



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

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

MATTER OF T-C-O-T-U-O-M-C-

DATE: OCT. 18, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an institution of higher learning and research, seeks to classify the Beneficiary as an outstanding researcher in orthopedics. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(B), 8 U.S.C. § 1153(b)(1)(B). This first preference classification makes immigrant visas available to foreign nationals who can demonstrate international recognition as outstanding in their academic field.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that the offered employment was a research position or that the Beneficiary was internationally recognized.

The matter is now before us on appeal. In its appeal, the Petitioner maintains that the assistant professor position is a research one and that the Beneficiary, based on his research record, is internationally recognized.

Upon *de novo* review, we will sustain the appeal.

I. LAW

The statute requires that beneficiaries under this immigrant visa classification should stand apart in their academic area based on international recognition. To establish a professor or researcher's eligibility, a petitioner must provide initial qualifying documentation that meets at least two of six categories of specific objective evidence and demonstrates the beneficiary is recognized internationally within the academic field as outstanding.

Specifically, section 203(b)(1)(B)(i) of the Act provides that a foreign national is an outstanding professor or researcher 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 [for a qualifying position with a university, institution of higher education, or certain private employers].

Finally, the regulation at 8 C.F.R. § 204.5(i)(3)(ii) provides that a petition for an outstanding professor or researcher must be accompanied evidence that the foreign national has at least three years of experience in teaching and/or research in the academic field.

## II. ANALYSIS

The Petitioner currently employs the Beneficiary as an assistant professor at its medical university. In denying the petition, the Director concluded that the employment agreement required the Beneficiary to work as a full-time physician, not a researcher, and that the record did not verify that he is internationally recognized. On appeal, the Petitioner notes specific terms in the contract; the Beneficiary's status as an investigator on multiple studies, two of which were ongoing; and his career accomplishments. The evidence of record includes the employment contract, verification of the Beneficiary's experience, his credentials, invitations for him to lecture at other institutions and review manuscripts, his publication and citation history, confirmation of his position as an editor, and reference letters. For the reasons discussed below, we find that the Petitioner has offered the Beneficiary a research position and that he is internationally recognized as outstanding.

### A. Research Position

The regulation at 8 C.F.R. § 204.5(i)(3)(iii) requires an offer of employment in the form of a letter from:

- (A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;
- (B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or
- (C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

The Petitioner is an institution of higher learning that is offering a non-tenure track position. Accordingly, the position must meet the requirements of subparagraph (B), quoted above.

Under part 6 of the petition, the Petitioner indicated the job title is assistant professor. The Petitioner listed the Standard Occupational Classification (SOC) code for health specialties teachers, postsecondary. The employment agreement refers to the employee as a physician but lists the title as

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assistant professor. Under the fifth section it states that the Beneficiary is expected to “provide clinical services for an average of no less than 40 hours per week.” Section 8 offers more detail about the activities, noting that the department chair will determine the exact duties and anticipating that “educational and research activities” will be part of the Beneficiary’s contribution to his department. The document continues that the education of students, residents, and fellows in the form of lectures and clinical instruction is “an important part” of the Beneficiary’s job. Finally, the contract discusses clinical trials and characterizes the publication of case reports as relevant to academic promotions. In response to the Director’s NOID, the Petitioner supplied a list of six studies for which the Beneficiary served or is serving as the principal investigator, co-principal investigator, or co-investigator. Two of the studies are scheduled to continue through 2024 and 2027. [REDACTED] interim dean at the Petitioner’s School of Medicine and chair of the Beneficiary’s department [REDACTED] affirms: “All faculty members are expected to engage in teaching, research and service in addition to their clinical duties.” He notes that the first question on the faculty reporting form inquires as to how the employee’s activities “align with the research strategies at the School of Medicine.”

The Director concluded that while research was “highly desirable,” it was not required. On appeal, the Petitioner discusses the terms of the employment agreement that reference research and [REDACTED] letter. The Petitioner then notes that it has presented evidence of the Beneficiary’s past and current research.

The Petitioner, an assistant professor at a medical school, works under the terms of a contract that, while requiring 40 hours of clinical services a week, also clarifies that the department chair will specify the exact duties, which are anticipated to include research. The chair of the Beneficiary’s department confirms that research is an expected duty and the record verifies that he has served and is serving as a principal investigator on research studies. While we have considered the reference to 40 hours of clinical services in the contract, we recognize that physicians who work as clinical researchers practice medicine. After a review of all of the above-mentioned exhibits in their entirety, we conclude that the Petitioner has demonstrated by a preponderance of the evidence that it has offered the Beneficiary a research position.

## B. International Recognition

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.” A petitioner must provide initial qualifying documentation for the beneficiary that meets at least two of the six regulatory criteria listed at 8 C.F.R. § 204.5(i)(3)(i)(A)-(F) (including items such as awards, published material in certain media, and scholarly articles). The submission of evidence relating to at least two criteria does not, in and of itself, establish eligibility for this classification.<sup>1</sup> Accordingly, where a petitioner submits qualifying evidence under at least two

<sup>1</sup> See *Matter of Chawathe*, 25 I&N Dec. at 369, 376 (AAO 2010) (holding that the “truth is to be determined not by the

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criteria, we will determine whether the totality of the record shows that the beneficiary is internationally recognized as outstanding in the academic field.

