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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**

B3

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUN 28 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

✓ Perry Rhew
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 on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is an institution of higher education. 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.

I. Law

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 May 1, 2008 to classify the beneficiary as an outstanding professor in the field of international politics and gender studies. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching experience in the field as of that date, and that the beneficiary's work has been recognized internationally within the field as outstanding. The director did not question that the beneficiary, who received her Ph.D. in November 1994 and has taught at universities in Pakistan and the United States, has the necessary three years of experience. At issue is whether the petitioner has established that the beneficiary 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 the following six criteria, of which the beneficiary must submit evidence qualifying under at least two.

- (A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;
- (B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;
- (C) 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;
- (D) 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;
- (E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or

(F) Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under a similar classification set forth at section 203(b)(1)(A) of the Act. *Kazarian v. USCIS*, 2010 WL 725317 (9th Cir. March 4, 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion. With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

The court stated that the AAO's evaluation rested on an improper understanding of the regulations.¹ Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at *6 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at *3.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination.² While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court's reasoning persuasive to the classification sought in this matter. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) (comparable to 8 C.F.R. § 204.5(i)(3)(i)(D)) and 8 C.F.R. § 204.5(h)(3)(vi) (comparable to 8 C.F.R. § 204.5(i)(3)(i)(F)).

² The classification at issue in *Kazarian*, section 203(b)(1)(A) of the Act, requires qualifying evidence under three criteria whereas the classification at issue in this matter, section 203(b)(1)(B) of the Act, requires qualifying evidence under only two criteria.

analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (recognizing the AAO's de novo authority).

II. Analysis

A. Evidentiary Criteria

The director concluded that the evidence of the beneficiary's service on editorial boards and requests from journals in multiple countries to review manuscripts constitutes qualifying evidence of judging the work of others in the field under 8 C.F.R. § 204.5(i)(3)(i)(D) and we concur with that determination. We now address two additional regulatory categories of evidence that we also find satisfied.

Evidence of the alien's original scientific or scholarly research contributions to the academic field.

The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(E) does not require that the beneficiary's contributions themselves be internationally recognized as outstanding. That said, the plain language of the regulation does not simply require original research, but an original "research contribution." Had the regulation contemplated merely the submission of original research, it would have said so, and not have included the extra word "contribution." Moreover, the plain language of the regulation requires that the contribution be "to the academic field" rather than an individual laboratory or institution. We simply note that the regulations include a separate criterion for scholarly books and articles at 8 C.F.R. § 204.5(i)(3)(i)(F). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly books articles.

Dr. [REDACTED], asserts that the beneficiary's book, *Beyond Honour – A Historical Materialist Explanation of Honor Related Violence*, contributed to the knowledge base on honor killings and "has laid the groundwork for formulating a solution to the continuing cycle of violence against women in the name of 'honour.'" Dr. [REDACTED] affirms: "No one before has produced such a far-reaching analysis of these shameful crimes." More specifically, Dr. [REDACTED] explains that the beneficiary's theory "is that the basis for honor crimes is not just cultural ideals, but instead that political parties, the justice system, and economic motives of the perpetrators are all determining factors in these crimes in addition to the traditional historical, religious and cultural factors." In support of the importance of this book, Dr. [REDACTED] asserts that 500 people attended the book signing in Karachi, including a former Supreme Court justice, the Chairman of the National Commission of Women and representatives of international consulates from around the world. A press release from the University of Denver confirms this information.

Subsequently, Dr. [REDACTED] notes that the Council of Social Sciences, Pakistan awarded the book the Dr. [REDACTED] Memorial Award for the best social science book in the area of gender discrimination published in Pakistan in 2006. According to other evidence of record, the award includes a monetary prize of 50,000 rupees (\$821.02).³ Finally, Dr. [REDACTED] notes that the beneficiary presented her findings to a 2007 Expert Group Meeting hosted by the United Nations (U.N.) Special Rapporteur on Violence Against Women in Geneva.

Dr. [REDACTED] on Trade and Development, explains that he reviewed the beneficiary's book and stated that it was "a timely scholarly contribution to the investigation of an area which is important to all concerned citizen's [sic] of the world. Based on original field research, the book contains many creative insights and theoretically coherent and rigorous."

