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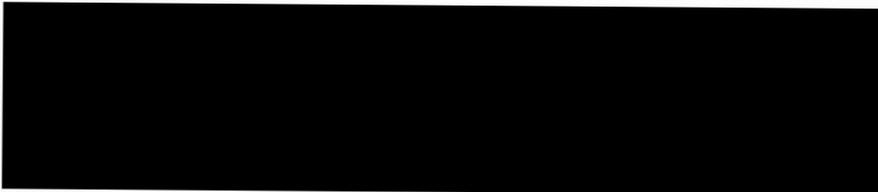
IN RE:

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, 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 university. It seeks to classify the beneficiary as an outstanding professor pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as an assistant professor. 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 resubmits all of the previously submitted evidence, which is already part of the record. Counsel also submits a brief and new evidence, much of which relates to events after the date of filing.

At the outset, we note that the petitioner must establish the beneficiary's eligibility 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). Thus, evidence of articles published after the date of filing or invitations to review manuscripts that postdate the filing of the petition cannot be considered. See also *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Commr. 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that we cannot consider facts that come into being only subsequent to the filing of a petition).

For the reasons discussed below, we uphold the director's decision.

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 13, 2006, to classify the beneficiary as an outstanding researcher in the field of petroleum engineering. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching or 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 beneficiary obtained his Ph.D. in 2005, less than three years before the petition was filed. The petitioner did not submit any evidence that the beneficiary had full responsibility for teaching any class while a Ph.D. student. Thus, the petitioner must demonstrate that the beneficiary's Ph.D. research has been recognized within the academic field as outstanding if that research is to count toward the beneficiary's three years of teaching or research experience.

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.

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).

Initially, counsel asserted that the beneficiary's student fellowship and student paper award serve to meet this criterion. The beneficiary received a student fellowship from the University of Texas at Austin, effective upon his admission to and enrollment at the university. In October 2001, the Society of Petroleum Engineers (SPE) issued the beneficiary a certificate recognizing the beneficiary's participation in the doctoral division of the International Student Presentation/Paper Contest. In response to the director's request for additional evidence, the petitioner submitted an electronically signed letter from [REDACTED], SPE's Young Member Programs Manager, advising that SPE has over 157 student chapters all over the world and that the beneficiary's research presentation was one of 12 student presentations to advance from the district to the regional competition and finally to the international competition.

The director concluded that the record did not establish that his student fellowship and recognition from SPE were major prizes or awards. On appeal, counsel states on page 2 of his brief that the petitioner submitted evidence of "honors and awards" received by the beneficiary. On page 5, counsel reiterates the statements made by [REDACTED]. On pages 13 through 15, however, where counsel discusses the criteria the beneficiary is alleged to meet, counsel no longer asserts that the beneficiary meets this criterion.

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.

We concur with the director that scholarships and fellowships designed to support the recipient's education and paper awards limited to students, thereby excluding the most experienced and renowned members of the field, are not major prizes or awards. Moreover, awards limited to newly published work must necessarily focus on the potential of the work rather than any demonstrated impact in the field.

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

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

The petitioner submitted evidence that the beneficiary is a member of SPE, the American Institute of Chemical Engineers (AIChE) and the Biomedical Engineering Society (BMES). Initially, the petitioner submitted a letter from [REDACTED], Manager of Sales and Customer Service for AIChE, advising that members must be "engaged in an activity and possess scientific knowledge or practical experience which qualify the candidate to cooperate with engineers in the advancement of chemical engineering knowledge."

In response to the director's request for additional evidence, the petitioner submitted the bylaws for AIChE and a membership application containing a chart listing membership requirements. The requirements reflect that members must meet specific education and experience requirements. Notably, an engineer with a baccalaureate in chemical engineering from a school of recognized standing and no experience is eligible for membership. The petitioner also submitted a Member Resource Guide for SPE indicating that members must be employed in work related to the petroleum industry and meet certain educational and/or experience requirements. Finally, the petitioner submitted information about the Society of Biological Engineering (SBE), a technical community of AIChE. The materials reflect that any member of AIChE with an interest in biological engineering may pay the necessary dues to join SBE. It is not clear that SBE is the same as BMES. Thus, the petitioner has not established that the beneficiary is a member of SBE. Regardless, SBE clearly has the same membership requirements as AIChE.

The record does not reflect that any of the organizations of which the beneficiary is a member require outstanding achievements of their general membership. Thus, the director determined that the beneficiary does not meet this criterion and counsel does not challenge that conclusion on appeal. We concur with the director.

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 submitted two articles that cite the beneficiary's work and evidence that a journal printed an abridged version of one of the beneficiary's presentations.

Research articles which cite the beneficiary's work are primarily about the author's own work, not the beneficiary. Review articles typically report on a spectrum of recent reported advances in the field, and are not generally about one particular researcher's work. While such evidence may relate to the impact of the author's scholarly research articles and original contributions, citations in research articles or broad review articles are not particularly persuasive evidence to meet this criterion. Thus, the director concluded that citations of the beneficiary's work could not serve to meet this criterion. On appeal, counsel no longer asserts that the beneficiary meets this criterion, but does discuss the evidence initially submitted to meet this criterion.

