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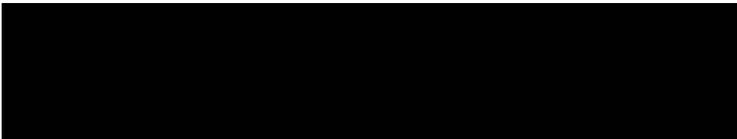


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: NOV 03 2008
SRC 07 219 51431

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Mai Plurson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 engineering / technical simulation firm. 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 development engineer. While the director framed the discussion as whether the beneficiary had three years of qualifying experience, the director, by discussing the evidence as it relates to the criteria set forth at 8 C.F.R. § 204.5(i)(3)(i), effectively 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 submits a brief and additional evidence. For the reasons discussed below, we uphold the ultimate findings of the director.

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 July 12, 2007 seeking to classify the beneficiary as an outstanding researcher in the field of development 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. As of the date of filing, the beneficiary was a recent Ph.D. graduate. As the petitioner asserts that the beneficiary's three years of experience occurred while pursuing his Ph.D., the director examined whether the beneficiary's Ph.D. research was recognized as outstanding pursuant to the section of 8 C.F.R. § 204.5(i)(3) quoted above. In doing so, the director relied on the regulatory criteria for outstanding researchers set forth below. We will consider the evidence under those criteria as it relates to the broader question of whether the beneficiary qualifies as an outstanding researcher. Nevertheless, we reach the same conclusion that the director did, that the petitioner has not established that the beneficiary enjoys international recognition 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

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.

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

The petitioner submitted evidence that the beneficiary is a member of the Institute of Electrical and Electronics Engineers (IEEE). The petitioner did not provide the general membership requirements for IEEE. The director concluded that membership requirements based on employment or an activity in a given field, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations or the payment of dues were not outstanding achievements. On appeal, counsel no longer asserts that the beneficiary meets this criterion. We concur with the director's implication that the record lacks evidence that IEEE requires outstanding achievements for its general membership.

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 conferences, one of which was organized by Michigan State University, where the beneficiary received his Ph.D. The director concluded that occasional participation as a peer reviewer is not indicative of international recognition. On appeal, counsel simply reiterates the claim that the beneficiary meets this criterion.

We cannot ignore that presentations at conferences are peer reviewed and rely on many scientists to review submitted manuscripts. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. Responding to a call for volunteers or being asked to participate as a reviewer by the institution where one is a student is not evidence of international recognition in the field. 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 director concluded that the record did not establish that the beneficiary's work had contributed to the field beyond his immediate circle of colleagues and questioned the "real world applications" of the beneficiary's work. Counsel asserts that the letters from independent experts and publication of the beneficiary's work in top journals demonstrate that the beneficiary's work is recognized outside his circle of colleagues and has real world applications.

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.

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 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. 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 baccalaureate and Master’s degree in Engineering from Huazhong University of Science and Technology (HUST) in China. The beneficiary began his Ph.D. studies at the University of Iowa under the direction of [REDACTED]. The beneficiary followed Dr. [REDACTED] to Michigan State University where he received his Ph.D. in electrical and computer engineering in 2006. As of the date of filing, the beneficiary was working as a development engineer at ANSYS in Austin, Texas. The beneficiary began working for this company as a Ph.D. student when it was Fluent, which has since been bought out by ANSYS.

[REDACTED] lists three contributions by the beneficiary. First, the beneficiary proposed a novel approach for analyzing scattering and radiation from periodic structures, characterized as time domain Floquet Modes. Dr. [REDACTED] asserts that this method is efficient, elegant, and groundbreaking and can be extended to the analysis of practical problems involving layers of materials. [REDACTED] notes that the beneficiary’s paper reporting this work was a finalist in a student paper competition at an IEEE symposium.

We note that the regulation at 8 C.F.R. § 204.5(i)(3)(i)(A) provides that a major award or prize can serve as evidence indicative of international recognition. Selection as a finalist in a student competition, which cannot be considered major as it excludes the most experienced and renowned members of the field, carries far less weight.

