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

[redacted]

File: [redacted] Office: Texas Service Center Date: OCT 3 2000

IN RE: Petitioner:
Beneficiary: [redacted]

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:

[redacted]

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, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a college. It seeks to classify the beneficiary as an outstanding professor 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 professor. 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.

On appeal, counsel argues that the petitioner has met the necessary criteria for eligibility. Counsel refers to five attached letters as "additional evidence," although three of the letters had been submitted previously and thus were not new additions to the record.

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)(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 membership in associations in the academic field which require outstanding achievements of their members.

The beneficiary is a member of the American Society for Biochemistry and Molecular Biology. The record contains no evidence that this association requires outstanding achievements of its members.

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 beneficiary has served as an editor of [redacted] a journal which "publishes original articles in English or Spanish refer[ring] to the various aspects of the arid and semi-arid zones of Latin America aiming to contribute to a better understanding and rational management of their resources." Since leaving this editorial position, the beneficiary appears to have shifted his specialty from agricultural concerns to endocrinology. Therefore, the petitioner's work as an editor for [redacted] is of questionable relevance to his current academic field.

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

[redacted] of the University of Georgia, Athens (where the beneficiary received his doctorate) describes the beneficiary's research at that institution:

> His research dealt with the lutropin receptor, an important G protein-coupled receptor, whose proper function is required for normal reproductive physiology in both males and females. [The beneficiary] prepared and characterized 36 mutants of the receptor with emphasis on a highly invariant region that is common to other distinct but related receptors, i.e. those for follitropin and thyrotropin. He identified two amino acid residues in the receptor that are obligatory for proper signaling and found another that was also important in mediating the conformational change after ligand binds to the receptor. This represented seminal work, and its importance was underscored by a recent report of an individual suffering from a naturally occurring mutation in exactly the same region of the receptor that [the beneficiary] had identified. His work was published in the prestigious scientific journal

 [redacted]

Endocrinology and has received excellent communications in its importance in the field.

The Endocrinology article referenced above was "received October 1, 1998," according to a footnote in the article itself. The petition was filed on September 29, 1998,[1] before this article was received, let alone published. In Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Therefore, the publication of this article cannot establish that the beneficiary was already eligible even before the article was published.

Other witnesses discuss the beneficiary's work as an instructor and administrator, and make vague references to his work as a researcher, but they do not credit the beneficiary with specific discoveries of international significance. For most of his career, the petitioner was involved in agronomy and soil science rather than his current field of endocrinology.

The director requested statements from individuals who have not worked directly with the beneficiary, to establish that the beneficiary has earned a truly international reputation as the statute demands. In response, the petitioner has submitted two additional letters, both from members of Endocrinology's editorial board. Professor Tae H. Ji of the University of Kentucky states:

> Based on my experience, [the beneficiary] accomplished excellent research and published an impressive paper in one of the top international journals. [The beneficiary] worked on the luteinizing hormone receptor, which is crucial for the regulation of the ovulation cycle of women. . . .
>
> Specifically, [redacted] discovered a region of the hormone receptor that is essential for inducing hormone actions. His findings will be helpful for understanding the hormone mechanism, providing the possibility to artificially manipulate the hormone action.

[redacted] of the University of Iowa states:

> [The beneficiary] has made a significant impact on the field of reproductive endocrinology. His work has been on the LH r4eceptor, a cell surface receptor that binds the reproductive

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[1]The Vermont Service Center received the petition on September 16, 1998, but this receipt does not constitute proper filing because that Service Center does not have jurisdiction over the state of Florida, where the petitioner intends to employ the beneficiary. The Texas Service Center, with jurisdiction over Florida, received the petition on September 29, 1998.

hormone LH. The receptor . . . is key to normal reproductive physiology in both sexes. The importance of the LH receptor is underscored by recent studies showing that loss-of-function mutations of the LH receptor cause infertility in males and females. Thus, it is critically important to learn the mechanisms by which the LH receptor works. [The beneficiary] has been a major player in this area.

Both of the above letters cite the beneficiary's Endocrinology article as the key to the beneficiary's impact on the field. As has been shown, that article had not even been submitted for publication as of the petition's filing date. If the beneficiary's reputation does rest largely on this article (as the witnesses suggest), then he clearly did not have this reputation when the petition was filed before the article's publication.

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

The petitioner has submitted copies of a number of articles co-authored by the beneficiary. The record does not reveal the extent of the circulation of the publications which carried these articles. Some of the beneficiary's writings appear to be manuscripts, with no evidence of actual publication.

After two requests for further evidence failed to yield satisfactory documentation, the director denied the petition, stating that of the above regulatory criteria, the petitioner has established only that the beneficiary has written scholarly articles in his field.

On appeal, the petitioner submits two additional witness letters and copies of previous submissions. Mario Ascoli, Ph.D., is, like [redacted] a Professor at the University of Iowa and a member of Endocrinology's editorial staff. Prof. Ascoli states "[i]n my judgment [the beneficiary] has made an important impact on the field of reproductive biology." [redacted] then appears to indicate, however, that this impact arises from the beneficiary's "study (published in the widely cited journal *Endocrinology*)." As established above, the journal did not even receive this article until after the petition's filing date; therefore, the publication of the article cannot possibly have contributed to the beneficiary's reputation as of the filing date.

[redacted] collaborated with the beneficiary at Peru's National University, and later supervised the petitioner's early doctoral research at the University of Georgia. [redacted] indicates that the petitioner "worked on sucrose metabolism in plants and was a key scholar in our discovery of the central role of the enzyme, sucrose synthase, in cleaving sucrose to feed carbon into plant cells for their growth." This research appears to have taken place just before the beneficiary's transition from soil

science and agronomy (in which fields the beneficiary holds lower degrees) and his current specialty of human endocrinology.

Counsel asserts on appeal that these letters establish that the beneficiary has not only published articles in his field, but that he has also made significant research contributions in his field. One must keep in mind that the purpose of the criteria is to demonstrate the international recognition which the statute demands. The evidence submitted to fulfill these criteria must be inherently demonstrative of such recognition; it cannot suffice to argue that, because the beneficiary is a published author who has conducted original research, he must by definition be internationally recognized. Indeed, it is difficult to imagine how a researcher could be published if he or she had not conducted original research. Even then, the director's finding regarding the beneficiary's publications does not appear to take into account the late publication date of the Endocrinology article.

The new letters, like those submitted earlier, indicate that the beneficiary has earned the respect of the faculty of the universities that he attended, and of the editorial staff of a journal which published one of his articles after the petition's filing date. The letters do not demonstrate that the petitioner enjoyed an international reputation in his present academic field as of September 29, 1998. Research conducted in a different field is of negligible consequence if the petitioner has since abandoned that field. If the beneficiary's claim of an international reputation is to rest largely on witness letters, such a claim would have been considerably stronger if the letters had come from acknowledged experts in several different countries, who have no significant ties to the beneficiary. Instead, the petitioner has relied largely on letters from Iowa, Kentucky and Georgia, as well as the beneficiary's native Peru. Congress does not appear to have intended for the term "international recognition" to apply to every alien who has conducted research both in his or her home country and in the United States.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in his field. 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.