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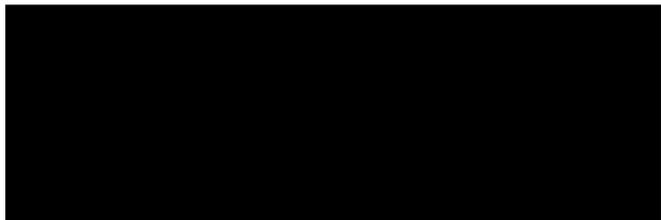
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED]
LIN 08 186 50988

Office: NEBRASKA SERVICE CENTER

Date: **MAR 15 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:

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).

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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is an educational/research institution. 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 submits a brief and additional evidence. For the reasons discussed above, 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 June 13, 2008 to classify the beneficiary as an outstanding researcher in the field of operations management. 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. In addition, the petitioner must establish the beneficiary's eligibility as of June 13, 2008. 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 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.

In 2005, the petitioner won the Outstanding Student Paper award from the Portland International Center on Management and Engineering and Technology, contingent on the beneficiary's presentation of this

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.

work at a conference in Portland. The director requested evidence of the significance of this award. The petitioner's response did not address this criterion. The director concluded that no evidence had been submitted to meet this criterion. Counsel does not challenge this conclusion on appeal.

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).

Competition for student awards is limited to other students. Thus, they do not suggest that a beneficiary is internationally recognized as outstanding. As such, the petitioner has not demonstrated 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 director concluded that the beneficiary meets this criterion and we concur.²

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."

² The director's implication, however, that the sole evidence submitted to meet this criterion was evidence that the beneficiary has participated in the widespread peer review process on a regular basis, is not accurate. The record contains other evidence, including evidence of repeated panel and session chairmanships that, in the aggregate, support the director's ultimate conclusion that the beneficiary meets this criterion.

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.

While several of the references raise the beneficiary's experience judging the work of others as evidence that the beneficiary must have made contributions to the field, the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(D) is a separate criterion. We will not presume that meeting that entirely separate criterion creates a presumption that the beneficiary also meets this criterion, set forth at 8 C.F.R. § 204.5(i)(3)(i)(E). To hold otherwise would undermine the regulatory requirement that the beneficiary meet at least two separate criteria.

Furthermore, the regulations also include a separate criterion for scholarly articles. 8 C.F.R. § 204.5(i)(3)(i)(F). Thus, the mere authorship of scholarly articles and presentation of the beneficiary's work cannot serve as presumptive evidence to meet this criterion. As with the judging criterion, to hold otherwise would render the regulatory requirement that a beneficiary meet at least two criteria meaningless. Moreover, as of the date of filing, the beneficiary had published only a single article. While she had presented her work at several conferences, the record contains no evidence of the impact of these presentations, such as citations.

One of the beneficiary's references, [REDACTED], a visiting professor at the University of Groningen in The Netherlands, asserts:

Please note that due to the rapid pace that takes place in business and the immediacy of business practices and environments, researchers usually disseminate their results to the international audience through international conferences, rather than journals. As a result, [the beneficiary's] publications and presentations at leading international conferences are just as significant, or even more so, than her publications in scholarly journals.

None of the references provide their curriculum vitae. As such, we cannot review those documents in determining the prevalence of publication in the beneficiary's occupation. We note, however, that [REDACTED] of the Center for Intelligent Supply Networks (C4iSN) at the University of Texas at Dallas' School of Management, asserts that he has authored over 300 papers and serves in an editorial capacity for ten journals that publish articles in the beneficiary's field. [REDACTED] a professor at McGill University, asserts that he has published articles in at least eight journals. [REDACTED] an associate professor at Washington University in St. Louis, asserts that he has been published in at least three journals. [REDACTED] a professor at the University of Texas at Dallas and the beneficiary's coauthor, asserts that has authored numerous papers in numerous journals. She

further indicates that all of her papers are on the list of 475 articles that have 50 or more citations in *Management Science* in the last 50 years. [REDACTED] a former member of the faculty at the University of Texas at Dallas, asserts that he has published articles in at least six journals. Thus, the record does not support [REDACTED] assertion that researchers in the beneficiary's field usually disseminate their results in conferences rather than journals. Instead, it appears that there are several journals covering the field of operations management and that researchers in that field frequently publish their work in those journals in addition to rather than instead of presenting their work at conferences.

On appeal, the petitioner submits a review article only recently published online in advance of appearing in the journal *Operations Research*. This article cites the beneficiary's lone published article. Counsel cites a non-precedent decision by this office in a lesser classification which looked at citations that postdated the filing of the petition. First, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all U.S. Citizenship and Immigration Services (USCIS) employees in the administration of the Act, unpublished decisions are not similarly binding. Second, as stated above, the decision referenced by counsel involved a lesser classification pursuant to section 203(b)(2) of the Act. Third, the decision referenced by counsel involved an article where the citation rate had increased after the date of filing. In the matter before us, the beneficiary's article had never been cited as of the filing date.

