



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF M-S-U-

DATE: DEC. 10, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a state university, seeks to classify the Beneficiary as an outstanding researcher. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(B), 8 U.S.C. § 1153(b)(1)(B). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be sustained.

The Petitioner seeks to continue to employ the Beneficiary as an Assistant Professor of Crop Physiology. The Director determined the Petitioner satisfied the initial requirements set forth at 8 C.F.R. § 204.5(i)(3)(i), but that the Beneficiary had not attained the level of achievement required of an outstanding researcher. On appeal, the Petitioner submits a brief and additional evidence. For the reasons discussed below, the Petitioner has established the Beneficiary's eligibility for the classification sought.

**I. LAW**

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

(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)(i) states that a petition for an outstanding professor or researcher must be accompanied by material demonstrating that a beneficiary is recognized internationally as outstanding in her academic field. To do this, a petitioner must submit evidence that satisfies at least two of six listed regulatory criteria. However, the submission of evidence relating to at least two criteria does not, in and of itself, show eligibility for this classification. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the “truth is to be determined not by the quantity of evidence alone but by its quality” and that we evaluate “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.”). If a petitioner files the necessary initial documentation, we then consider the totality of the evidence in a final merits decision to determine whether the petitioner has established eligibility.<sup>1</sup>

## II. ANALYSIS

### A. Evidentiary Criteria

The Petitioner has demonstrated that the Beneficiary has at least three years of experience in teaching or research in her academic area, and that she seeks to enter the United States for a tenure-track position within a university. *See* §§ 203(B)(1)(b)(ii) & (iii) of the Act. The Petitioner provided evidence that the Beneficiary has been conducting post-doctoral research in her field since 2009, giving her well over the required three years. In addition the Petitioner currently employs the Beneficiary as a tenure-track Assistant Professor of Crop Physiology. The only issue on appeal is therefore whether the Beneficiary is recognized internationally as outstanding in her specific academic area, as required by section 203(B)(1)(b)(i) of the Act.

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<sup>1</sup> *See Kazarian v. USCIS*, 596 F.3d 1115 (9<sup>th</sup> Cir. 2010) (discussing a two-part review where the evidence is first counted and, if it satisfying the required number of criteria, then considered in the context of a final merits determination); USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14*, 4, (December 22, 2010), <http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf> (stating that the approach in *Kazarian* should apply equally to petitions for outstanding professors or researchers and to petitions for aliens of exceptional ability).

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The Petitioner meets the following 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 Director determined that the Petitioner submitted evidence that satisfies this criterion. The documentation provided shows the Beneficiary participated as a judge of the work of others in the same or an allied field, as required by 8 C.F.R. § 204.5(i)(3)(i)(D). Specifically, the Beneficiary served as a peer-reviewer for eight scientific journals, and as one of nine jurors at a graduate student poster presentation at the 2012 [REDACTED]. Accordingly, the Petitioner has met this criterion.

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

The Director determined that the Petitioner satisfied this criterion. The documentation provided shows the Beneficiary authored scholarly books or articles in scholarly journals with international circulation in the academic field, as required by 8 C.F.R. § 204.5(i)(3)(i)(F). Accordingly, the Petitioner has met this criterion.

## B. Summary

In light of the above, the Petitioner has submitted sufficient initial evidence to meet two of the regulatory criteria, as required for this classification.

## C. Final Merits Determination

The Director found that the Petitioner satisfied two of the six evidentiary criteria listed at 8 C.F.R. § 204.5(i)(3)(i) and we agree.<sup>2</sup> The next step is a final merits determination that considers whether the record shows the Beneficiary is recognized internationally as outstanding in her academic area. Section 203(b)(1)(B)(i) of the Act. In making this determination, we consider all relevant and probative evidence as it relates to the assessment.<sup>3</sup>

The Beneficiary began her current position as an Assistant Professor of Crop Physiology at the petitioning university in 2014. Prior to this, she worked for a year as Research Assistant Professor at the [REDACTED] after performing her postdoctoral research there from 2009-2013. She earned a Ph.D. in 2008 from [REDACTED] and a master's degree in Geo-information

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<sup>2</sup> In his denial, the Director found the Petitioner did not provide evidence of original scientific or scholarly research contributions to the academic field pursuant to 8 C.F.R. § 204.5(i)(3)(i)(E). As the Petitioner has provided the initial evidence required for the classification by meeting two other criteria, we will consider the evidence relating to the contributions criterion within the final merits determination.

<sup>3</sup> See USCIS Policy Memorandum PM-602-0005.1 at 20.

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Science and Earth Observation in 2002 from the [REDACTED] in the Netherlands. In 1996, she received a bachelor's degree in Agriculture from [REDACTED] in the Philippines.

The Beneficiary's research focuses on attempting to understand crop responses to abiotic factors (light, temperature, water, nutrients, climate, etc.) in order to help scientists and farmers determine how to manage water, nutrients, genetics, and other controllable inputs. The Beneficiary's more recent research has concentrated on soybean plants, with specific findings in the areas of crop-water relations and root growth modeling.