The record supports the Director's conclusion that the Beneficiary has participated as a judge of the work of others, made original scientific or scholarly contributions, and authored scholarly books or articles in the academic field.<sup>2</sup> Accordingly, the Petitioner has presented the required initial documentation. We now consider the totality of the record to determine if the Petitioner has demonstrated, by a preponderance of the evidence, that the Beneficiary is recognized internationally as outstanding in his academic field.<sup>3</sup>

The Beneficiary has reviewed manuscripts for the [REDACTED] and the [REDACTED] and posters for the 2015 [REDACTED] of the [REDACTED] and the 2015 [REDACTED]. In March 2015, well before the filing date, the [REDACTED] invited the Beneficiary to serve as a subeditor. In response to the NOID, the Petitioner offered the journal's editorial page from its website listing the Beneficiary as one of [REDACTED] section editors. The journal is an official publication of the [REDACTED] with editors from multiple countries. The Beneficiary's services as one of a small number of credited international editors are consistent with a finding of international recognition.

Several letters describe the Beneficiary's original work in the field. We have considered all of them and will address a sampling here. [REDACTED] a professor of orthopaedic surgery at [REDACTED] in [REDACTED] discusses his collaboration with the Beneficiary during his fellowship in Switzerland. Building on this work, which focused on treating infection in total joint patients, the Beneficiary published his findings in [REDACTED]. [REDACTED] confirms that this follow-up article, which he did not coauthor, "has changed the practice guidelines at our institution and many others." Similarly [REDACTED] a consulting orthopaedic surgeon at [REDACTED] states that this published study "changed practice guidelines on the treatment of infections around the globe." Consistent with these attestations, this article has garnered moderate citation.

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quantity of evidence alone but by its quality" and that U.S. Citizenship and Immigration Services (USCIS) examines "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."); *cf. 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 then, if satisfying the required number of criteria, considered in the context of a final merits determination). The immigrant visa 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.

<sup>2</sup> 8 C.F.R. § 204.5(i)(3)(i)(D), (E), (F).

<sup>3</sup> 8 C.F.R. § 204.5(i)(3)(i). While the statute requires extensive documentation, eligibility is to be determined not by the quantity of the filings alone but by their quality. *Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)). We "examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence." *Id.*

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The Beneficiary's publication record is also commensurate with international recognition. He has authored several articles and [REDACTED] book chapters. One of his articles has garnered almost 200 citations and another had over 100. Two of his other articles have earned moderate citation. The Director discounted these citations because of author placement. Author placement may be a relevant factor, on a case-by-case basis, especially for a large collaboration with numerous authors. In this matter, however, we find that the citations do reflect recognition of the Beneficiary's work. [REDACTED] a co-author of the Beneficiary's most highly cited articles, confirms that he was "very instrumental in coordinating and conducting multi-center research projects on infection in total joints." [REDACTED] head of knee surgery at [REDACTED] in Switzerland, indicates that, after reading these articles, he asked the Beneficiary and [REDACTED] to jointly author two chapters in a book he was editing. A page from the publisher's website reflects over 16,000 downloads. The Director found that downloads do not show ultimate reliance on a work in the same way citations do. While true that the downloads of the book are not probative of the impact of any one chapter, they are relevant to the significance of the overall book for which the Beneficiary was asked to author two chapters. Considering this evidence in the aggregate, the Beneficiary's history of publishing his original contributions is consistent with international recognition.

In addition to the evidence relating to the relevant criteria, the record contains other documents that warrant mention. [REDACTED] confirms that the Beneficiary "organiz[ed] a cadaveric workshop and hosted a travelling fellowship to train surgeons all over the world in hip preservation." [REDACTED] head of orthopaedics at the [REDACTED] in Switzerland, states that the Beneficiary is "an instructor with the [REDACTED] and is very actively involved in teaching hip preservation techniques at the national and international level." These letters are corroborated by email correspondence regarding his services as an associate instructor for a [REDACTED] hosted by the [REDACTED] in Illinois, and schedules of speakers, including the Beneficiary, for a [REDACTED] event and the [REDACTED]. The demand at different locations for the Beneficiary to demonstrate and share his techniques is commensurate with international recognition. [REDACTED] elaborates that in addition to serving as a consultant for [REDACTED] the Beneficiary also serves in a similar role for [REDACTED] and [REDACTED].

Ultimately, outside organizations have sought the Beneficiary's services as one of a small number of credited editors and an instructor of his techniques. He is the author of frequently and moderately cited articles. The evidence in the record, in the aggregate, is indicative of the Beneficiary's international recognition as outstanding in his field. Thus, the Petitioner has satisfied its burden of proof.

### III. CONCLUSION

The Petitioner submitted the requisite initial documentation and has shown the Beneficiary's international recognition. Section 203(b)(1)(B) of the Act. The Petitioner has also demonstrated by a preponderance of the evidence that it has offered the Beneficiary a research position. Therefore,

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the Petitioner has met the burden of proof necessary to establish eligibility for the benefit sought.  
Sections 203(b)(1)(A), 291 of the Act.

**ORDER:** The appeal is sustained.

Cite as *Matter of T-C-O-T-U-O-M-C-*, ID# 9789 (AAO Oct. 18, 2016)