



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: WAC 98 222 50034 Office: California Service Center Date:

AUG 15 2000

IN RE: Petitioner:  
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an 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)

IN BEHALF OF PETITIONER:



Public Copy

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a receptor-based drug discovery and development biotechnology firm. 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 an associate scientist. The director determined that the petitioner had not established the significance of the beneficiary's research, or that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

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 --

(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.

Service regulations at 8 C.F.R. 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:

(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. Such evidence shall consist of at least two of the following:

(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;

(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 former or current 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 August 13, 1998, to classify the beneficiary as an outstanding researcher in the field of pharmaceutical research. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field as of August 13, 1998, and that the beneficiary's work has been recognized internationally within the field as outstanding.

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(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --

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(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.

Service regulations at 8 C.F.R. 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by

(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition . . . ;

(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 former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien; and

(iii) An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be 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 regulation specifies that the "evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition" can consist of any two of six listed criteria. The petitioner claims that the beneficiary has met the following criteria:

*Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field.*

Counsel observes that the beneficiary received "the [redacted] Scholarship Award for the Fall of [redacted]." The record shows that "[redacted] stands for [redacted] scholarship." The petitioner has not shown that this scholarship represents a major award. This scholarship appears to represent financial aid (reimbursement for tuition and expenses) rather than an internationally-recognized honor. The scholarship was not presented at a ceremony attended by international leaders in the field, and reported in major media; rather, the beneficiary was instructed to report to the Bursar's Office at the [redacted] to have the scholarship credited to her credit card.

The other "awards" claimed by counsel are, in fact, invitations to submit poster presentations at various professional gatherings. Counsel offers no explanation as to how these invitations represent major prizes or awards, nor does the record contain evidence that only internationally-recognized scientists give poster presentations.

*Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members.*

The beneficiary is a member of the American Association of Pharmaceutical Scientists and the American Chemical Society. The petitioner has submitted no evidence to establish the membership requirements of these associations. If membership requires only payment of dues and relevant employment, then such membership cannot satisfy the plain wording of this criterion.

*Evidence of the alien's original scientific or scholarly research contributions to the academic field.*

Because the purpose of these regulatory criteria is to establish that the beneficiary enjoys an international reputation as an outstanding researcher, the evidence submitted to fulfill the criteria must, to some extent, demonstrate such a reputation.

Counsel lists the beneficiary's "lectures and participation in conferences," but does not establish that presentations at professional gatherings reflect, or cause, international recognition. Documentation from these conferences indicate that very substantial numbers of researchers offer presentations. A page from an index of participants at one such conference lists 173 names between [REDACTED] and [REDACTED] from which one can infer a total roster of presenters numbering in the thousands. Other indices show similar numbers of participants.

Counsel also cites four letters of recommendation. Two of these letters are from officials of the petitioning corporation, and the other two are from professors at the [REDACTED] where the beneficiary had earned her doctorate. This range of witnesses does not demonstrate that the beneficiary is well known outside of institutions where she has worked or studied.

These witnesses discuss the petitioning corporation's research goals but do not indicate to what extent these goals have been accomplished, or what significant findings the beneficiary has made for the petitioner since joining the company in April 1997.

[REDACTED] Professor [REDACTED] asserts that the beneficiary was an unusually productive student who "has the capability to become an outstanding American scientist."

Officials of the petitioning company indicate that the beneficiary has developed analytical methods for testing drugs already developed by the petitioner, and that the beneficiary has aided in the development of "drug candidates." There is no indication that any of these drugs have already been tested widely; another ranking official describes the petitioner as a "start-up firm." In general, the statements describe drugs which the petitioner is

seeking to develop, with no indication that the petitioner has yet issued any finished product.<sup>1</sup>

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

The petitioner satisfies this criterion as worded.

Among the various evidentiary criteria, counsel cites a criterion which does not exist, "[e]vidence of [the beneficiary's] research being used by her academic peers as an authority." Counsel lists eight articles which cite the beneficiary's work among their bibliographic footnotes. One of these articles was, itself, co-written by the beneficiary and thus represents self-citation. Several of the other articles were written by the beneficiary's collaborators. The remaining three citations indicate that other researchers have availed themselves of her findings, just as the petitioner has done with dozens of other articles in her own work.

The director denied the petition, having determined that the petitioner has not established that the beneficiary is internationally recognized. The director observed various shortcomings or omissions in the petitioner's initial submission.

On appeal, counsel acknowledges a Service communication which states "[m]ere presentation of evidence, which relates to two of the listed criteria, does not guarantee an approval. The evidence must be weighed and evaluated." Counsel asserts that the petitioner has, in fact, satisfied at least four of the evidentiary criteria.

Counsel asserts "[t]he [redacted] Scholarship Award from the [redacted] is in fact a major award. Consideration for the award is limited to those researchers who have at least a 3.5 grade point average." The petitioner seeks to classify the beneficiary under a very exclusive visa classification, which requires evidence of international recognition. The petitioner has submitted no evidence that the [redacted] Scholarship Award won the beneficiary any attention outside of the [redacted] itself. If the award did not attract international notice, then obviously it cannot add to or demonstrate an international reputation. Counsel

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<sup>1</sup>Part 5 of the Form I-140 petition instructs the petitioning company to state its annual income. Rather than cite any income, the petitioner stated "venture capital of \$20 million." This indication that the petitioner has yet to actually release any product raises the question of whether the petitioner meets the "documented accomplishments" requirement set forth at 8 C.F.R. 204.5(i)(3)(iii)(C).

contends that the award is "open to a broad pool of applicants" and thus qualifies as "major," but it appears that the applicant pool is limited to graduate students at one university. Furthermore, the size of the applicant pool is only one of several factors that must be considered. Some degree of international prestige must attach to a given award. Awards which are wholly or primarily limited to students cannot satisfy this criterion because students, virtually by definition, are the least experienced segment of researchers and therefore generally the least likely to have earned international reputations as outstanding.

