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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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Services

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FILE:

[REDACTED]
SRC 09 065 52082

Office: TEXAS SERVICE CENTER

Date: **MAY 10 2010**

IN RE:

Petitioner:
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.


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

The petitioner is a public university. 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 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 professor or researcher.

On appeal, counsel submits a brief and additional evidence. Given the entire record of proceeding, including the evidence submitted on appeal, we are satisfied that the petitioner has demonstrated the beneficiary's eligibility for the classification sought.

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 December 24, 2008 to classify the beneficiary as an outstanding researcher in the field of geography. 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 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.

As noted by counsel on appeal, 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.¹ 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. 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

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.

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 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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria³

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 petitioner documented several examples of peer review by the beneficiary. Specifically, the beneficiary authored a book review in *Eurasian Geography and Economics*. In addition, the beneficiary reviewed a proposed chapter submitted for inclusion in the book *Progress in Spatial Analysis: Theory and Computation and Thematic Applications*. Finally, the beneficiary reviewed manuscripts for *Urban Geography*, *Regional Studies*, the *American Journal of Public Health*, *The Annals of Regional Science*, the *Journal of Geographical Systems*, *International Regional Science Review* and *International Development Planning Review*. Thus, the petitioner submitted qualifying evidence under 8 C.F.R. § 204.5(i)(3)(i)(D).

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

As noted by counsel on appeal, 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 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 articles.

██████████ the beneficiary's former colleague at the Institute of Geography in China, asserts that the beneficiary is one of the first scientists to promote the concept of "Regional Carrying Capacity"

³ The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

regional planning and studies in China. [REDACTED] explains that the beneficiary “developed a sound system of quantifying, simulating, and predicting the carrying capacity of a region from a synthesized perspective.” [REDACTED] states that the beneficiary’s four articles between 1998 and 2003 have been cited 315 times. The record supports this assertion. [REDACTED] further states that national officials and scholars in the Annual China’s Sustainable Development Forum cited the beneficiary’s work on four occasions. [REDACTED] continues that the beneficiary “not only built the conceptual framework of Regional Carrying Capacity based on system science, he was among the first to define the quantification criteria, simulation procedures and measuring details of the concept as well.” [REDACTED] further states that this concept “later became one of the most cited and studied concepts in the field of regional sustainable studies and one that makes significant contributions to China’s National and Regional governments’ regional development policies.” The citation evidence submitted is consistent with that statement.

[REDACTED], a former director of the Institute of Geography in China, reiterates much of the information discussed above. [REDACTED] further asserts that members of his former research group and their colleagues are currently using the beneficiary’s spatial statistical software package, SPGWR in R. [REDACTED], a professor at the Norwegian School of Economics and Business Administration, explains his collaboration with the beneficiary on SPGWR in R. Specifically, [REDACTED] states:

Because I am involved in developing and supporting software for spatial data analysis within the R project [website omitted], I have on several occasions worked with him in expressing algorithms in code, code published in open source admitting peer review. An example --- he needed more functionality in a method that I had provided (for geographically weighted regression), and worked with me for many hours at the AAG Philadelphia meeting to make and check the implementation. He subsequently contributed more code, from which many other researchers have benefitted.

[REDACTED] further asserts that the beneficiary is “a generous and helpful participant on two [online] discussion lists that are central to spatial analysis.” [REDACTED] concludes that the beneficiary is an important contributor to these professional discussions.

[REDACTED] a former professor at the University of Wisconsin-Milwaukee (UWM), asserts that he met the beneficiary when visiting the Institute of Geography in China and recruited the beneficiary for the Ph.D. program at UWM. [REDACTED] praises the beneficiary’s background in geographic information system (GIS) and discusses their five coauthored published articles while the beneficiary was a Ph.D. student. These articles include: one of the earliest GIS studies of spatial inequality in China that challenged conventional wisdom by identifying emerging local patterns of clustering and agglomeration, a study of regional developments in Beijing using GIS, a study of the housing market in Milwaukee that revealed “many significant findings” and a study of globalizing cities in China.

Professor Eric Stern, a research associate professor with the petitioning university and a program manager in the Division of Environmental Planning and Protection with Region 2 of the U.S.

Environmental Protection Agency (USEPA), discusses the beneficiary's work at the petitioning university. [REDACTED] explains that the beneficiary is involved in "looking at spatial contamination of organic and inorganic contaminants in the Passaic River, NJ and Gowanus Canal, NY riverine systems." [REDACTED] further explains that the beneficiary's urban geography and GIS background merges basic and applied science as it relates to environmental management and economics of New York and New Jersey ports. [REDACTED] asserts that the beneficiary's work has been of interest to the USEPA's Superfund Division.

[REDACTED] of *GIScience & Remote Sensing* and a professor at the University of South Carolina, discusses the beneficiary's two articles published in that journal. Specifically, he asserts that both articles "developed and applied novel geographic analysis models to study spatial segmentation of the society and urban housing markets." [REDACTED] concludes that both articles "have attracted a broad variety of scholarly interests" and mentions two citations. [REDACTED] further states that the beneficiary's work on the newly proposed GeoSpatial analytical methodology "represents a highly intelligent trend in the past decade of GIS development." Finally, [REDACTED] asserts that one of his colleagues used SPGWR in R, found it very useful and "talked about the use of the software in one of his recent presentations."

On appeal, the petitioner submits a new letter from [REDACTED], an associate professor at the City University of New York. [REDACTED] asserts that the beneficiary developed the concept of Regional Carrying Capacity, which has been of particular interest to Environmental Science Ph.D. programs. [REDACTED] reiterates that the beneficiary's articles reporting his models in this area have been cited over 300 times. [REDACTED] further concludes that the beneficiary's work in the area of geographically weighted regression is "groundbreaking" in that it "greatly improved our capability to explore detailed patterns and relationships from a spatial-temporal perspective." Finally, [REDACTED] asserts that SPGWR in R is widely used, including by [REDACTED] almost daily, and has "proven invaluable in our scientific community."

Given the evidence in the aggregate, including the detailed letters explaining the beneficiary's influence in the field beyond his collaborators and the widespread citation of his work, we are satisfied that the beneficiary's original research can be considered an original contribution to urban geography and GIS. Thus, the petitioner has submitted qualifying evidence under 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.

As noted by counsel, the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(F) requires only evidence that the beneficiary has authored scholarly books or articles in journals with an international circulation in the academic field. While the petitioner has not demonstrated the international circulation for all of the Chinese-language journals that have published the beneficiary's articles, the beneficiary has published articles in several journals that have an international circulation. Thus, the petitioner has submitted qualifying evidence under 8 C.F.R. § 204.5(i)(3)(i)(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)(D), (E) 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.

B. Final Merits Determination

It is important to note at the outset that the controlling purpose of the regulation at 8 C.F.R. § 204.5(i)(3)(i) is to establish international recognition, and any evidence submitted under this regulation 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 reflects that the beneficiary's judging experience has been in multiple areas, a book review, review of a book chapter and manuscript reviews for journals, as well as extensive, having reviewed manuscripts for several journals. In addition, the beneficiary's articles are extensively cited in China. While the statute requires international recognition, the beneficiary has been cited outside of China and the record contains letters from independent international references who adequately explain how the beneficiary's research has influenced the field internationally. Given this evidence in the aggregate, as well as other evidence of record, we are satisfied that the beneficiary has the necessary international recognition as outstanding required for the classification sought.

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 in the academic field of GIS. 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.