

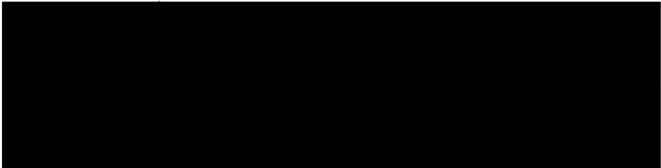


U.S. Department of Justice

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: Vermont Service Center Date:

NOV 8 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

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

Mary C. Mulrean, Acting Director  
Administrative Appeals Office

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

The petitioner is a firm which offers a wide array of document related business solutions. 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 a member of the technical staff. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

On appeal, counsel argues that the beneficiary is recognized internationally as outstanding in his field.

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 18, 1998, to classify the beneficiary as an outstanding researcher in the field of image processing, computer vision, and pattern recognition research. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field as of August 18, 1998, and that the beneficiary's work has been recognized internationally within the field as outstanding.

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 prestigious Outstanding Scientist Award in [REDACTED] from the Chinese Academy of Sciences. The record does not show that this award is one which is recognized internationally nor does it show the criteria required to qualify for the award. The petitioner has not shown that this is a major award.

Counsel also states that the beneficiary received an "excellent industrial research award in [REDACTED] from the Advanced Technology Branch, The National Committee of Science and Technology. Again, the record does not show that this award is one which is recognized internationally nor does it show the criteria required to qualify for the award. The petitioner has not shown that this is a major award.

The excellent graduate student research award and the excellent Ph.D. dissertation award are indicative of scholastic achievement. There is no indication, however, that individuals receive international attention as a result of attaining these awards, as they would from receiving a major award such as the Nobel Prize.

The other "awards" claimed by counsel are, in fact, employment positions. Counsel offers no explanation as to how these positions (full research professor, associate professor) represent major prizes or awards, nor does the record contain evidence that only internationally-recognized scientists obtain these positions.

*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 100 names between [REDACTED] and [REDACTED]" from which one can infer a total roster of presenters numbering in the thousands.

Several witness letters accompany the petition. Counsel highlights three of these letters. Dr. [REDACTED] Director of the Technology Department, [REDACTED], states:

. . . Dr. [REDACTED] PTT-based method for the fast computation of moments significantly speeds up the implementation of pattern recognition, which is necessary to improve optical character recognition devices. The formula derived by Dr. [REDACTED] in his fast computation of moments is called [REDACTED] formula" by experts in internationally journals and conferences and these experts have noted that Dr. [REDACTED] method is one of the most efficient.

[REDACTED] Ph.D., Director, Institute of Automation, [REDACTED], asserts:

Dr. [REDACTED] invented a new method to compute moments, which reduced the computational cost [by] 40 to 50 times.

. . . Dr. [REDACTED] discovered a groundbreaking method in the field of polynomial fitting. . . Tests in the industrial application showed that Dr. [REDACTED] method is 43 times faster than the conventional method.

[REDACTED] Ph.D., Associate Professor of Electrical and Computer Engineering, [REDACTED] states:

In all my years as a professional in the field of pattern recognition, I have not seen another individual who is more qualified and successful in solving technical problems. . . than Dr. [REDACTED]

Other witnesses offer letters, with varying degrees of detail, discussing the beneficiary's skill as a 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.

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

Counsel asserts that the "results of Dr. [REDACTED] research have been published in numerous articles in leading international journals, including *Pattern Recognition; IEEE Transactions on Image Processing; IEEE Transactions on Robotics and Automation; Graphical Models and Image Processing* and over five Chinese journals." The initial submission contained little evidence about these journals.

*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 has established that the beneficiary has refereed papers for the journal, *IEEE Transactions on Pattern Analysis and Machine Intelligence*. While such peer review indicates that the beneficiary's opinion is respected, peer review appears to be somewhat routine in scholarly fields.

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.

Counsel states:

Dr. [REDACTED] outstanding research has been cited by experts in his field worldwide in leading scientific journals, including *Pattern Recognition and Graphical Models and Image Processing*.

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.

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 five of the evidentiary criteria.