Counsel adds that the beneficiary received a travel award to attend a conference. As above, the burden is on the petitioner to show that such travel awards win international attention for the recipients, rather than representing a comparatively routine form of financial aid for attendees.

Counsel states on appeal that the beneficiary was invited to become a member of Rho Chi, which describes itself as "the national honor society for undergraduate and graduate students in the College of Pharmacy." Leaving aside the very relevant fact that the beneficiary declined this invitation, and therefore is not a member, Rho Chi's membership requirements do not include outstanding achievements. According to Rho Chi documentation in the record, "[m]embership is limited to a maximum of 20% of each undergraduate class. Members must have at least a B (3.0) average and have completed 60% of the undergraduate hours required for a pharmacy degree." A B average is not an outstanding achievement, nor is completing 60% of the credit hours necessary to complete an undergraduate degree. Furthermore, Rho Chi is clearly a student society rather than an association of individuals who are actually employed in the field of pharmaceutical research.

Similar to the above request that the Service consider a membership which the beneficiary declined, counsel asks for another creative interpretation of the regulations regarding the beneficiary's membership in the American Association of Pharmaceutical Scientists. Counsel concedes that this association does not require outstanding achievements of its members, but counsel contends that the association has given the beneficiary a significant honor by giving her oral presentation time at one of its gatherings.

With regard to the citations of the beneficiary's work, counsel asserts that a proposed regulation, which would have clarified the existing criteria, was never finalized and therefore "it is unlawful for the INS to apply this standard," i.e. that published material about the beneficiary must actually discuss this work at length, rather than referencing it in a footnote. Virtually all scholarly writings contain a significant number of bibliographic footnotes, including the beneficiary's own writings. To hold that

every cited author has an international reputation as outstanding is unacceptably broad. Counsel had noted the Service's communication, above, which indicates that evidence must be weighed, rather than automatically slotted into the various criteria. By following this standard, a researcher whose work has been the primary subject of scholarly articles plainly enjoys more recognition than a researcher who happened to write on the same subject as a later author, who cited the earlier researcher's work in a footnote.

Counsel states that these other researchers did not merely cite the beneficiary's work, they actually utilized it. Counsel does not explain how this differs from the usual citation process. Earlier research is cited only when it is relevant to later writings. Counsel here fails to acknowledge that a researcher's work can have useful applications without being internationally recognized as outstanding. Furthermore, most of the specific articles which counsel discusses on appeal are articles by one of the beneficiary's former professors. Clearly, this professor's knowledge of the beneficiary's work stems not from any outstanding reputation, but from the fact that the professor collaborated on that earlier work.

Counsel asserts that the beneficiary acted as a judge of the work of others, by reviewing manuscripts which had been submitted to a [REDACTED] professor who did not have time to perform the reviews personally. Here again, the record does not show that the international community regards the beneficiary as a judge of the work of others; the review requests had been addressed to the professor, who unilaterally delegated the task to the beneficiary. Even then, peer review is a standard procedure at many journals, and there is nothing from any of the publishers of the journals in question to demonstrate that only internationally recognized researchers are entrusted with the responsibility of performing such reviews.

Counsel maintains that the petitioner has submitted "letters from . . . distinguished and prominent researchers." It remains that half of these researchers are officials of the petitioning company itself, and the remainder were directly involved in the petitioner's education. Even if the entire faculty of the [REDACTED] and the entire management structure of the petitioning company, were to provide letters attesting to the beneficiary's skill as a researcher, these statements could not provide direct evidence that the beneficiary enjoys an international reputation as an outstanding researcher, or that researchers with no direct connection to the beneficiary share the opinions of the petitioner's employers and instructors. Rather than showing that the beneficiary is held in unusually high regard by the international research community, counsel has attempted to define the beneficiary into eligibility.

Another issue which arises from review of the record concerns the statutory requirement that the beneficiary have at least three years of experience as a researcher. 8 C.F.R. 204.5(i)(3)(ii) states, in pertinent part, "[e]xperience in . . . research while working on an advanced degree will only be acceptable . . . if the research conducted toward the degree has been recognized within the academic field as outstanding." The beneficiary accumulated only approximately sixteen months of experience between the date she received her Ph.D. and the petition's filing date, and all of her previous research experience was as a student. (The beneficiary's experience as an instructor is not relevant here because the petitioner does not seek a teaching position.) The petitioner must, therefore, establish that the beneficiary's graduate research has been recognized within the academic field as outstanding.

As noted above, however, the record does not show that the beneficiary's student research has won such recognition. While the beneficiary's research has been published in journals and presented at conferences, publication and presentation are not equivalent to recognition. Indeed, it is not clear how such research could even have a chance to gain recognition without first being put forth in some public forum.

The beneficiary is clearly a skilled researcher whose efforts are valued by those who have taught or employed her. The record indicates that her career shows much promise, but it appears to be premature to conclude that she has already earned an international reputation as an outstanding researcher in her field. She only very recently completed her training, and her work for the petitioner appears to be largely preliminary, with little evidence that such work has attracted sustained attention outside of the petitioning company itself. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

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 not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.