Moreover, recognition as a new paper at the time of presentation demonstrates the potential of the work rather than its demonstrated impact in the field. Significantly, Dr. [REDACTED], a member of the beneficiary's Ph.D. thesis committee at Michigan State University, merely speculates that this work "will be used to explore the properties of novel synthesized electromagnetic materials that will find use in both commercial and defense applications." Dr. [REDACTED] and Dr. [REDACTED] both further assert that additional papers by the beneficiary on this subject are forthcoming. The petitioner must establish that the beneficiary was eligible for the classification as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Work that has yet to be published cannot be considered to have already impacted the field at the international level. The petitioner also bears the burden of establishing the influence of work that has been published. Dr. [REDACTED] does not assert that the beneficiary's time domain Floquet Modes have been applied by other independent research groups.

Second, Dr. [REDACTED] asserts that the beneficiary developed plane wave time domain methods for the analysis of transient scattering from electrically large dispersive objects. In this work, the beneficiary developed a method that permitted the interplay between two different types of basis functions, enabling the optimal analysis of dielectric bodies. Dr. [REDACTED] does not explain how this work has influenced the field such that it is being used beyond the beneficiary's colleagues.

Third, the beneficiary pursued a finite difference time domain technique on tetrahedral elements to solve the problem of stair-casing approximation. Dr. [REDACTED] asserts that the beneficiary's method successfully simulated fields in a tetrahedral domain, resulting in a conference presentation. Dr. [REDACTED] does not identify another laboratory that has adopted this approach.

[REDACTED] Product Manager at ANSYS, asserts that while working for that company, the beneficiary was instrumental in implementing a series of new features for the company's IceWave product, such as simulation restart, sub-cell modeling and 3D far field calculation. Dr. [REDACTED] asserts that IceWave has since undergone two successful official releases. In addition, Dr. [REDACTED] asserts that the beneficiary investigated the company's algorithms for plane wave excitation, reducing errors from greater than 30 percent to 3 percent. This work, performed while the beneficiary was studying for his Ph.D., resulted in the company's subsequent job offer.

[REDACTED] a software manager at ANSYS, provides similar information, asserting that the beneficiary's research has improved the company's competitive edge in the scattering analysis application areas such as radar cross section and validation of stealth technology and that the beneficiary's approach for modeling loss along a wire will enrich the company's offerings to both the electronic design automation community and the electromagnetic compatibility industry.

It is inherent to the position of development engineer to improve existing technology. On page 29 of the petitioner's 2006 annual report, submitted by the petitioner, it states that the petitioner "operates in an industry generally characterized by rapidly changing technology and frequent new product introductions." The record lacks objective evidence of the wider significance of the programs at ANSYS on which the beneficiary has worked, such as articles in trade journals noting ANSYS' unique mastering of algorithms. Page 14 of the petitioner's 2006 annual report discusses the benefits of acquiring Fluent, but the discussion does not single out IceWave or the ground breaking nature of the company's plane wave excitation and wire algorithms.

asserts that Motorola, Xilinx and Texas Instruments have benefited from the ANSYS projects to which the beneficiary contributed. The record lacks confirmation from any of these companies that they use these products and, if they do, when and why they adopted these products.

The above letters are all from the beneficiary's immediate circle of colleagues. As noted by counsel, the petitioner also submitted several letters from assistant professors constituting Dr. [REDACTED]'s coauthors, other members of the field in Texas and more independent members of the field. The petitioner submits additional independent letters on appeal from more experienced members of the field.

[REDACTED], an assistant professor at the University of Texas, Arlington, asserts that he came to know of the beneficiary's work at conferences. We note that [REDACTED] was a postdoctoral researcher at the University of Illinois, Urbana, where Dr. [REDACTED] previously taught, and coauthored several articles with [REDACTED]. Dr. [REDACTED] praises the beneficiary's conference presentations and explains the practical applications of the beneficiary's work. Dr. [REDACTED] does not, however, claim to have applied the beneficiary's techniques or algorithms in his own work or to have cited the beneficiary's work in his own work.

