



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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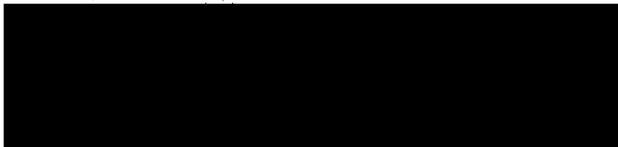
IN RE: Petitioner:
Beneficiary:



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. 1529(b)(1)(B)

Public Copy

IN BEHALF OF PETITIONER:



Identifying data included 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

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 data storage technology design and manufacturing 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 a staff development engineer. 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.

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 satisfied the following two criteria.

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

To describe and evaluate the beneficiary's past contributions, the petitioner submits letters from four witnesses. [REDACTED]

[REDACTED] Ph.D., of the University of Singapore's Data Storage Institute, was previously an assistant professor at the St. Petersburg University of Aerospace Instrumentation, while the beneficiary was a research engineer and doctoral student at the same institution. The two have collaborated in the past. [REDACTED]

[REDACTED] states:

[The beneficiary] can be considered as an expert in [the] area of digital signal processing. His contributions to Charge-Constrained bitshift-correcting/detecting RLL codes and Correlation properties of RLL sequences are well recognized in [the] magnetic storage research community. He is also known [for] his research work on digital Speech and Image Compression. . . .

[T]he results of his research are now used in developing an advanced MDFE detector for (1,7) read-write channel.

Professor [REDACTED] Doctor of Science,¹ supervised the beneficiary's Ph.D. research at St. Petersburg University of Aerospace Instrumentation. [REDACTED]

[The m]ain scientific interests of [the beneficiary] were in the field of block codes for magnetic recording. His outstanding contribution[s] to this field are the algorithm for constructing run-length-limited bitshift-error-correcting and detecting codes. It was one of the first known code construction[s] of that kind. Coding and decoding algorithms for these codes with non-exponential complexity were developed by [the beneficiary].

Gregory Tenengolts, Ph.D., president of GT Technology, states:

I know [the beneficiary] from the joint research my company, GT Technology, was conducting with Sankt Petersburg Academy of Aerospace Technology.²

[The beneficiary] was one of the major contributors in the project related to information transmission, storage and signal processing. Results of the research done by [the beneficiary]

¹The Russian "Candidate" degree is equivalent to a U.S. doctoral degree; the Russian "Doctor" degree, which has no U.S. equivalent, is a level higher than the Ph.D.-level "Candidate" degree.

²The exact translation of the name of this institution differs from witness to witness.

in the field of coding theory have been presented in the international conferences and numerous publications. . . . As a result of his efforts, very efficient new algorithms for run-length-limited codes with charge constraints and recursive digital signal filtering have been obtained. These algorithms have been used for the applications related to disk drive technology and nascent Internet telephony.

The original algorithms developed by [the beneficiary] established him as an outstanding researcher in the fields of multimedia and data storage.

Venkata Raja Gosula, the beneficiary's supervisor and director of the petitioner's ASIC Design-Formatter Group, states:

When I interviewed [the beneficiary], I came to know of his previous research in channel codes for magnetic recording . . . and . . . in error correction. . . .

[The beneficiary's] research based on his previous experience allowed him to make an important contribution to the research/development program of our department. The algorithm for the fast encoding of the block address developed by him significantly improves the implementation of special error-correcting features in current and future products.

The wording of the above letter indicates that the witness did not know of the beneficiary's work prior to the aforementioned interview. All of the witnesses have supervised or collaborated with the beneficiary, and thus the composition of the witness pool does not suggest an international level of recognition. Given the absence of independent testimony (i.e., from witnesses unconnected to the beneficiary), we cannot determine what impact (if any) the beneficiary's work has had outside of the institutions where the beneficiary has worked. The beneficiary does not earn an "international" reputation merely by working in more than one country. So low a standard would render this classification virtually meaningless, because every beneficiary is (by definition) an alien, and many if not most beneficiaries seeking this classification are already in the United States as nonimmigrants.

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

The beneficiary is the author or first-listed, co-author of several journal articles, two conference presentations, and a textbook. The burden is on the petitioner to demonstrate that the beneficiary's writings have circulated internationally. If the beneficiary's work has appeared in print in only one country, then

such writings cannot establish or contribute to an international reputation.

The petitioner notes that the beneficiary holds the Soviet equivalent of a patent for his "Apparatus for Linking Computers with End-Users." The record does not indicate how widely this device is used outside of the former Soviet Union. Holding a patent is not *prima facie* evidence of international recognition as an outstanding researcher.

