

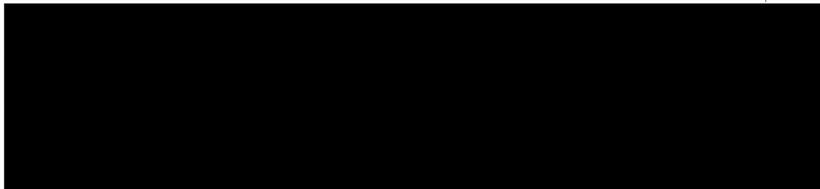


U.S. Department of Justice

Immigration and Naturalization Service

B3

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



File: [Redacted] Office: Nebraska Service Center Date:

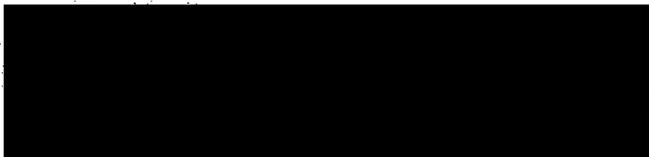
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

NOV 20 2000

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)

Public Copy

IN BEHALF OF PETITIONER:



Identifying information 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

Mary C. Mulrean, Acting Director
Administrative Appeals Office

NOV 20 2000

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

The petitioner is a firm which is involved in the manufacture, sales, and marketing of animal feed and supplements. 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 product development manager. 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 March 19, 1998, to classify the beneficiary as an outstanding researcher in the field of poultry science. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field as of March 19, 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 "recognitions as outstanding graduate student (1996) from the [REDACTED] at [REDACTED]

and [REDACTED] (1995) Annual Meeting Southern Poultry Science Society in Atlanta, Georgia, and the [REDACTED] from the [REDACTED] for [REDACTED] Cairo, Egypt." The record does not show that these awards are recognized internationally nor does it show the criteria required to qualify for the awards. The petitioner has not shown that these are major awards. The petitioner has submitted no evidence that the outstanding graduate award or the most outstanding graduate student research paper and its presentation won the beneficiary any attention outside of [REDACTED] itself. If the awards did not attract international notice, then obviously they cannot add to or demonstrate an international reputation. 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 refers to a travel award the beneficiary received 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.

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

Counsel claimed that the beneficiary is a member of the American Association for the Advancement of Science, the Poultry Science Association, and the International Association of Milk, Food, and Environmental Sanitarians. Counsel also stated that the beneficiary is a member of Sigma Xi, the Scientific Research Society; Phi Beta Delta, the Honor Society for International Scholars; and Gamma Sigma Delta, the Honor Society of Agriculture.

No documentation of the membership requirements for the American Association for the Advancement of Science, the Poultry Science Association, or the International Association of Milk, Food, and Environmental Sanitarians were submitted.

Information on Sigma Xi, the Scientific Research Society, reveals that membership is "by invitation."

Those who have shown potential as researchers are invited to join as associate members. Full membership is conferred upon those who have demonstrated noteworthy achievements in research. Each year the Society initiates more than 5,000 new members. Over the course of the Society's distinguished history, more than 170 members have won the Nobel Prize and many more have earned election to the National Academies of Sciences and Engineering.

The record does not show that the beneficiary was elected by a national or international panel. Instead, it appears that he was elected by his college's chapter of the society. Full membership in Sigma Xi requires "noteworthy achievement," which society documents define as "publication, patents, written reports or a thesis or dissertation." Sigma Xi documents in the record state the society's size as "nearly 90,000" members. An organization of this size plainly does not restrict its membership to the very top of the field.

Counsel cites "more than 170 members have won the Nobel Prize." It does not follow, however, that Sigma Xi's members, in general, are of Nobel Prize caliber, or that membership increases one's chance of winning the prize.

While membership in Sigma Xi is certainly an honor, we cannot find that its requirements are sufficiently restrictive to meet the plain wording of this criterion.

The record shows that the Phi Beta Delta society is "dedicated to recognizing scholarly achievement in international education." Since its founding in 1986, more than 8,500 members have been installed.

The goals of the society are:

- * to recognize the scholarly achievement of international students and scholars, U.S. students who have studied abroad and faculty and staff who are involved in international activities,
- * to serve as a vehicle for the development of academic-based international programming,
- * to provide a network on each campus of faculty, staff and students involved in international endeavors; and
- * to extend this network to thousands of members in chapters across the country and throughout the world.

Again, it appears that the beneficiary was selected by the local chapter of the society and not by a national or international

panel. The record contains no direct evidence (such as a communication from the organization's headquarters) that "recognized national and international experts," rather than a local chapter panel, approved the beneficiary's admission.

This criterion is intended to refer to the most prestigious associations, such as the National Academy of Sciences, which are extremely restrictive in their membership requirements. The National Academy of Sciences admits a few dozen members each year and these new memberships are decided at the national level rather than by local members. It appears, from the available information, that Phi Beta Delta is a considerably larger (and less restrictive) organization. The record does not permit the conclusion that Phi Beta Delta consists entirely of established, renowned researchers, to the exclusion of graduate students and as-yet-unestablished young researchers.