The first article citing the beneficiary's work, "Wettability Alteration for Water-Block Prevention in High-Temperature Gas Wells," evaluates five different chemicals for their ability to prevent water block formation at high temperature. The paper cites the beneficiary and another research team for the background principle that water removal occurs in two stages. The second article citing the beneficiary's work, "Modeling Low-Salinity Waterflooding," discusses the author's own model of low salinity flooding and its implications. The article discusses the beneficiary's results, reproducing a graph from the beneficiary's article. While the author of this second article clearly applied the beneficiary's work, the citing article primarily reports the author's own model and, thus, cannot be said to be "about" the beneficiary's work. We will, however, consider the significance of this article below as it relates to the impact of the beneficiary's contributions and scholarly articles.

Finally, the *Journal of Petroleum Technology*, an official publication of SPE, selected one of the beneficiary's presentations to be "highlighted" in their journal. The article is not "about" the beneficiary's work in that it does not analyze or comment upon the beneficiary's work. Rather, it appears to be an abridged version of the beneficiary's presentation. For example, the article never refers to the beneficiary or his research team by name or generically. Rather, the highlighted article is written in the style of a researcher reporting his own results. Readers are advised that for a limited time they can access the full article online.

Thus, rather than constituting published work "about" the beneficiary, this article appears to be an abridged version of an article *by* the beneficiary. While counsel asserts on appeal that this evidence demonstrates that the beneficiary's work is considered "authoritative," the letter from [REDACTED], Technology Editor for the journal, advises the beneficiary that the decision to highlight his work "does not imply peer review or approval of your paper, nor does it affect consideration of your paper by the Editorial Review Committee if you have submitted your paper for review." Thus, the inclusion of an abridged version of the beneficiary's work as a "highlighted" piece appears to involve even less scrutiny than the peer-review process that the journal normally uses to select articles for publication.

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

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

The record reflects that, as of the date of filing, the beneficiary had refereed articles for the *SPE Journal*. The director noted that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. The director concluded that absent 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, the beneficiary cannot meet this criterion.

On appeal, counsel notes that SPE has members worldwide and asserts: "The fact that this international organization sought the opinion of [the beneficiary] as an outstanding expert indicates that his reputation crossed national boundaries. Counsel's assertion is not persuasive. The letter thanking the beneficiary for reviewing his first manuscript for the *SPE Journal* is from Review Chairperson Dr. [REDACTED], one of the beneficiary's own coauthors and collaborators. Being requested to review an article by one's own collaborator is not evidence of international recognition. Moreover, we agree with the director that the peer-review process for scientific journals requires the solicitation of numerous volunteers to review manuscripts.

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

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. 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.

On appeal, counsel notes the importance of the beneficiary's area of research. The classification sought is limited to those researchers with international recognition. We will not presume that every researcher engaged in an important area of research enjoys international recognition for that work.

The petitioner relies on several reference 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. The most persuasive letters are from independent references who were previously aware of the petitioner through his reputation and who have applied his work. 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 director concluded that the record lacked objective evidence supporting the reference letters. On appeal, counsel asserts that the publication of the beneficiary's articles supports the claims of expertise and influence in the reference letters. While the beneficiary's articles are relevant to this criterion, 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.

The beneficiary received his Ph.D. from the University of Texas at Austin in 2005. The beneficiary then worked for several months at PetroTel, Inc. in Texas. As of the date of filing, the beneficiary was working for the petitioning university.

██████████ the beneficiary's Ph.D. dissertation supervisor, asserts broadly that the beneficiary "has made pivotal scientific contributions." More specifically, Dr. ██████████ asserts that the beneficiary described the removal of water in porous media due to the flow of a fully saturated gas, a process that was not even thought to occur. Dr. ██████████ further asserts that the beneficiary's concept of "capillary wicking" in application to evaporative processes "is a unique contribution

which underscores the depth of understanding [the beneficiary] has developed in the area of interfacial flows.” The director expressed concern that Dr. Sharma stated that the beneficiary had authored ten articles while the record contains only five. On appeal, counsel notes that the beneficiary’s curriculum vitae lists nine conference papers, seven articles (only five of which had been published) and three poster presentations.

Irrespective of the number of published articles by the beneficiary, [redacted]’s letter does not establish the beneficiary’s impact in the field. Dr. [redacted] states that the beneficiary’s publications “are already being used by the industrial operators and in other universities to advance the applications to improved recovery of gas.” Similarly, [redacted], Dean of the Viterbi School of Engineering at the University of Southern California and one of the beneficiary’s coauthors, asserts that the beneficiary’s “publications are already being used by industry operators, as well as in other universities to improve recovery of gas from subsurface reservoirs.” Neither Dr. [redacted] nor Dr. [redacted] identifies any specific team either in industry or academia using the beneficiary’s work. The director concluded these claims were unsupported in the record.

