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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
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U.S. Citizenship
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FILE: [REDACTED]
SRC 08 065 51763

Office: TEXAS SERVICE CENTER Date: **MAY 26 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:

SELF-REPRESENTED

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

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 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 associate business professor. The director determined that the petitioner had not established that it had offered the beneficiary a tenure or tenure-track position or that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher.

On appeal, the petitioner submits a statement and new evidence. For the reasons discussed below, the petitioner has not overcome the director's bases of denial. Most significantly, the petitioner has not submitted the required initial evidence set forth under the regulatory criteria at 8 C.F.R. § 204.5(i)(3)(i)¹ and has never explained which of those criteria the beneficiary is alleged to meet.

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

¹ As will be discussed below, this regulation contains six criteria, of which an alien must meet at least two.

(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.

JOB OFFER

The regulation at 8 C.F.R. § 204.5(i)(3)(iii) provides that a petition must be accompanied by:

An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or

(C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

On Part 6 of the petition, the petitioner indicated that the proposed employment was a permanent position. The petitioner submitted a May 14, 2007 letter from the petitioner addressed to the beneficiary advising that the beneficiary's contract was due for renewal and a contract dated August 7, 2007 whereby the petitioner would employ the beneficiary as an associate professor for a 27 month period from August 11, 2007 to May 8, 2010.

On October 21, 2008, the director requested a qualifying job offer. In response, the petitioner submitted a June 26, 2008 letter from the petitioner to the beneficiary advising that the beneficiary's contract was due for renewal. The petitioner also submitted a July 2, 2008 contract whereby the petitioner would employ the beneficiary for a 27 month period from August 9, 2008 through May 14, 2011.

The director concluded that the petitioner had not demonstrated that the petitioner had offered the beneficiary a tenure or tenure-track position.

On appeal, the petitioner asserts:

Tenure generally implies permanence and job security. This is what [the petitioner] has offered to [the beneficiary] since he was promoted to the category of Associate Professor in Spring 2007.

The petitioner submits two pages from its Faculty Handbook. The handbook provides that associate professors are awarded three year rolling contracts negotiated annually. None of the pages provided indicate which positions are considered tenure-track.

The petitioner is employing the beneficiary in a teaching position. Thus, at issue is not whether the beneficiary's position meets the definition of permanent but whether the position is a tenure or tenure-track position. The handbook confirms that the petitioner does employ tenured faculty. A tenure-track position is one that can lead to tenure. Webster's New College Dictionary 1165 (3rd ed. 2008). We will not presume that a given position can lead to tenure. Thus, without evidence that an associate professor can be promoted to a tenured position, the petitioner cannot meet its burden.

INTERNATIONAL RECOGNITION

The regulation at 8 C.F.R. § 204.5(i)(3) states that a petition for an outstanding professor or researcher must be accompanied by:

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from current or former employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

This petition was filed on December 17, 2007 to classify the beneficiary as an outstanding teacher in the field of business. 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 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 evidence before the director, including the response to the director's notice of intent to deny that enumerated the six regulatory criteria for eligibility, consisted of conference presentations, an invitation to attend a Marketing Management Reviewer Workshop, the beneficiary's self-serving curriculum vitae, three reference letters from the beneficiary's immediate circle of colleagues and the beneficiary's education credentials. The director concluded that the petitioner did not demonstrate that the beneficiary meets the criteria for classification. The lack of further elaboration in the director's final decision is justified given the minimal evidence submitted and the petitioner's failure to ever explain how the evidence relates to any of the regulatory criteria. Even on appeal, the petitioner does not specify which criteria the beneficiary is alleged to meet. Rather, the petitioner merely asserts that the beneficiary has taught students from all over the world, has participated as a lecturer in study abroad programs, is developing a book and has reviewed textbooks. Only the last claim even relates to one of the regulatory criteria. Nevertheless, we will analyze the evidence under the six criteria.

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

On his self-serving curriculum vitae, the beneficiary indicates that he was an "American Marketing Association Doctoral Fellow" in 1999 and recognized as "Outstanding Faculty of the Year" by the petitioner for the academic year 2002-2003. First, the petitioner did not submit either award. The nonexistence or unavailability of required initial evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)) (going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings).