The petitioner must demonstrate the beneficiary's eligibility as of the filing date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. In this matter, that means that the petitioner must demonstrate the beneficiary's international recognition as outstanding as of that date. All of the case law on this issue focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate the beneficiary's eligibility. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l. Comm'r. 1977); *Matter of Katigbak*, 14 I&N Dec. at 49; *see also Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Comm'r. 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.") Consistent with these decisions, a petitioner cannot secure a priority date in the hope that the beneficiary's recently published research will subsequently prove influential. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008). Regardless, we are not persuaded that a single published citation is indicative of the beneficiary's international recognition as outstanding.

As noted by counsel on appeal, the petitioner submitted several letters from members of the beneficiary's field, including several letters from independent references. As will be seen from the detailed discussion that follows, however, counsel mischaracterizes these letters as providing "great detail of the impact and significance of the Beneficiary's research results and developments." In actuality, while the letters discuss the beneficiary's specific projects in detail, the references mostly speculate as to the future applications of the beneficiary's work. The two letters that do affirm use of

the beneficiary's work do not reveal the type of application of the beneficiary's work that is indicative of or consistent with international recognition as outstanding.

discusses the beneficiary's Ph.D. research at the University of Texas at Dallas. First, discusses the beneficiary's proposal of a new business model, commit-to-delivery, for make-to-order companies that the beneficiary developed for Dell. While asserts that the beneficiary demonstrated that Dell could improve profits by 17 percent "if" it adopts the beneficiary's business model, does not suggest that Dell has actually done so and realized the improved profits predicted. The record contains no letters from officials at Dell confirming that they have applied or are in the process of applying the beneficiary's business model.

According to the beneficiary also conducted studies to determine whether a make-to-order manufacturing company should quote to customers a uniform lead time and price or a menu including different manufacturing lead times associated with different prices. explains that the beneficiary found that the answer differs based on the customer and production characteristics and developed a formula for companies to decide the optimal capacity level that they should build. concludes that this work "not only improves social resource utilization by balancing demand and production capacity, but also provides better customer service for the world." however, fails to provide an example of any make-to-order company that has successfully applied the beneficiary's formula.

further asserts that the beneficiary studied advance selling practices, which reduce uncertainty about demand but typically require retailers to offer a discount. The beneficiary found that the benefits of an advance selling strategy are contingent on the parameters of the market, the consumer and heterogeneity. states that this work "provides detailed guidance for retailers to use advance selling as a powerful tool to better match supply with demand." does not, however, provide any examples of retailers using the beneficiary's parameters in deciding whether to use advance selling.

also discusses the beneficiary's current studies on lateral cooperation among competing firms, "where competing firms share inventories or manufacturing capacities by agreeing upon a contract." speculates that this work, "once completed will drastically change the business practices of American industry where competitors will also look at each [other] as partners." As the beneficiary had yet to complete this work as of the date of filing, we cannot conclude that this work is an internationally recognized contribution.

In evaluating letter, we cannot ignore that he states that the beneficiary's work "has resulted in several publications in leading journals of international circulation." In fact, when wrote this letter, the beneficiary had published only a single article. does not explain how he reached the conclusion that the beneficiary had "several" articles in leading journals.

asserts that the beneficiary has "a documented history of producing important contributions to this field." As examples of these contributions, asserts that the beneficiary's work

includes “breakthroughs in developing solution methodologies capable of solving industry-size problems.” Once again, [REDACTED] provides no examples of industry utilizing the beneficiary’s proposed solutions or formulas. [REDACTED] a former professor at the University of Texas at Dallas provides similar information.

The remaining letters are from independent references. [REDACTED] asserts that he has been following the beneficiary’s work since hearing her presentation at a conference. [REDACTED] notes the beneficiary’s work studying coordination among independent retailers and manufacturer-owned distribution channels. [REDACTED] notes that he proposed a new type of contract to coordinate the system in one of his own publications. [REDACTED] then concludes that the beneficiary was “the first to provide a new contract, minimum price constrained revenue sharing contract, which coordinates the system and arbitrarily allocates profits for this case.” [REDACTED] discusses the benefits of the beneficiary’s contract but does not indicate that it is being used or promoted by industry. As stated above, [REDACTED] implies that this work had yet to be completed as of the date of filing.

[REDACTED] then discusses the beneficiary’s study of how to better match supply with demand through advance selling. [REDACTED] explains that the beneficiary “has shown whether a retailer should sell in advance, how much price discount should the retailer give to pre-orders, and how to improve demand forecast for the selling season based on the sales information realized in the end of the advance selling period.” [REDACTED] asserts that this research “has been positively reviewed in *Management Science*, a flagship journal in our field.” While the beneficiary presented this work at a conference in 2006, the record contains no evidence that this work has been positively reviewed by a journal. Rather, the beneficiary’s curriculum vitae reflects that her own manuscript on this subject is under consideration for publication in *Management Science*. That the beneficiary’s work is under consideration for publication is not indicative of or consistent with international recognition. Ultimately, [REDACTED] provides no examples of the beneficiary’s models or formulas being used by businesses or applied by academicians.