On appeal, counsel asserts, “it is unrealistic to think [the experts supporting the petition] would have independent knowledge of the applications of [the beneficiary’s] research by oil and gas companies, other scientists and scholars, or by anyone else.” Counsel also notes that the beneficiary’s research is relatively new. Counsel is not persuasive. [redacted] and [redacted] are the beneficiary’s coauthors. It is reasonable that, if their collaborative work is truly being applied by independent industry researchers, they would be able to identify those using their own research. Moreover, counsel does not explain why [redacted] and [redacted] make the claim that the beneficiary’s work is being applied at other universities and in industry if they have no independent knowledge of that fact. Regardless, the most persuasive evidence of the application of the beneficiary’s research would be letters from independent researchers, either in industry or academia, who can confirm their own use of the beneficiary’s work. The record contains no such letters. The record also lacks evidence that the beneficiary’s work is frequently cited. Finally, if the beneficiary’s research is too new to have impacted the field as implied by counsel on appeal, it would appear that the petition may have been filed prematurely.

It remains, [redacted] does not identify any independent research groups using the beneficiary’s work and the record does not contain letters from these groups confirming their reliance on the beneficiary’s models or theories.

[redacted], Strategic Planning and Business Manager for Chevron, asserts that the beneficiary spent six weeks as a visiting scholar with Chevron in the summer of 2006. [redacted] asserts that the beneficiary developed a pioneering understanding of the effect of interfacial forces on the evaporative phase behavior and rates in porous media. While [redacted] asserts that this work has “far reaching applications,” he does not provide examples of where the beneficiary’s models or theories are being used. [redacted] further asserts that the beneficiary’s research with the mechanism of capillarity “can be used to conveniently determine the effect of multiple parameters of gas

production from wells in one step.” he again provides no examples of how this method has already impacted the field. Finally, [REDACTED] provides no examples to support his assertion that the beneficiary’s work has “wide appeal including the areas of biological tissues engineering.” The record lacks letters from biological engineers confirming their use of the beneficiary’s models or theories.

[REDACTED], a distinguished reservoir engineering advisor with PetroTel, asserts that he knew the beneficiary during his employment with PetroTel. Dr. [REDACTED] characterizes the beneficiary as a “very well qualified young engineer” who is “capable of making significant future contributions to the technology of oil and gas production that will benefit this country.” Dr. [REDACTED] speculates that the beneficiary’s method to understand interfacial forces on the evaporative phase behavior “has potential applications for avoiding unmanageable formation damage phenomena such as halite precipitation.” While [REDACTED] praises the beneficiary’s work on the mechanism of capillarity, he provides no examples of its use in industry or independent university laboratories.

[REDACTED], Chairman of the petitioner’s College of Engineering and Natural Sciences, Petroleum Engineering, claims that the beneficiary is internationally recognized as a leading researcher but then states that the beneficiary is “an up and coming scientist with great potential.” [REDACTED] provides a similar discussion of the specifics of the beneficiary’s work to those addressed above. [REDACTED] does not provide examples of the beneficiary’s work being applied in the field.

Another professor with the petitioning university, [REDACTED] asserts that the beneficiary’s “publications are already being used by the industrial operators and in other universities to advance the applications to improved recovery of gas.” This assertion is not supported by evidence of wide citation of the beneficiary’s publications or by letters from industrial operators confirming their use of the beneficiary’s models and theories.

The petitioner submits a new letter on appeal electronically signed by [REDACTED] of Rock Deformation Research, Ltd. at the University of Leeds. Dr. [REDACTED] asserts that he proposed working with the beneficiary in May 2005 and praises the beneficiary’s work with X-ray imaging, mathematical modeling and numerical methods to study evaporation from porous media. Dr. [REDACTED] asserts that the beneficiary’s research “is expected to help increase gas production.”

As discussed above, the record contains evidence that the beneficiary’s work has been cited twice, once in a paper that applies the beneficiary’s model. This single application of the beneficiary’s work does not establish the type of broad international recognition as outstanding contemplated in the statute.

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 has been recognized internationally 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 had authored five published articles as of the date of filing. The beneficiary had also presented his work at conferences. The director did not contest that the beneficiary meets this criterion. While the beneficiary's articles have appeared in distinguished journals, we will not presume the influence of a given article from the journal in which it appeared. Rather, the petitioner must demonstrate the impact of the beneficiary's individual articles. The beneficiary's conference presentations have generated some interest, as is apparent from the selection to reprint an abridged version of one of the beneficiary's presentations in the *Journal of Petroleum Technology* and the SPE recognition of his presentation at the district and regional level. Moreover, one of the beneficiary's published models has been utilized and cited in another publication, although the beneficiary's work has not been widely and frequently cited. Even if we agreed with the director that the beneficiary does meet this criterion, 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.