Gamma Sigma Delta, the Honor Society of Agriculture, has been strictly honorary since 1917. Elections to membership are conducted by the faculty. Seniors and graduate students are elected in the Fall and Spring; faculty and alumni are elected in Spring only.

Senior students elected to membership must rank scholastically in the upper 15 percent of the class and they must show promise of future leadership in some phase of agriculture in its broadest meaning.

Graduate students of outstanding ability in the various fields of agriculture or closely related sciences, and alumni and faculty who have, by virtue of outstanding achievement in agricultural pursuits, are also eligible for election. Faculty members are eligible after at least three years of service. Alumni are eligible for election not sooner than five years after graduation.

Gamma Sigma Delta is an organization with the objectives of improving all phases of agriculture, including production agriculture, biology, environmental studies, agribusiness, and other related sciences. High standards of scholarship and outstanding achievement in career pursuits are encouraged.

The record indicates that the beneficiary was selected by the faculty members for membership into Gamma Sigma Delta in [REDACTED]

[REDACTED] There is no evidence in the record, however, which establishes that the faculty members are considered national or international experts in their disciplines or fields. In addition, there is no evidence in the record which establishes that membership in this organization confers international recognition upon a member.

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, possibly numbering in the thousands.

Several witness letters accompany the petition. [REDACTED] PhD, Associate Professor, [REDACTED] states:

. . . He was an outstanding student, whom I have had the pleasure to direct through very productive M.S. and Ph.D. programs. He accomplished a great deal as a young researcher and clearly established himself as scientist. I sincerely believe that through his scientific research efforts and strengths, he has significantly contributed to a better understanding of bacteria responsible for foodborne disease.

. . . In addition to his thesis, In vitro and in vivo evaluation of direct-fed-microbial bacteria and fructooligosaccharides for Salmonella control in broilers, his M.S. research generated four refereed journal articles, four presentations at national scientific meetings, and recognition by the Southern Poultry Science Society for outstanding research.

His PhD research focused on development of sensitive and rapid methods for the speciation of *Campylobacter*, foodborne bacteria that are important causes of human and veterinary disease. . . he developed novel and specific polymerase chain reaction primers for the detection and identification of *Campylobacter lari* and *C. fetus*. This accomplishment . . . led to four additional journal articles and several presentations at national meetings. Furthermore, [REDACTED] received extramural funding for his research. . . Receiving this competitive grant as well as his other research accomplishments not only demonstrate his research creativity and originality, but his ability to apply research findings to real world problems.

[REDACTED], Ph.D., Associate Professor, Microbiology, [REDACTED] asserts:

There are several reasons that Dr. [REDACTED] would be an asset to our work force and population if he is granted permanent residency. First, he is a scientist who demonstrates originality in his actions. His research project in my laboratory involved experiments to more rapidly identify bacterial pathogens such as *Campylobacter*, which is probably the world's leading cause for bacterial gastro-intestinal disease. He independently developed DNA primers (small pieces of DNA that complement part of the chromosome) that allowed him to use the polymerase chain reaction (PCR) to identify specific species of *Campylobacter* in a shorter period of time than required by the usual culture methods. Additionally, he used cutting edge technology to identify subtypes of *Campylobacter* and *Arcobacter*. Second, he consistently relates his work to a mission that relates to disease. In his research here, he used his results to gain a better insight into the carriage and transmission of *Campylobacter* by and from poultry, one of our leading food sources. Third, his personality and ability to communicate well with others will ensure that he will accomplish his goals while working with others. Fourth, his publication record at [REDACTED] has brought recognition and respect to our higher education program in a portion of Agriculture. He integrated molecular biology techniques with the classical poultry science methods to develop new ways to perform research in this area. Lastly, his dedication and willingness to share with others compels us to allow him to continue to make his contributions.

[REDACTED] DPH, Lead Scientist, *Campylobacter/Listeria* Research, [REDACTED], states:

. . . As a result of his Ph.D. training [REDACTED] background now includes extensive work in molecular biology as evidenced by the three publications which he and I have coauthored. . . .

Dr [REDACTED] is a superb scientist and a truly productive collaborator. He is and will be a positive contributor to the nation's scientific effort in food safety research.

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 "Dr. [REDACTED] work has been published in numerous scientific articles and published abstracts around the world."

Dr. [REDACTED] articles and presentations with published abstracts have been presented in Veterinary Microbiology, the Journal of Microbiological Methods, Plant Molecular Biology, Poultry Science, Journal of Food Protection, Avian Diseases, Aviculture Profesional, Highlights of Agricultural Research, [REDACTED] International Congress of International Society for Plan Molecular Biology (Singapore), Alabama Academy of Science, American Society for Microbiology Annual Meeting [REDACTED] Southern Conference on Avian Diseases, and [REDACTED] Western Poultry Disease Conference.

