



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

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

MATTER OF T-O-S- [REDACTED]

DATE: OCT. 2, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a public university, seeks to classify the Beneficiary as an outstanding professor. Immigration and Nationality Act (the Act) section 203(b)(1)(B), 8 U.S.C. § 1153(b)(1)(B). This first preference classification makes immigrant visas available to foreign nationals who are internationally recognized as outstanding in their academic field.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary is internationally recognized as outstanding in her academic field, anesthesiology.

On appeal, the Petitioner asserts that the Director did not address its claims relating to comparable evidence, and did not consider the totality of the evidence when conducting the final merits analysis. The Petitioner contends that those factors, together with the evidence of the Beneficiary's peer review for scholarly journals, authorship of scholarly articles, and contributions to her field establishes that she is internationally recognized in the field of anesthesiology.

Upon *de novo* review, we will dismiss 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 Beneficiary is employed by the Petitioner as a clinical assistant professor, and her work is in the academic area of medicine, with a focus on anesthesiology. The Director found that the Beneficiary met the requirements of three of the six evidentiary criteria, those pertaining to the authorship of scholarly articles, original contributions to her field, and judging the work of others in the field, but did not find that she is internationally recognized as outstanding in her field. Upon review we agree that the Petitioner has submitted the necessary initial evidence, and will therefore turn to the final merits analysis.¹

In her appeal brief, the Petitioner points out several inaccuracies which appear in the Director's decision, including a finding in the final merits analysis that service as an examiner for the American Board of Anesthesiology is not probative under the criterion at 8 C.F.R. § 204.5(i)(3)(i)(D).² When conducting the final merits determination, we will consider all evidence in the record to determine whether the Petitioner is internationally recognized as outstanding in her academic field, regardless of whether that evidence would have satisfied any of the initial six evidentiary criteria at 8 C.F.R. § 204.5(i)(3)(i).³

The Petitioner first addresses the evidence of the Beneficiary's service on several committees of the [REDACTED] Chief Executive Officer of the [REDACTED] indicates in his letter that the Beneficiary's appointment to these committees "was based on the recognition by [REDACTED] of her strong reputation as a dedicated anesthesiology teacher and clinician." He also indicates that in the course of her service on these committees, the Beneficiary reviewed over 1200 abstracts which were submitted for presentation at [REDACTED] conferences. The evidence of her review activities also includes a printout showing that she assigned a numerical score to 297

¹ On appeal the Petitioner contends that evidence relating to the Beneficiary's salary, affiliation with prestigious institutions, and leading role with two organizations should have been considered as comparable evidence under 8 C.F.R. § 204.5(i)(3)(ii). Since the Petitioner has already established that the Beneficiary meets the requisite two of the six evidentiary criteria, we need not consider whether additional criteria may have been met through comparable evidence. The specified evidence will be considered along with the remainder of the record to determine whether the Beneficiary is recognized internationally as outstanding.

² We also acknowledge the Director's reference to evidence which was not submitted, and an inaccurate statement regarding presentations at scientific conferences in general.

³ See USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain I-140 Petitions* 4 (Dec. 22, 2010), <https://www.uscis.gov/laws/policy-memoranda>.

abstracts submitted for one conference. Further, the Petitioner submitted emails from the [REDACTED] thanking the Beneficiary for her work as a presenter, moderator and committee member for three conferences, and noting that this service was “integral and important” to those conferences.

The Petitioner asserts on appeal that in addition to meeting the evidentiary criterion regarding the Beneficiary’s service as a judge of the work of others in her field, this evidence of her work with the [REDACTED] demonstrates her leading or critical role for a prestigious organization, and thus that she is “widely respected and recognized at the highest level by her peers in the field.” However, while this evidence shows that her service to her profession as a committee member is valued by her peers, it does not establish that her work as an anesthesiologist and teacher is recognized as outstanding at the international level. In addition, although the Petitioner emphasizes the quantity of reviews conducted by the Beneficiary in her role in reviewing abstracts submitted for possible presentation at the conferences, the evidence indicates that these reviews did not involve the same sort of in-depth analysis and feedback that is typically associated with the peer review process for a manuscript submitted to a scholarly journal. Overall, this evidence does not demonstrate that her role on these committees establishes her as a leader within the overall [REDACTED] organization, that it was critical to the extent that she was directly responsible for any success the organization may have enjoyed, or that it gave the Beneficiary international standing in her field.

The Petitioner also submits evidence of the Beneficiary’s selection as a “new” examiner by the [REDACTED] for purposes of evaluating physicians’ eligibility for board certification in the practice of anesthesiology. The evidence indicates that the [REDACTED] maintains a pool of more than 400 examiners to conduct more than 2000 examinations per year, and that examiners must be certified for at least five years, participate in a continuing certification program, present references and be actively practicing anesthesiology in order to qualify. [REDACTED] Associate Professor of Anesthesiology at [REDACTED] writes in his letter that “selection as a Board examiner is sure sign that someone has “arrived” at the top of our field.” This evidence establishes that as an examiner, the Beneficiary has demonstrated her expertise as an anesthesiologist and a commitment to maintain professional standards in her field, but it does not show that she has received recognition for her service outside of the board review process related to her status as an examiner.