Regardless, 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. *Compare* 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). Thus, awards limited to students overall or faculty at a particular institution cannot serve to meet this criterion.

In light of the above, the petitioner has not documented 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 beneficiary lists no memberships on his curriculum vitae, other than committees at the petitioning university that cannot serve to meet this criterion, and the record contains no evidence of any memberships. Thus, the petitioner has not documented 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 record contains no evidence relating to 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.

On his curriculum vitae, the beneficiary indicates that he served as a reviewer for five books. The petitioner submitted evidence of a single invitation to attend a Marketing Management Reviewer Workshop held by ██████████ to gain feedback from educators on *Marketing Management*. In response to the notice of intent to deny, the petitioner submitted the introduction to the book, which indicates that the beneficiary was one of 32 professors to review the draft. On appeal, the petitioner submits an unsigned February 24, 2009 letter purportedly from ██████████ advising that iD8 Publishing Services, Inc. was inviting the beneficiary to participate in another text book review. As this letter is unsigned, it has no evidentiary value. Similarly, the petitioner submits another unsigned May 28, 2008 letter purportedly from ██████████ Senior Editor for Sage Publications, requesting the beneficiary's assistance in evaluating the viability of a book project. Once again, the unsigned letter has no evidentiary value. Moreover, both unsigned letters postdate the filing of the petition. The petitioner must establish the beneficiary's eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

The invitations and other materials from ██████████ suggest that the review workshop was designed to receive educator feedback on the book's usefulness in the classroom as an educational tool. It would appear that the beneficiary was invited as an educator who might use this tool rather than as an internationally recognized expert in the field.

Without more information, we cannot conclude that this one workshop serves to meet 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.

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 or scholarly conference presentations 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.

Initially, the petitioner submitted the beneficiary's unpublished dissertation and evidence that he has presented his work at conferences. In response to the director's notice of intent to deny, the petitioner submitted a letter from the Chair of the beneficiary's department and two letters from Florida International University, where the beneficiary received his Ph.D.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of international recognition. U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS 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; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS 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 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread recognition and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive. 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.

Chair of the petitioner's Department of Business Administration, merely describes the beneficiary's titles at the petitioning institution. While [REDACTED] asserts that the beneficiary has performed research in the areas of Customer Service in the Information Technology Environment, Marketing in Less Developed/Developing Countries and Consumer Choice Preferences for Bundled/Unbundled Products, [REDACTED] does identify any original results that arose from this work or explain how it has influenced the field. [REDACTED] and [REDACTED], both members of the beneficiary's Ph.D. dissertation committee, confirm that the beneficiary taught courses while a Ph.D. student, but do not assert that he is internationally recognized for outstanding contributions or that his work has influenced the field.

Without evidence of specific contributions and their influence in the field, we cannot conclude 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 beneficiary's self-serving curriculum vitae lists six refereed conference presentations and one non-refereed conference presentation. The beneficiary also lists four research projects "in progress." The petitioner submitted evidence of three conference presentations. On appeal, the petitioner asserts that the beneficiary is developing a book and submits a book proposal prepared by the beneficiary. The petitioner, however, 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. at 49.

As of the date of filing, the beneficiary had not published a single scholarly article. Even if we considered the beneficiary's conference presentations, the Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at www.bls.gov/oco on May 21, 2009 and incorporated into the record of proceedings), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See* www.bls.gov/oco/ocos066.htm. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's

field. The record contains no evidence that sets the beneficiary's presentation record apart from other faculty in his field, such as evidence that he has been cited by independent researchers. Thus, the petitioner has not established that the beneficiary meets this criterion.

The record stops far short of elevating the beneficiary to the level of an alien who is internationally recognized as an outstanding researcher or professor. The petitioner has not submitted the required initial evidence necessary to establish eligibility under the regulatory criteria at 8 C.F.R. § 204.5(i)(3)(i) and has never explained which criteria the beneficiary is alleged to meet. 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.