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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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FILE: SRC 08 279 50583 Office: TEXAS SERVICE CENTER Date: **MAY 21 2009**

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:  
[Redacted]

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.

John F. Grissom  
Acting 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 AAO will withdraw the director's decision; however, because the petition is not approvable, it is remanded for further action and consideration.

The petitioner is a biopharmaceutical research and development 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 scientist. The director determined that the petitioner had not established that the beneficiary has the necessary three years of experience because the beneficiary had received his Ph.D. less than three years before the petition was filed.

On appeal, counsel submits a brief. For the reasons discussed below, we withdraw the director's decision, which misapplied the regulation at 8 C.F.R. § 204.5(i)(3)(ii), and remand the matter for a more complete analysis of the beneficiary's claimed international recognition under the regulatory criteria set forth at 8 C.F.R. § 204.5(i)(3)(i).

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.

(Emphasis added.) This petition was filed on September 22, 2008 to classify the beneficiary as an outstanding researcher in the field of medical pharmacology. 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 noted by the director, the beneficiary received her Ph.D. in 2007. Thus, the director concluded that the "timeframe does not enable the beneficiary to complete the minimal three years of outstanding postdoctoral degree work prior to submitting the petition." The director then stated that "additionally," the "volume and depth" of the beneficiary's research "does not meet the high criteria set for outstanding researchers in her field who have years of experience and numerous significant discoveries recognized by major national and international awards."

The use of the word "additionally" suggests that the director concluded that the lack of three years of postdoctoral experience in and of itself precluded approval of the petition. The regulation at 8 C.F.R. § 204.5(i)(3)(ii), however, provides that experience conducted while the beneficiary was a Ph.D. student can be considered provided that work "has been recognized within the academic field as outstanding." Thus, we must withdraw the director's conclusion that the beneficiary's inability to document three years of postdoctoral experience precludes approval of the petition.

At issue, then, is whether the beneficiary's work is internationally recognized 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 director appears to have concluded that the beneficiary is not internationally recognized as outstanding, but the basis of that conclusion is the “volume and depth” as compared with those who have “years of experience” and who have received “major national and international awards.” These factors, however, are not the statutory or regulatory standards for this classification.<sup>1</sup> The director’s decision does not explain how the evidence fails to meet at least two of the regulatory criteria set forth at 8 C.F.R. § 204.5(i)(3)(i) and, thus, makes it difficult for the petitioner to file a meaningful appeal.

In addressing whether the evidence is sufficient to meet the regulatory criteria, the director should consider the following issues.

In order to meet the membership criterion at 8 C.F.R. § 204.5(i)(3)(i)(B), the petitioner cannot rely on the association’s mission or reputation but instead must provide official membership criteria demonstrating that the association requires outstanding achievements of its members.

According to the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C), the published material must be “about” the alien’s work. It is absurd to suggest that a single sentence or paragraph constitutes the entire published material; thus, the beneficiary’s work must be the subject of the article itself. 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.

Evidence submitted to meet the judging criterion at 8 C.F.R. § 204.5(i)(3)(i)(D) must be considered within the context of the fact that scientific journals are peer reviewed and rely on many scientists to review submitted articles.

- Analysis of evidence submitted to meet the contributions criterion at 8 C.F.R. § 204.5(i)(3)(i)(E) must take into account that research work that is unoriginal would be unlikely to secure the beneficiary an advanced degree and, thus, originality alone does not set the researcher apart from other researchers. 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 if the requirement

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<sup>1</sup> Although a major award is one of the regulatory criteria, 8 C.F.R. § 204.5(i)(3)(i)(A), it is only one of the six regulatory criteria of which an alien need only meet two.

that an alien meet at least two criteria is to have any meaning. In addition, a patent application in and of itself does not show that the beneficiary's invention is more significant than those of others in her field. Finally, while the opinions of other members of the field are relevant, an individual with international recognition should be able to produce unsolicited materials reflecting that recognition.

- Scholarly articles submitted to meet the regulation at 8 C.F.R. § 204.5(i)(3)(i)(F) must be considered in the context of the inherent nature of publication to the researcher occupation.

Therefore, this matter will be remanded. The director must issue a new denial notice, containing specific findings that will afford the petitioner the opportunity to present a meaningful appeal. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above, and therefore the AAO may not approve the petition at this time. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.