The initial submission contained little evidence about these journals or presentations.

Counsel claims that Dr [REDACTED] contributed to works which received extramural funding from the U.S. Poultry and Egg Association. Extramural funding is not persuasive evidence of the significance of the petitioner's contributions. Indeed, the nature of extramural funding is such that the funding must be secured before the research is initiated, much less completed. Thus, establishing that the petitioner's research (like much scientific research) is externally-funded does not compel the conclusion that such research eventually resulted in original findings of major significance, long after the disbursement of the funds.

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 asserts:

The Service has failed to consider properly the evidence submitted. The Service has erred in applying the standard required for extraordinary ability to this petition for outstanding Professor or Researcher.

The only reference to "international" under the established requirements in the regulations, is the reference to the international circulation of scholarly journals in which the alien have published articles. In its commentary, the Service notes that it withdrew the requirement proposed for the requirement that the major prizes or awards be international, acknowledging that national prizes may be international recognized.

The scientific community within specialty areas is an international community. The original work of scientists publishing in the United States in International Journals become internationally known since this country is a world leader in science. An article published in an International Journal becomes upon publication "international material." It is read around the world by other specialists. In the case of Dr. [REDACTED], he has published in several of the most prestigious International Journals and, according to letters submitted, he is a pioneer in research on Campylobacter, reprints of his articles have been received from all over the world (see attached letter from Dr. [REDACTED]

In denying this petition, the Service has discounted the opinion of several well known scientists, among them, two scientists with the United States Agricultural Department, the fact that Dr. [REDACTED] has received awards based in his scientific work, belong to three International Honor Societies which membership is based only in scientific accomplishments, that his work has been mentioned by other scientists and that he has published several original scientific papers in prestigious International Journals.

The Service has further erred, by using the wrong standard for outstanding professor and researcher and stating that the beneficiary "is not one of the few renowned and truly outstanding researchers recognized internationally, . . ." By using this standard the Service is applying the "extraordinary ability" standard in which the beneficiary has to demonstrate that is "one of the few who has risen to the top in the field of endeavor." The regulations do not require this standard for an "outstanding professor or researcher."

Counsel is mistaken. 8 CFR 204.5(i)(3) states 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. . . .

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

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 that the 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.

The petitioner has not shown that the journals previously mentioned are international publications. 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).

The only new evidence submitted on appeal are letters from [REDACTED], Research Microbiologist, [REDACTED] and from [REDACTED] Professor, [REDACTED] reiterating their belief that the beneficiary meets the outstanding scientist category.

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 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.

On appeal, counsel has failed to provide adequate documentation to establish that the beneficiary has been recognized internationally as outstanding in the field of poultry science. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

Beyond the decision of the director, another issue that must be addressed is whether the position offered to the beneficiary constitutes "research."

[REDACTED] Director, Human Resources Department, [REDACTED], [REDACTED], describes the beneficiary's duties as follows:

Dr. [REDACTED] currently works as Product Development Manager for [REDACTED] at its world headquarters in St. Louis, Missouri. Dr. [REDACTED] works to develop technical programs which enhance Novus image and technical credibility (in relation to poultry science) throughout the world. He addresses technical issues at [REDACTED] prospective and existing accounts, including bioequivalency as appropriate; participates in the commercial development aspects of new product/business launches; and, he produces training materials and conduct sales/distributor training sessions to acquaint the sales/distribution personnel with the purposes of the products, how they are used and their benefits.

In addition, he uses his research to perform the following duties as Product Development Manager: put Customer High Impact Programs (CHIPS) service in place at key accounts and position to extract measurable value (cooperative research program, ingredient analysis program, literature searches on specific topics or relationship) throughout the world; plan and coordinate a technical symposium for key accounts in territory; provide support as needed for the scheduled symposiums; repackage or publish four technical pieces/publications each year; and, provide support for advertising literature.

The beneficiary's present position appears to be, essentially, as a marketing manager who uses existing principles and technology to solve practical problems rather than someone who engages in scholarly or advanced theoretical research that is comparable to the work of researchers at universities or other institutions of higher education. The standard for what constitutes research must be more stringent and independent than simply the petitioner's attestation that the beneficiary's work constitutes research.

The petitioner has not shown that the beneficiary's current duties involve adding new information to the global body of basic knowledge in his field. Rather, the beneficiary's work that the petitioner labels research appears to amount to various stages of product design. While marketing and design share some degree of common ground with research, there is nevertheless a distinction between the various occupations. The beneficiary's very job title, "Product Development Manager," supports the finding that the beneficiary is a marketing manager designing specific products, rather than a researcher exploring the theoretical underpinnings of such products. It is evident, therefore, that the beneficiary's occupation is not a full-time research position.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in his field. The duties of the position offered to the beneficiary appear to be more akin to design and marketing functions than to scholarly research. 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.