Professor [REDACTED] indicates that she also serves as the U.N. Special Rapporteur on Violence Against Women and a board member of the U.N. Research Institute for Social Development. Professor [REDACTED] asserts that in November 2006, as part of the preparation of her annual report for the Human Rights Council, she organized an Expert Group Meeting in Geneva on the subject of the intersections of culture and violence against women. Professor [REDACTED] explains that she invited the beneficiary to the meeting "due to her background in women's rights activism and her excellent research for her book." Professor [REDACTED] further notes that she participated in a panel discussion organized by the beneficiary jointly with the Women's U.N. Network (WUNRN) which took place during the U.N. Commission on the Status of Women's 2007 annual meeting in New York.

[REDACTED] of the Asia Pacific Forum on Women Law and Development (APWLD), explains that the beneficiary has conducted two research studies for APWLD, one of which was presented at a panel organized by APWLD and the Women's U.N. Network.

Dr. [REDACTED] of Malaysia, confirms that in her graduate courses she has been assigning a chapter from the beneficiary's book and two of her articles as required readings. Similarly, Dr. [REDACTED] a senior instructor at the University of Colorado-Boulder, also asserts that he assigns chapter from the beneficiary's book and her articles as assigned reading.

Linda Reeder, an associate professor at the University of Missouri, states:

I first met [the beneficiary] in the fall of 2007. I contacted her after I came across her book, *Beyond Honor*, and invited her to join our interdisciplinary scholarly network entitled "Love and Hate in a Mobile World." This network, comprised of scholars, journalists, activists and policy makers, explores the ways migration affects personal

³ U.S. dollar equivalent on October 9, 2006 according to www.oanda.com, accessed June 24, 2010 and incorporated into the record of proceedings.

and political notions of love, loyalty and patriotism. One of the driving questions that emerged in the last three years from this network has been the meaning of honor crimes in migrant communities. [The beneficiary's] rigorous research and methodological framework has been instrumental in framing our thinking about honor crimes. [The beneficiary] is one of the premier authorities on the issue of honor crimes in the world.

This assertion is supported in the aggregate by requests for the beneficiary to participate in international symposiums, a request for responses to a lengthy list of specific questions from the Research Directorate of the Immigration and Refugee Board of Canada, citations of the beneficiary's research findings in a report by Amnesty International and an article in *National Geographic News* and quotes from the beneficiary in other media.

The above experts have not merely reiterated the regulatory language at 8 C.F.R. § 204.5(i)(3)(i)(E) or the statutory standard for the classification sought. Rather, they have detailed how the beneficiary's scholarly contributions are both original and a contribution to the field as a whole. Several of these experts have explained how they are currently using the beneficiary's work. Moreover, as stated in the preceding paragraph, the remaining evidence of record bolsters the assertions contained in the letters.

In light of the above, the petitioner has submitted qualifying evidence that meets the plain language requirements of 8 C.F.R. § 204.5(i)(3)(i)(E).

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 of one scholarly book authored by the beneficiary and evidence of two scholarly articles in form of citations to those articles.⁴ Thus, the beneficiary has submitted evidence that qualifies under 8 C.F.R. § 204.5(i)(3)(F).

In light of the above, the petitioner has submitted evidence that meets three of the criteria that must be satisfied to establish the minimum eligibility requirements for this classification. Specifically the petitioner submitted evidence to meet the criteria set forth at 8 C.F.R. §§ 204.5(i)(3)(i)(C), (D) and (F). The next step, however, is a final merits determination that considers whether the evidence is consistent with the statutory standard in this matter, international recognition as outstanding. Section 203(b)(1)(B)(i) of the Act.

⁴ Several references attest to the beneficiary's journal articles also listed on the beneficiary's self-serving curriculum vitae, but the petitioner did not support those assertions with copies of the first pages of those articles. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

B. Final Merits Determination

It is important to note at the outset 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 beneficiary's qualifying evidence includes editorial positions, contributions to the field of gender studies as a whole – as demonstrated through reliance on the beneficiary's work by the U.N. and non-governmental organizations (NGOs) – and her scholarly writings. The qualifying evidence is also supported by other evidence of record including a prestigious award. The evidence of record in the aggregate does set the beneficiary apart in the academic community through eminence and distinction based on international recognition. 56 Fed. Reg. at 30705.

III. Conclusion

Upon careful consideration of the evidence offered with the initial petition, and later on appeal, we conclude that the petitioner has satisfactorily established that the beneficiary enjoys international recognition as outstanding. The petitioner has overcome the objections set forth in the director's notice of denial, and thereby removed every stated obstacle to the approval of the petition.

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 met that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.