

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



[REDACTED]

B3

Date: **DEC 12 2012** Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

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:  
[REDACTED]

**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,

A handwritten signature in black ink, appearing to read "D. King" or similar, written over a circular stamp or mark.

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment based immigrant visa petition for abandonment, reopened the matter and denied it on its merits. The director's decision advised that the matter was being forwarded to the Administrative Appeals Office (AAO) and that the petitioner could submit a brief to the AAO within 30 days in accordance with 8 C.F.R. § 103.2(b).<sup>1</sup> The director's decision will be withdrawn and the petition will be approved.

The petitioner is engaged in information processing, manufacturing, sales and services. 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 a research staff member. 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.

Our review of the record, including the petitioner's January 22, 2010 submission, reveals that several of counsel's assertions are not persuasive and rely on reverse reasoning. For example, we are not persuaded that the beneficiary's status as a member of an association is, in and of itself, evidence that the association of which he is a member must be exclusive, especially in the face of evidence to the contrary. Moreover, the record contains considerable evidence of the beneficiary's accomplishments that postdate the filing of the petition. The petitioner must establish the beneficiary's eligibility as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Thus, we will not consider any evidence of accomplishments after that date. Nevertheless, for the reasons discussed below, we are persuaded that the petitioner has submitted sufficient evidence of the beneficiary's eligibility as of November 25, 2008, the date the petition was filed.

## I. Law

Section 203(b) of the Act states, in pertinent part, that:

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<sup>1</sup> The director denied the petition for abandonment on July 14, 2009. On August 11, 2009, the petitioner filed an appeal although the regulations do not permit an appeal of a denial for abandonment. 8 C.F.R. § 103.2(b)(15). Rather, the petitioner is limited to a motion to reopen. *Id.* The director, advising that the service center recognized its error on July 20, 2009, reopened the matter on December 23, 2009 and denied the petition on its merits. The director further advised that he was forwarding the August 11, 2009 appeal to the AAO and advised the petitioner to submit a brief to the AAO. Counsel subsequently submitted a brief and additional evidence on January 22, 2010. As the regulation at 8 C.F.R. § 103.2(b)(15) does not permit the filing of an appeal on a denial for abandonment, there is no appeal before us. Rather, it appears that the director treated the August 11, 2009 filing as a motion to reopen. Had the director reopened the matter on his own motion, he would have had to advise the petitioner of such action and grant 30 days to respond. 8 C.F.R. § 103.5(a)(5)(ii). Given the history of this matter, however, we will certify the matter to ourselves pursuant to 8 C.F.R. § 103.4. As the petitioner has already been advised to submit a brief to this office and has done so, we find no due process concerns.

(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.

As stated above, the petition was filed on November 25, 2008 to classify the beneficiary as an outstanding researcher in the field of electrical engineering. Therefore, the petitioner must establish that the beneficiary had at least three years of 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 beneficiary received his Ph.D. in electrical engineering on December 19, 2004 and has been working for the petitioner since that time. Thus, at issue is only 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.

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 U.S. Citizenship and Immigration Services (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.<sup>2</sup> 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.<sup>3</sup> 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 (9<sup>th</sup> Cir. 2003) (recognizing the AAO's *de novo* authority).

## II. Analysis

The director never contested that the beneficiary's patented and patent-pending innovations, his published research and his contributions to PUMA\_FXU constitute original scientific contributions to the academic field. Thus, it appears that the director concluded that the petitioner submitted sufficient qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(i)(3)(i)(E).

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<sup>2</sup> 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)).

<sup>3</sup> 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.

We concur with that conclusion. For the reasons discussed below, the petitioner also meets the plain language requirements of 8 C.F.R. §§ 204.5(i)(3)(i)(D) and (F).

*A. Evidentiary Criteria*

*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 a letter from ██████████, an associate professor and Graduate Director at the University of Utah confirming that the beneficiary had been approved to serve on the Ph.D. doctoral committee of Amlan Ghosh at that university. In addition, ██████████, the Managing Editor of *IEEE Proceedings – Circuits, Devices & Systems*<sup>4</sup> confirms that the beneficiary reviewed a manuscript for the journal in 2004. In addition, ██████████, a steering committee member of the VLSI Design Conference asserts that the beneficiary assisted with the review of submitted technical papers for the VLSI Design Conference in 2004 and 2006. Finally, ██████████, Director of the FCRP Focus Center for Circuit & System Solutions (C2S2), explains that C2S2 is a consortium of 50 faculty and 80 graduate students from across 19 U.S. universities, is funded by industry and the U.S. government and “conducts long-range, pre-competitive research intended to advance both commercial and US government applications.” ██████████ further explains that the success of the consortium “is strongly dependent on the periodic evaluation and feedback provided by industry experts, who have established themselves in the semiconductor community through their impressive credentials and their ability to evaluate the contributions of their peers.” ██████████ asserts that the beneficiary has contributed to the consortium’s “review process through his feedback and attendance at our regular workshops and annual review conferences over the past two years.” The above evidence qualifies under the plain language of the criterion set forth at 8 C.F.R. § 204.5(i)(3)(D).

*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 qualifying evidence that meets the plain language requirements at 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)(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.

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<sup>4</sup> Dr. Müller indicates that this journal is now *IET Circuits, Devices & Systems*.

### *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 review experience, including reviewing the work of a national consortium; 10 patented or patent-pending innovations and research contributions, including PUMA\_FXU; and a record of publication and citation, including citations from authors that expressly state they are relying on the beneficiary's work. As an example of the beneficiary's impact, [REDACTED] a Formal Methods Engineer at Intel Corporation, discusses his reliance on the beneficiary's "dual-issue out-of-order execution PowerPC fixed point unit microprocessor, PUMA." [REDACTED] explains that PUMA is an ideal design for his work on low power design optimizations at higher levels of hardware design. Specifically, [REDACTED] states that PUMA allowed him to "apply my algorithms on a real-life, complex design with reliable benchmark results." [REDACTED] further states that this work was published and that he later implemented his algorithms at Intel. In addition, we note the following examples of the citations of the beneficiary's work. Two researchers at Arizona State University explain that their own work is an extension of the beneficiary's work. Researchers at the University of California at San Diego (UC San Diego) acknowledge that they are adapting the methodology proposed by the beneficiary for their own research, obtaining similar results. Researchers at Carnegie Mellon University state that they used the beneficiary's methodology to estimate normalized leakage current per device. Finally, [REDACTED] a member of the University of Michigan Intellectual Property Source (UMIPS) states that the beneficiary's PUMA\_VXU component is one of the most popular downloads in the UMIPS repository and lists several institutions that have downloaded the component between 2004 and 2007.

We are satisfied that the evidence above, in addition to the remaining evidence of record, *in the aggregate* does set the beneficiary apart in the academic community through eminence and distinction based on international recognition, the purpose of the regulatory criteria. 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 an electrical engineer. 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, considered in the aggregate in our final merits determination, 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.