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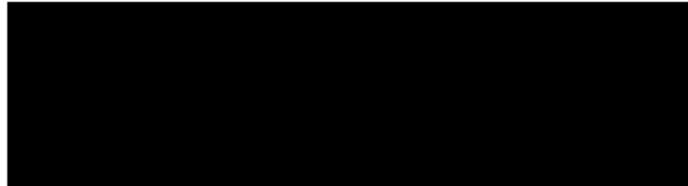
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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



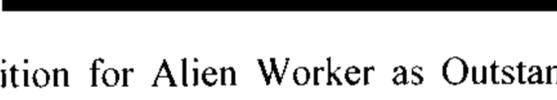
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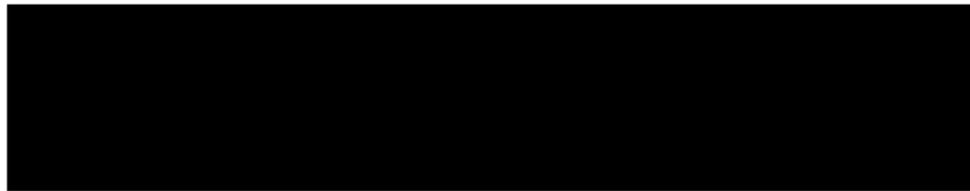


FILE:  Office: NEBRASKA SERVICE CENTER Date: **OCT 14 2010**

IN RE: Petitioner: 
Beneficiary: 

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 (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a basic and applied research nonprofit company. 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). According to the Form I-140 petition, the petitioner seeks to employ the beneficiary permanently in the United States as a computational scientist. 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. Counsel also resubmits all previous evidence, which was already a part of the record of proceeding. Some of the director's concerns are valid, not all of the petitioner's original claims are persuasive and counsel relies on authorities that are not binding on USCIS. Nevertheless, for the reasons discussed below, we find that the petitioner has adequately demonstrated the beneficiary's eligibility for the benefit sought through the submission of qualifying evidence under three of the regulatory criteria, of which an alien need only meet two. Moreover, a review of the evidence in the aggregate in a final merits determination is persuasive.¹

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 --

¹ The legal authority for a two-step analysis that looks at the evidence first under the regulatory criteria and then as part of a final merits determination will be discussed at length below.

(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 11, 2009 to classify the beneficiary as an outstanding researcher in the field of computer science. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching and/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. At issue is whether 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.

On appeal, counsel relies on unpublished decisions by this office, a 1992 correspondence memorandum from Lawrence Weinig, Acting Assistant Commissioner, to the then Director of the Nebraska Service Center, James M. Bailey, and the district court decision in *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994). While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. In addition, Mr. Weinig issued his correspondence memorandum in response to an inquiry from Mr. Bailey and makes clear that he is discussing his personal inclinations. Moreover, correspondence issued to a single individual do not constitute official U.S. Citizenship and Immigration Services (USCIS) policy and will not be considered as such in the adjudication of petitions or applications. Finally, as acknowledged by counsel, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In this matter, there is a recent circuit court decision that is far more persuasive authority.

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*, 596 F.3d 1115 (9th Cir. 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.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations.² 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 1122 (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 1119-20.

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.³ 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 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).

² 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)).

³ 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.

II. Analysis

A. Evidentiary Criteria⁴

On appeal, counsel asserts that the petitioner previously submitted evidence pertaining to all six of the regulatory criteria at 8 C.F.R. § 204.5(i)(3)(i) but addresses only three of those criteria. Those criteria follow. As we concur with counsel that the evidence submitted under those criteria is, in fact, qualifying, the petitioner's far less persuasive original claims under the remaining three criteria need not be addressed.

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 record contains evidence that the beneficiary has reviewed grant proposals internally for the petitioner and has reviewed manuscripts for publication in several journals. As noted by counsel on appeal, this evidence qualifies under the plain language of the criterion set forth at 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.

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 original "research contributions." Had the regulation contemplated merely the submission of original research, it would have said so, and not have included the extra word "contributions." Moreover, the plain language of the regulation requires that the contributions be "to the academic field" rather than an individual laboratory or institution.

The petitioner submitted evidence that the beneficiary has authored scholarly articles. As noted by counsel on appeal, the regulations include a separate criterion for scholarly articles at 8 C.F.R. § 204.5(i)(3)(i)(F). Thus, not only is the question of whether the scholarly articles rise to the level of a contribution to the field irrelevant under 8 C.F.R. § 204.5(i)(3)(i)(F) as claimed by counsel, we must also presume that mere authorship of scholarly articles is not presumptive evidence of qualifying contributions under 8 C.F.R. § 204.5(i)(3)(i)(E). Rather, 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 record reveals that four of the beneficiary's articles have been cited. While the beneficiary's citation record is insufficient by itself, it is consistent with other evidence of record.

⁴ The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

On appeal, counsel asserts that the director mischaracterized the letters as vague. In fact, several of the letters are vague and conclusory, affirming that the beneficiary has made contributions and is internationally recognized without providing examples of the beneficiary's influence in the field beyond the fact that she has published and presented her work. As stated above, the mere publication of scholarly articles falls under 8 C.F.R. § 204.5(i)(3)(i)(F) and cannot, by itself, serve as qualifying evidence under 8 C.F.R. § 204.5(i)(3)(i)(E). The letters also speculate as to the future impact the beneficiary's work may have. Such statements are not useful in explaining how the beneficiary has already influenced the field. Nevertheless, the record does contain letters specifically explaining how the beneficiary's work rises to the level of a contribution to the academic field as a whole.

