and expected process, they cannot establish the beneficiary’s recognition beyond his own circle of colleagues. While the beneficiary’s Chinese-language articles have been cited 39 times in the aggregate, no one article has been cited more than eight times. Moreover, the petitioner has not demonstrated that the Chinese-language journals have an international circulation as required pursuant to 8 C.F.R. § 204.5(i)(3)(i)(F).

While the number of the beneficiary’s published articles may be indicative of international exposure, we are not persuaded that the petitioner has demonstrated that the beneficiary’s publication record is indicative of international recognition as outstanding. Even if we were to conclude that the large number of publications alone serves to meet this criterion, the beneficiary would only meet one criterion. For the reasons discussed above, the petitioner has not demonstrated that the beneficiary meets 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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.