[REDACTED], an assistant professor at the University of Texas at Austin, indicates that he obtained his Ph.D. at the University of Illinois at Urbana-Champaign in 2005. Dr. [REDACTED] also asserts that he has attended the beneficiary's conference presentations. Dr. [REDACTED] characterizes the beneficiary's work as creative and an important breakthrough, but fails to provide examples of how the beneficiary's algorithms are being used in the field. Rather, Dr. [REDACTED] speculates that the beneficiary's Floquet mode techniques "may have many diverse applications in radiation from periodic dipole antennas, scattering from periodic structures and signal integrity analysis for high-speed interconnects, especially for wide-band excitations."

[REDACTED], an assistant professor at the University of Siena in Italy and an adjunct assistant professor at the University of Houston, asserts that he was introduced to the beneficiary's work at a symposium. Dr. [REDACTED] speculates that the beneficiary's work "may suggest significant performance improvement in real-world applications, such as the scanning accuracy and speed in modeling phased-array antennas." Dr. [REDACTED] does assert that the beneficiary's model for scattering from dispersive media in time domain "is a great contribution to the existing time domain integral equation solvers and the Electronics Design Automation industry" but does not identify any company using this model or claim to use the model himself.

One of the letters submitted on appeal provides an example of the application of the beneficiary's work beyond his colleagues. Dr. [REDACTED], Director of Engineering for Zeland Software in California, asserts that he contacted the beneficiary for "further information" regarding his IEEE presentation. Dr. [REDACTED] used the beneficiary's algorithm to compute the scattering for dispersive materials and validate the responses already obtained at Zeland Software. Clearly, another company in the United States has found the beneficiary's work useful, but novel research that contributes to the general pool of knowledge is not necessarily indicative of international recognition. Moreover, as stated above, the beneficiary's contributions must have been recognized internationally as outstanding as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Dr. [REDACTED] in his letter dated May 31, 2008, does not confirm that he had already used the beneficiary's work to validate his own as of July 12, 2007, when the petition was filed.

The remaining letters submitted on appeal are more speculative regarding the potential for the beneficiary's work to be widely utilized. Dr. [REDACTED], an engineer at Continental in Michigan, asserts that he is "seriously considering to use [sic] [the beneficiary's] idea in our company's own design of the high power (200 kW – 1 MW) solar inverters and mobile Microgrids." Dr. [REDACTED] Director of Engineering at Ethertronics in California, asserts that his company "has taken a great interest in [the beneficiary's] research." More specifically, [REDACTED] speculates that the beneficiary's techniques for antenna array will accelerate the development process and that the beneficiary's Floquet models "can lead to enormous development cycle reduction because of its drastic improvement on the computation efficiency." Finally, [REDACTED], Professor of Power Engineering at Nanyang Technology University, asserts that he became aware of the beneficiary's work as part of his efforts to keep abreast of development and advances made by fellow research teams. While [REDACTED] characterizes the beneficiary as an "expert," he characterizes the beneficiary's work as only "detailed and comprehensive" showing "some degrees [sic] of innovation." Dr. [REDACTED] concludes that the beneficiary is a "careful and competent researcher" with "the excellent analytical skills which are essential for the making of a successful engineer."

As noted by counsel on appeal, the beneficiary is also a published author. The record contains copies of five published articles and a manuscript bearing no pagination or journal title. The beneficiary has also presented his work at various conferences. The relevant regulations includes 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. Rather, the petitioner must demonstrate that the beneficiary's published work is sufficiently influential in the field such that the published work can be considered a contribution recognized as outstanding in the field. We acknowledge that the beneficiary's work was considered to have potential when it was selected as a finalist for a best paper award. The record, however, lacks evidence of its subsequent impact in the field, such as evidence that the beneficiary's work has been widely and 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 scientific community. Any Ph.D. thesis or doctoral 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 is internationally recognized 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 five published articles and has presented his work at conferences. 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 stated above, the record contains no evidence that the beneficiary's published work has been cited. Even if we were to conclude that the mere authorship of published scholarly articles was sufficient to meet this criterion, and we do not, for the reasons discussed above, the record falls far short of establishing 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.