The beneficiary's Ph.D. advisor, [REDACTED], asserts that the beneficiary's Ph.D. research focused on applying spectral methods to discontinuous problems, with the "strongest part" being her treatment of the spectral approximations of the eigenvalues of equations with discontinuous coefficients. [REDACTED] concludes that this work was "ground breaking in the sense that there was no previous work on this subject and [the beneficiary] had to construct the theory from the beginning."

[REDACTED], a member of the petitioner's doctoral dissertation committee and a coauthor of some of the beneficiary's articles, affirms that the beneficiary's doctoral research "focused on the theoretical and algorithmic development on spectral methods for discontinuous problems, especially eigenvalue problems with discontinuous coefficients and image reconstructions." [REDACTED] continues that the beneficiary "developed algorithms for [REDACTED] and [REDACTED] reconstructions and successfully applied for reduction of the [REDACTED] oscillations in the fourier-spectral data obtained from the [REDACTED] phantom image and [REDACTED] incomprehensible flow simulations." In addition, according to [REDACTED] the beneficiary "also conducted theoretical analysis to prove the convergence rate of [REDACTED] and multi-domain spectral methods for the [REDACTED] eigenvalue problems with discontinuous coefficients, and showed the sharp bound of the numerical solutions on the eigenfrequencies."

The discussion of the beneficiary's work for the petitioner is more persuasive. [REDACTED], a computational scientist with the petitioner, asserts that the beneficiary "produced original ideas for solving computational electromagnetics problems and has implemented them in [the software package] [REDACTED]" [REDACTED] further asserts that this computer code "has already proved extremely useful in wakefield calculations for future linear colliders such as the International Linear Collider [(ILC)], enabling high-performance calculations on advanced computers." [REDACTED] notes that approximately 2,000 people from more than 200 institutions in more than 24 countries are collaborating to build the ILC. [REDACTED] concludes that the beneficiary's code allows those working on the ILC to "conduct complex design calculations previously considered infeasible because the conventional methods do not scale well on high-performance computers." [REDACTED] notes that the beneficiary published this work.

In response to the director's request for additional evidence, the petitioner submitted a 2007 online newsletter published by the petitioner containing a brief article about [REDACTED]. The article indicates the advantages of [REDACTED] and that it has been "used successfully for both nanophotonics simulations, in collaboration with researchers in the Chemistry Division and accelerator modeling, in collaboration

with the Advanced Photon Source.” In addition, the [REDACTED] included the beneficiary’s article among its [REDACTED] accomplishments. On appeal, counsel submits online information about [REDACTED] from the petitioner’s website.

[REDACTED], Director of the petitioner’s Mathematics and Computer Science Division, asserts that the petitioner spent two weeks at the [REDACTED] in [REDACTED]. A letter from [REDACTED] at this organization supports [REDACTED]’s assertion. [REDACTED] explains that he is a lead developer of the numerical codes [REDACTED] and [REDACTED], solver codes used worldwide at the [REDACTED], the petitioning laboratory, the [REDACTED] National Accelerator Laboratory, [REDACTED] for the past 20 years. Professor [REDACTED] asserts that after meeting the beneficiary at the petitioning laboratory, he invited her to [REDACTED]. He continues:

During the two weeks of her visit, she was able to analyze and run my [REDACTED] code and to implement the [REDACTED] spectral code into [REDACTED] and [REDACTED] reconstructions as a postprocessing component.

[REDACTED] notes that the beneficiary has presented this work and asserts that it is getting attention in the international community.

[REDACTED] continues:

[The beneficiary’s] software is also making a huge positive impact on the way the science is done by the international accelerator community. Accurate and efficient numerical codes for wake field simulations have become critical for computational accelerator problems. By developing higher-order spectral element methods designed for high performance on parallel computers, [the beneficiary] has eliminated one of the main bottlenecks to accurate and efficient wake field simulations – critical for modern accelerator design. The tools that she has developed are being used by physicists at [the petitioner’s] Advanced Photo Source for wake field calculations.

[REDACTED] notes that the beneficiary was invited to organize a minisymposium for the [REDACTED]. [REDACTED], a professor at [REDACTED] who is listed as an [REDACTED], affirms that he accepted the beneficiary’s invitation to participate in her minisymposium based on her reputation in the field.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is “self-serving.” *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: “We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available.” *Id.* If testimonial

evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

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; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). 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, including letters from independent references who have benefited from the beneficiary's work, do identify at least some specific contributions and explain how they have contributed to the academic field as a whole. The record also contains corroborating evidence in existence prior to the preparation of the petition, which is consistent with the reference 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.

As stated above, the petitioner submitted several articles authored by the beneficiary. Thus, the petitioner has submitted evidence that qualifies 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 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 nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. While not determinative on its own, we acknowledge once again that the beneficiary has reviewed grant proposals for the petitioner and has reviewed manuscripts for five different prestigious journals at the request of those journals.

We further reiterate that the beneficiary's research has resulted in concrete, completed programs that are promoted on the petitioner's website and led to the beneficiary's two weeks of successful consulting services at a high level institution in Korea.

Finally, the beneficiary has published articles that have consistently garnered at least some attention in the academic field.

Given the above evidence in the aggregate, including other evidence in the record, we are satisfied that the petitioner has established that the beneficiary is internationally recognized.

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. 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 record indicates that the beneficiary meets at least two of the six criteria listed at 8 C.F.R. 204.5(i)(3)(i). Based on the evidence submitted, it is concluded that the petitioner has established that the beneficiary qualifies under section 203(b)(1)(B) of the Act as an outstanding researcher.

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.