



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: [Redacted]

Office: Texas Service Center

Date:

AUG 31 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:

Self-represented

Public Copy

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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a state institution of higher education and research. It seeks classification of 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 assistant professor of statistics. The director determined that the petitioner had not established that the beneficiary has attained the outstanding level of achievement required for the category of outstanding professor or 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.

The sole issue to be considered in this proceeding is whether the beneficiary's scientific accomplishments are internationally recognized as those of an outstanding researcher in his field. Service regulations at 8 C.F.R. 204.5(i)(3)(i) state 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 petitioner must meet at least two of six stated criteria. The petitioner claims to have met the following criteria:

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

The beneficiary won the [REDACTED] Award documentation states that the recipient of the award must "be a full-time graduate student majoring in applied mathematics" at [REDACTED] and the award amounts to "a financial stipend of \$1000." The award amounts to an academic scholarship rather than a major award. The same appears to apply to the [REDACTED] which the beneficiary received from the [REDACTED]. There is no indication that individuals receive international attention as a result of achieving these student awards, as they would from receiving a truly major award such as the Nobel Prize.

Other items claimed as prizes or awards do not appear to fit into this category. The petitioner's rank at the top of his class at the [REDACTED] while impressive, is not a prize or award. Grants received by the beneficiary are intended to finance ongoing research rather than reward past achievements, and the beneficiary's internship is a form of practical training rather than a prize or award in its own right. Documentation pertaining to various internships shows that the internships are intended to enhance the intern's "research potential" rather than to acknowledge past work.

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

The petitioner claimed that the beneficiary is a member of the American Statistical Association, the American Mathematical Society, the Institute of Mathematical Studies, ENAR and SIAM. The initial submission, as it now stands in the record, contains no evidence to confirm these memberships or to establish the membership requirements of the associations. The director informed the petitioner of this omission, and the petitioner submitted supplemental documentation, but this submission likewise contains no evidence about the beneficiary's memberships or the requirements of the associations in question.

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.

The petitioner asserts that the beneficiary's "work has been discussed in works published by others in the academic field."

Footnoted citations, or brief mentions in articles, do not indicate that the articles are about the alien's work. The purpose of this criterion is to show that the beneficiary's work has attracted such notice in the international research community that some researchers have subjected the beneficiary's work to in-depth analysis, criticism and discussion. While footnoted citations have value in showing that other researchers rely on the beneficiary's own work, those citations do not elevate the beneficiary above the countless other published researchers whose work is cited in thousands of scholarly journals each year.

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 petitioner establishes that the beneficiary has refereed papers for various journals. While such peer review indicates that the beneficiary's opinion is respected, peer review appears to be somewhat routine in scholarly fields. Furthermore, we cannot ignore that the editors who solicited the beneficiary's reviews are on the faculties of Iowa State University (which the beneficiary attended) and the petitioning institution. Thus, the invitations do not establish a reputation that extends beyond institutions where the beneficiary has worked or studied.

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

Several witness letters accompany the petition. The petitioner highlights three of these letters. [REDACTED] now

[REDACTED] was formerly [REDACTED] which employed the beneficiary as a senior research statistician from 1995 to 1997. [REDACTED] that the beneficiary "has made outstanding contributions" in statistical applications on Phase I clinical trials for various major pharmaceutical companies. [REDACTED] repeatedly stresses that there is a "critical shortage" of research statisticians, although the existence of such a shortage has nothing to do with the beneficiary's individual reputation in the field.

[REDACTED]

I have come to believe that [the beneficiary] is one of the top applied probabilists in the nation and has applied his knowledge of stochastic processes to biostatistical problems of vital interest to our public health. He has also distinguished himself as a biostatistical consultant.

In particular, he has used his extensive knowledge of branching processes to model the growth of cell populations. Problems of interest that he has worked on include obtaining estimators of

the growth parameter and lifetime distribution, prediction, and validation of independence of lines of descent. These are important problems in biology, and his knowledge of branching processes and their asymptotic properties has been pivotal in solving them.

More recently, he has developed new methodology in biostatistics which has improved our ability to analyze bioassay data. Such data arise from animal experiments in cancer and other diseases, and have direct impact on our public health.

[REDACTED] not specified), states:

I came to know of [the beneficiary's] work in the area of Robust Statistics through his publications in highly reputed statistical journals. . . .

[The beneficiary's] work in the area of Robust statistics is fundamental to the statistics discipline and mathematically novel. They form an important part of statistics and clearly demonstrate ingenuity and excellence and set a new trend for further research. . . . I consider [the beneficiary] to be one of the top young statisticians of high international repute.

Other witnesses offer letters, with varying degrees of detail, discussing the beneficiary's skill as a statistical researcher. Most of the initial witnesses have employed, instructed, or collaborated with the beneficiary, and therefore their statements are not evidence that the beneficiary has earned a broad reputation. [REDACTED] neither claims nor denies having worked personally with the beneficiary, and therefore no conclusion is possible with regard to his letter.

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

The petitioner has written several such articles, in highly-rated journals.

The director denied the petition, stating "[t]he evidence in the record does not establish that the beneficiary is recognized internationally as outstanding in the field of statistics." The director stressed that the petitioner cannot define the beneficiary into eligibility by conforming the evidence to the regulatory criteria; rather, the petitioner must submit documentation which consistently establishes that the beneficiary is recognized internationally.

On appeal, the petitioner submits additional witness letters from established statisticians at prestigious institutions in the U.S.

and abroad. These witnesses assert that the beneficiary has had a profound impact on his field, providing "fundamental tools" for further research. The range of witnesses on appeal is considerably broader than in the initial submission, and the emphatic statements in these letters support the finding that the beneficiary has made significant original contributions in his field. The international scope of these letters lends considerable support to the petitioner's claim that the beneficiary is known internationally. Furthermore, there is no indication that these witnesses are simply the beneficiary's former collaborators who have now scattered to different countries; testimony of that sort, while technically "international," would be far less compelling.

Much of the evidence accompanying the initial filing (for example, concerning the local scholarships which cannot be considered "major awards") is quite weak, which necessarily raises questions about the beneficiary's eligibility. Weak evidence, however, does not undermine stronger evidence unless it calls the petitioner's credibility into question. In this matter, while some of the petitioner's early claims are exaggerated, other evidence is difficult to ignore. The beneficiary's work has indeed appeared in top international statistical journals, and scientists from such diverse locales as Sweden, Poland and Singapore have praised the beneficiary's contributions to his field. While the petitioner's initial presentation may have raised legitimate and justifiable concerns about the beneficiary's eligibility, these concerns must not solidify into prejudicial or irrebuttable presumptions. In this matter, the petitioner appears to have overcome the director's understandable concerns. While the petitioner has failed to satisfy a number of regulatory criteria, the petitioner has satisfied at least two, which is sufficient for 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, 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.