In support of the outstanding nature of the Beneficiary's contributions, the Petitioner provided reference letters from 13 professionals in the field, including [REDACTED] Associate Professor, [REDACTED] Australia; [REDACTED] Associate Professor, [REDACTED] Professor, [REDACTED] Professor at the petitioning university; and [REDACTED] the Petitioner's Interim Head, Department of Research Centers. Several of these authors emphasized the importance of her efforts to translate research results into actual application for end users. [REDACTED] in particular noted the Beneficiary's ability and willingness to relay scientific findings to farmers; for example, he noted that the Beneficiary conducted demonstration tours to explain her field research and findings to farmers. She also gave presentations on nitrogen use and irrigation strategies at the [REDACTED] annual grower meeting. According to [REDACTED] as a research associate at the [REDACTED] the Beneficiary helped develop [REDACTED] an online tool that utilizes maps, weather information, and soybean growth models to forecast a particular plot's soybean growth. The program helps determine when to apply critical input, such as irrigation, pest control, and fertilizer. The program is available free of charge and hundreds of Midwest farmers have signed up to utilize its services.

Each of the letters speaks to the Beneficiary's research accomplishments, however, the letter from [REDACTED] in Brazil included the most comprehensive explanation of the international impact of the Beneficiary's contributions. [REDACTED] stated that he first came to know of the Beneficiary through her paper [REDACTED]. According to [REDACTED] "[t]his paper is stellar because it demonstrated the usefulness of crop simulation models in an actual farmer's field and how it can be best utilized by scheduling various crop management given the high-quality forecasts of crop growth and development that enables application of specific crop management to improve and sustain crop yields." He praised the implementation of SoyWater on the web for use by farmers and researchers as follows: "This irrigation management tool [the Beneficiary] developed for use in the USA is an inspiration to scientists globally in mending the gap between scientific research and practice in an actual condition." [REDACTED] further explained that he initially contacted the Beneficiary through email to request assistance in measuring the climate change impacts on soybean yields in Brazil. He organized a team that simulated the impact of these changes using the Beneficiary's outcomes and expertise. He then sent his Brazilian Ph.D. students and Postdoctoral scientists to the United States to work with the Beneficiary and other modelers to gain knowledge and experience they could apply at home. Finally, [REDACTED] referenced the

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Beneficiary's more recent work submitted to the [REDACTED] on soybean yield gaps and water productivity. He affirmed that the concepts and methodologies presented in the paper would be extremely useful in Brazil, the world's leading soybean producer and exporter.

In his letter, Australian scientist [REDACTED] summarized the contents of a chapter written by the Beneficiary and others as "a synthesis of a soybean yield, genetics, and management history and modelling of response to changing climate-temperature and CO<sub>2</sub> over the years." He stated that they "were able to quantify the genetic gain and contribution of yield increase with CO<sub>2</sub> increase due to a changing climate," and noted that he cited this chapter numerous time in his own book, [REDACTED]

The Petitioner provided evidence that the citations to the Beneficiary's work have frequently been substantive, in addition to being from a global audience. Several articles noted the Beneficiary's development of a simplified soybean growth model that is easy to use in practice, yet still accurate. Many of them included descriptions of the methods used, discussed the findings, or applied her techniques. The Beneficiary's work while a research associate at the [REDACTED] was featured through multiple citations in a 2014 review article about genetic improvements of the American soybean. An article by South African researchers indicated they used the soil erosion classification system created by the Beneficiary. Dutch scientists cited the same work, summarizing the scope and results of the Beneficiary's study. A paper from researchers at Brazilian and American institutions expanded and built upon the Beneficiary's recommendations, which were also noted by researchers in Indonesia.

In addition, the Beneficiary's peer-reviewed experience is sufficiently consistent with a finding that she enjoys an international reputation in the field. The [REDACTED] a United Kingdom-based publication, asked the Beneficiary to peer-review the article, [REDACTED] due to her collaboration on the topic. Similarly, she received an invitation from [REDACTED] to review the paper, [REDACTED]

The Petitioner also showed that the Beneficiary was personally invited to peer-review other articles for multiple international journals, such as [REDACTED]

Submissions in the record also emphasized the Beneficiary's election as the chairperson of the [REDACTED] which is, according to [REDACTED] "the pre-eminent organization of agricultural science with an international scope and membership." Documentation from the [REDACTED] elections indicates that the Beneficiary was voted into the position over professors from [REDACTED]

In this role, the Beneficiary helped organize the Climatology and Modelling section of the [REDACTED] International Annual Meeting in 2014.

The submitted documentation provides concrete examples of the international reach of the Beneficiary's work and the high regard she enjoys from researchers in her field throughout the world. The letters of recommendation give sufficient explanation regarding the reasoning for the opinions expressed, and those opinions are corroborated by other information in the record. When considered in its totality, the evidence is sufficient to demonstrate that the Beneficiary is recognized internationally as an outstanding researcher in her field.

### III. CONCLUSION

The documentation offered in support of a claim of an outstanding researcher must show that the Beneficiary is recognized internationally as outstanding in her field. When considered in light of the analysis outlined in the *Kazarian* decision, the Petitioner has submitted the requisite evidence to satisfy two evidentiary categories and also to demonstrate that the Beneficiary is an outstanding researcher when considered in a final merits decision.

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. § 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has met that burden. Therefore, the Petitioner has shown the Beneficiary's eligibility for the benefit sought under section 203(b)(1)(A) of the Act.

**ORDER:** The appeal is sustained.

Cite as *Matter of M-S-U-*, ID# 14826 (AAO Dec. 10, 2015)