Counsel asserts:

Dr. [REDACTED] earned his Ph.D. degree in [REDACTED]. In [REDACTED] Dr. [REDACTED] received the Outstanding Scientist Award from the Chinese Academy of Sciences. In [REDACTED] Dr. [REDACTED] received the Excellent Industrial Research from the Advanced Technology Branch of China's National Committee of Science and Technology. Moreover Dr. [REDACTED] was appointed to the position of Full Research Professor by the Chinese Academy of Science from [REDACTED] to [REDACTED]. Therefore, this evidence clearly meets the burden set forth in 8 C.F.R. § 204.5(i)(3)(i)(A).

The petitioner has submitted no evidence that the awards mentioned above and the professorships won the beneficiary any attention outside of China. If the awards or professorships did not attract international notice, then obviously they cannot add to or demonstrate an international reputation.

Counsel states:

Leading international scientists have referenced Dr. [REDACTED] research in international journals and conferences, including the *International Conference on Pattern Recognition* and the *International Conference on Computer Analysis of Image Analysis and Patterns*. Moreover, one of Dr. [REDACTED] papers was called an "excellent paper" in a letter from the editor of the well-known and respected: *International Journal of Pattern Recognition*, which is recognized by the International Association of Pattern Recognition. This evidence clearly meets the burden set forth in 8 C.F.R. § 204.5(i)(3)(i)(C).

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 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.

In addition, it does not automatically follow that the beneficiary is internationally recognized as outstanding in his field; dozens of researchers make presentations at each of hundreds, if not thousands, of international gatherings each year, and countless articles appear in professional journals. It is unrealistic to claim that every piece of research which reaches an audience in more than one country is, by definition, outstanding. The petitioner has not shown that, outside of those entities where he has worked, the beneficiary's work is in any way distinguished from that of others in the same or related fields. It cannot suffice to claim that the beneficiary enjoys a vicarious reputation stemming from the acclaim of his employer or collaborators.

Counsel claims:

Dr. [REDACTED] was invited to serve as an editorial reviewer for the *Institute of Electrical Engineering and Electronics (IEEE) Transactions on Pattern Analysis and Machine Intelligence* journal. The IEEE is a prestigious international association with a high degree of peer review. In fact, well-known experts in the field have had their papers rejected due to the high

caliber of the journal. This evidence clearly meets the burden set forth in 8 C.F.R. § 204.5(i)(3)(i)(D).

The petitioner has not shown that the IEEE is an international publication. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

There is no indication that performance of peer review is restricted to internationally known researchers. Furthermore, because peer review is often anonymous, one does not necessarily enhance one's reputation by performing such reviews.

The purpose of the regulatory criteria is to demonstrate that an alien is internationally recognized as outstanding. It is, therefore, an unacceptably low standard to assert that every researcher who presents opinions about the work of other researchers satisfies this criterion.

The only new evidence submitted on appeal is a copy of a piece of correspondence dated [redacted] which is a response to an inquiry from an attorney. The letter states that "the opinions expressed in this letter consist merely of thoughts. The issues which you raise can only be determined when a petitioner files a fully documented petition with a service center." New evidence also includes a testimonial from [redacted] Professor and Director, Manufacturing System Laboratory at the [redacted] at [redacted] which reiterates information in previous witness letters. Mr. [redacted] claims that "Dr. [redacted] research achievements are not only significant in the academic field where they are internationally recognized, but also extremely important to many industrial applications."

The record shows that the petitioner, the beneficiary's professors, and the beneficiary's collaborators think highly of the beneficiary's work, and that the beneficiary's efforts have attracted some degree of notice on a wider scale. The record stops short, however, of demonstrating a consistent pattern to show that the beneficiary's work is recognized internationally as outstanding. Assertions about the value or potential applications of the beneficiary's research do not establish or imply international recognition.

Counsel states:

. . . if the director determines that the evidence submitted does not fully establish eligibility for this classification or raises underlying questions regarding eligibility, the director may request additional evidence. In the present case, the

Petitioner was never even afforded the opportunity to present additional evidence. . . .

The best remedy at this stage is to give full consideration to any evidence which the petitioner submits on appeal. On appeal, counsel has failed to provide adequate documentation to establish that the beneficiary has been recognized internationally as outstanding in the fields of image processing, computer vision, and pattern recognition. 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 met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.