The petitioner also notes that it has filed for a U.S. patent based on another of the beneficiary's inventions, the details for which are "considered strictly confidential . . . and cannot be made public until the patent application is approved." The beneficiary obviously cannot have earned international recognition based on an innovation which is still considered a secret outside of the petitioning company. The international community has had no opportunity to examine or comment upon this innovation.

The director denied the petition, stating that the record does not show that the petitioner, as an individual, is recognized internationally as an outstanding researcher. The director noted that the petitioner was co-author, rather than sole author, of most of his published works.

On appeal, counsel asserts that "many internationally recognized researchers and professionals" have attested to the beneficiary's "notable research accomplishments." We cannot ignore, however, that every one of those witnesses has worked closely with the beneficiary on the very projects that they describe. Counsel acknowledges that the witnesses "may be colleagues or former colleagues," but maintains that the witnesses "certainly possess the ability to make educated comments about [the beneficiary's] individual potential to the scientific research field." The witnesses are, of course, competent to offer testimony about their collective field of endeavor, but their statements cannot objectively establish that the beneficiary's work is known outside of that circle of individuals who "may be colleagues or former colleagues." The visa classification at issue is restricted to researchers whose work is of such a caliber that it has won them international recognition as outstanding. The beneficiary does not automatically gain such recognition by virtue of endorsements from his collaborators, mentors, and employers.

Even among the petitioner's witnesses, the petitioner's own [REDACTED] [REDACTED] apparently only learned about the beneficiary's earlier work at the beneficiary's job interview. No official of the petitioning company has indicated that the company was aware of the beneficiary's work before the beneficiary sought employment there.

With regard to the beneficiary's scholarly articles, counsel rightly asserts that such articles are not invalidated simply because the beneficiary was a co-author rather than the sole author. Review of scholarly journals suggests that co-authorship is the rule, and sole authorship the rare exception. Collaboration does not necessarily diminish the contribution of one participating researcher.

At the same time, we note the lack of evidence that the beneficiary's writings have appeared in internationally-circulated journals, as required by the plain wording of the regulation. Counsel's assertion that "the journals . . . are published all over the world" does not constitute evidence. See Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaiqbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel notes the beneficiary's co-authorship of a textbook "that has been in use at the Institute since its publication in 1990." The "Institute" to which counsel refers is the St. Petersburg University of Aerospace Instrumentation, where the beneficiary was a graduate student at the time he co-wrote the book. Its use at a single institution is no indication of wider use or acknowledgment.

Prior to entering the United States, the beneficiary's only documented activity outside of Russia (or the then-Soviet Union) was his presentation at a "Swedish-Soviet International Workshop in Information Theory" in 1989. Counsel asserts that an invitation to participate in this conference is a mark of distinction, but no official of that conference corroborates this claim. The petitioner has not shown that the beneficiary earned any significant recognition among Swedish researchers as a result of this conference.

Upon careful review of the evidence of record, we cannot find that the beneficiary has earned an international reputation as an outstanding researcher. While he has produced original research that has yielded published articles, original research and publication are not *prima facie* evidence of an international reputation; rather, they are avenues through which one might earn such a reputation, depending on the international community's reaction to one's work.

Review of the record yields another issue affecting the beneficiary's eligibility. The statute and regulations require that the petitioner seeks to employ the beneficiary in a research capacity. An official of the petitioning company has thus described the beneficiary's duties:

[The beneficiary will] conduct research on and design digital ASICs for disc controllers and specifying error correction

circuits in next generation disk drives. He will further perform simulation analysis, fault coverage, and test vector production for ASICs. [The beneficiary] will finally research VHDL behavioral and RTL model development, synthesis with Synopsys and post-synthesis simulation for error-correcting code for a hard disk controller.

While the petitioner has used the term "research" in the above passage, the overall description indicates that the beneficiary's intended duties are more akin to commercial product design.

When considering whether the beneficiary is a "researcher," it is relevant to observe that the beneficiary does not appear to have published anything after he completed his Ph.D. degree in 1991. The beneficiary's work throughout the 1990s appears to have been primarily for the private benefit of his various employers rather than to add to the published, or publicly-available, body of knowledge in the field (as demonstrated by the petitioner's stated unwillingness to provide details of the beneficiary's latest project).

The record indicates that the beneficiary engaged in research as a graduate student (as do most, if not all, graduate students), but the evidence is far less persuasive that the beneficiary's subsequent employment has constituted research as opposed to product development and design.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in the field of data storage technology. 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.