Additionally, the record includes evidence relating to the Beneficiary’s work as a teacher of medical students. [REDACTED] Chair of the Petitioner’s Department of Anesthesiology, writes that the Beneficiary is “very well-known for her expertise in simulation-based training for anesthesiology graduate medical education,” and notes that the Petitioner uses simulations developed by the Beneficiary in training anesthesiology residents and fellows. [REDACTED] also points out that the Beneficiary received a second place award at the 2015 [REDACTED] annual conference for a presentation on this topic, and that four of the published articles she has co-authored focus on simulation-based training. The evidence of the Beneficiary’s receipt of this award consists of an article from what appears to be the [REDACTED] which is described on the [REDACTED] website as the society’s “official

newsletter” which contains “up-to-date information on Society activities.”⁴ The Petitioner also submitted a copy of her profile on Google Scholar, which indicates that at the time of filing, the articles mentioned by [REDACTED] published in *International Journal of Academic Medicine*, had not been cited by other anesthesiology scholars in their own published work. Although the evidence of the Beneficiary’s conference award indicates a certain level of recognition of her work on simulation based training, it does not demonstrate that the impact of this work has currently reached beyond the Petitioner to garner her recognition at the international level.

In addition to the articles mentioned above, the Petitioner also submitted evidence of the Beneficiary’s publication of more than 15 articles in peer-reviewed medical journals, as well as the Google Scholar report of the number of times her work has been cited by others. This evidence establishes that the Petitioner has submitted initial evidence of the Beneficiary’s authorship of scholarly articles, and of her original scientific or scholarly research contributions to her field. In support of her contention that it also demonstrates that she is internationally recognized as an outstanding anesthesiology professor, the Petitioner has submitted several reference letters, some of which have already been considered. For instance, [REDACTED] Professor of Anesthesiology at [REDACTED] describes two other articles co-authored by the Beneficiary, and states that they offer guidance to other anesthesiologists encountering specific medical situations. While the citation evidence shows that researchers other than the authors have cited to this work on a small number of occasions, the record does not include comparative evidence that might establish whether the overall significance of this work supports a finding that the Beneficiary is internationally recognized as outstanding in her field.

In its appeal brief, the Petitioner refers to a scholarly article submitted in response to the Director’s notice of intent to deny (NOID), in which the authors conducted a study of the publication rate of academic anesthesiologists like the Beneficiary. The Petitioner asserts that the finding of this study that 65% of anesthesiology faculty did not publish at all during the two-year period analyzed (2006-2008) shows that her record of publication sets the Beneficiary apart from her peers. However, the authors note that their study merely establishes a baseline for comparison between the period before a “call to action” regarding the lack of research productivity in the field, and the research productivity in subsequent years. Since the study did not focus on this post “call to action” period, during which the Beneficiary published her work, the data provided has not been shown to be relevant for purposes of comparing her research productivity to others in the field. Further, the Petitioner has not established that productivity alone, without considering the quality or impact of the Beneficiary’s work, is sufficient to establish her reputation as an outstanding professor.

Also on appeal, the Petitioner refers to salary information submitted in response to the NOID and asserts that this evidence further sets the Beneficiary apart from her peers. This evidence includes salary information from the U.S. Department of Labor’s Online Wage Library (OWL) regarding the positions of “Health Specialties Teachers, Postsecondary” and “Anesthesiologists.” The brief description of the teacher occupation includes teaching in a variety of health-related fields such as

⁴ [REDACTED], accessed on August 29, 2018.

laboratory technology, pharmacy, therapy and public health, and does not include the practice of clinical medicine which is included in the Beneficiary's duties. Therefore, while the wages listed are significantly lower than the Beneficiary's, this evidence has not been shown to offer a relevant comparison which would demonstrate that her wages set her apart from her peers. The information regarding the anesthesiologist position, on the other hand, demonstrates this database's limited usefulness when evaluating fields with very high salaries, since the evidence includes an explanation that wages cannot be provided for this occupation due to limitations in the data. Accordingly, the Petitioner has not established that the Beneficiary's salary serves as an indication of her recognition in the field.

Upon review of the entirety of the record, we find that the Petitioner has not established that the Beneficiary is internationally recognized as outstanding in her field.

III. CONCLUSION

The Petitioner submitted evidence which established that the Beneficiary meets at least two of the requisite evidentiary criteria. However, the totality of the evidence does not demonstrate the Beneficiary's international recognition as outstanding in the field of pharmaceutical science.

ORDER: The appeal is dismissed.

Cite as *Matter of T-O-S-* [REDACTED], ID# 1526043 (AAO Oct. 2, 2018)