[REDACTED] asserts that he knows the beneficiary through her presentations and is basing his opinion on the beneficiary’s presentations and publications in the plural. As stated above, while the beneficiary has presented her work at multiple conferences, she has only one publication. [REDACTED] focuses on the beneficiary’s work on a dual channel supply chain whereby a manufacturer sells a single product to end-users through both a traditional retail channel and a manufacturer-owned outlet store. [REDACTED] explains that the beneficiary modeled each channel as a newsvendor problem and analyzed the optimal decisions for each location and proved the existence of a unique equilibrium for the system. According to [REDACTED], the beneficiary also proposed a new modified revenue sharing contract, in which the manufacturer imposes a minimum retail price to enable supply chain coordination. This contract not only coordinates the supply chain, but also arbitrarily allocates supply chain profits among the members, an important contribution to the supply chain coordination literature according to [REDACTED]. [REDACTED] concludes that the beneficiary’s study “has the potential of providing great benefits to American economics and improving customer service level as a whole.” [REDACTED] does not provide

examples of the beneficiary's contract being used by industry. Moreover, as stated above, suggests that this work was not yet complete as of the date of filing.

, a professor at the Seidman School of Business, Grand Valley State University, asserts that he knows the beneficiary through her body of research and academic discussions. affirms the importance of the beneficiary's area of research, which is not in contention. praises the beneficiary's attempt to integrate the production and transportation models, concluding that her approach has "tremendous value" based on its "pragmatism and ease of implementation." He does not, however, provide examples of any research team or industry that has implemented the beneficiary's integrated approach.

Several of the other letters provide similar information. For example, , a professor at the University of Washington asserts that the beneficiary's work "can be applied widely in many industries" but provides no examples where it has been applied. asserts that companies such as Dell "can use the mechanism" proposed by the beneficiary. These letters, from academia rather than industry, do not establish the impact of the beneficiary's work in industry.

As discussed below, three of the letters submitted in response to the director's request for additional evidence address the beneficiary's impact on academia. As can be seen from the following discussion, however, their examples are limited and not indicative of or consistent with international recognition as outstanding as of the date of filing.

of the National University of Ireland, Galway, asserts that he has been impressed with the beneficiary's "papers" and conference presentations. He later states that the beneficiary has "publications in the top international journals" even though the beneficiary had published only one article in one journal. More specifically, states that the beneficiary's model for advance orders is capable of handling all three types of uncertainties and that she is "the first one to successfully build it and solved it." concludes that this comprehensive model provides useful and robust guidance for companies as well as showing other researchers a new way to handle complexities from reality but does not provide any examples of companies or researchers utilizing the beneficiary's model. Regarding the beneficiary's coordination contracts, concludes that they are superior to other contracts that require information sharing between competitors and "the best coordination mechanism that I have ever seen so far for such a supply chain system." does not provide examples of how these contracts are being implemented, resulting in more coordination between competitors. We reiterate that indicates this work was not yet complete as of the date of filing. does not claim to have been influenced personally by the beneficiary's work, although he does confirm that her research has been selected to be read and discussed in a Ph.D. seminar series at his university. While notable, this one example of the beneficiary's research being discussed in a seminar is less persuasive than examples of several course curricula from different universities all including papers or articles by the beneficiary.

██████████ an associate professor at McGill University, asserts that the beneficiary was the first to study whether a company should offer one uniform service or time differentiated services to customers. He concludes that her results “can” provide guidance for companies facing this problem. ██████████ does affirm personally using the beneficiary’s work as “one of the most important references” in his own paper. On appeal, the petitioner submits the paper, which won a student award but does not appear to have been published.

Finally, ██████████ asserts that the beneficiary’s work on advance selling surprisingly revealed that advance selling may not be profitable for some companies and provides “helpful management insights for practice” as well as filling “important gaps in the literatures.” Once again, ██████████ does not identify any industry that is applying the beneficiary’s work when deciding whether or not to pursue an advance selling strategy.

██████████ an associate professor at the University of Maryland, asserts that the beneficiary’s work on integrated production and distribution “has been especially useful” in his own project. As an example, ██████████ notes that he has cited the beneficiary’s work in a review article. As discussed above, that review article, which cited an additional 85 articles in addition to the beneficiary’s article, was not published prior to the date of filing in this matter.

The opinions of experts in the field are not without weight and have been considered above. 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, as we have done above, 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)).

The letters considered above primarily contain bare assertions of widespread recognition. While the letters discuss the beneficiary’s work in detail and affirm its importance, they do not provide specific examples of how those contributions have influenced the field. The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

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.

As discussed above, as of the date of filing, the beneficiary had authored a single published article and had presented her work at several conferences. As also discussed above, however, the assertion by [REDACTED] that researchers in the beneficiary's field present their work rather than publish it is contradicted by the record of proceeding.

The Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at www.bls.gov/oco on February 25, 2010 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.

As discussed above, the beneficiary's work had not been cited at all as of the date of filing. The record also lacks evidence from industry confirming their reliance on the beneficiary's published or presented work. Thus, we concur with the director that the beneficiary's publication and presentation record does not set the beneficiary apart from other members of her field.

The petitioner has shown that the beneficiary is a talented and prolific researcher, who has won the respect of her 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.