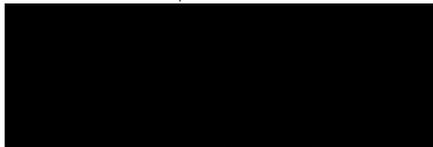




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U.S. Department of Justice
Immigration and Naturalization Service

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



Public Copy

APR 13 2001

File:  Office: Texas Service Center Date:

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

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

Robert P. Wiemann, Acting 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 university. 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 an assistant professor of Physics. 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, the petitioner submits copies of published articles by the beneficiary, and argues that the beneficiary qualifies for the classification sought.

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 regulation lists six criteria, of which the petitioner must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. The petitioner claims to have satisfied all six of these criteria:

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

The petitioner asserts that the Visiting Erskine Fellowship which the beneficiary received in 1996 amounts to a major award. The fellowship amounted to six weeks of lectures at the University of Canterbury in Christchurch, New Zealand, with a "maintenance allowance" and travel expenses.

The petitioner also received a Feodor Lynen Fellowship from the Alexander von Humboldt Foundation, which funded the beneficiary's postdoctoral research at Cornell University from 1989 to 1992.

The petitioner initially offered no documentary evidence of the beneficiary's work as a guest researcher in Japan in 1996. Documents submitted later suggest that this position is comparable to the above fellowships.

There is no independent evidence to show that the above fellowships are major international prizes or awards for outstanding achievement. A fellowship, particularly for a postdoctoral researcher who is still in a training stage of his or her career, is not necessarily a major award that indicates international recognition. These fellowships appear to represent a source of funding for ongoing work, rather than prizes or awards for past work.

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

The petitioner claims that the beneficiary satisfies this criterion because he has served on the organizing committees for various conferences. Such committees, however, are not associations but rather temporary, *ad hoc* bodies which exist for the limited purpose of organizing specific short-term events. An example of a qualifying association under this criterion would be the U.S. National Academy of Sciences. The only evidence submitted to support the petitioner's claim is a document from a 1998 conference

which identifies the beneficiary as a member of the program committee, but not of the smaller organizing committee. Nothing in the record explains how the organizers came to select the beneficiary for the program committee. While the beneficiary's service on this international committee is not without value, such service does not satisfy this criterion.

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 claims that the beneficiary's published work has garnered "146 citations in international journals since 1997." The petitioner submits a citation index containing exactly 100 entries, most of which predate 1997. An internal document prepared by the petitioner itself lists 65 citations from 1992 through 1996. The petitioner offers no source for the claim of "146 citations . . . since 1997." The number of documented citations is actually somewhat lower than 100, because included in the 100 listed citations are several instances of self-citation by the beneficiary. Citation of one's own work is obviously not an indication of international recognition.

Citation of the beneficiary's work does not establish that the articles containing the citations are "about" the beneficiary or his work. These citations are better understood as a gauge of the field's reaction to the beneficiary's own writings, which are covered by a separate criterion further below.

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 claims that the beneficiary satisfies this criterion, but offers only its own list of instances in which the beneficiary purportedly acted as a judge. This list is not evidence of the beneficiary's participation as a judge, but rather a claim of such participation. 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).

Furthermore, many of the listed instances appear to represent routine duties of university faculty members, such as committee memberships and evaluation of graduate student work, none of which have been shown to be the exclusive purview of professors who are internationally recognized as outstanding.

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

Obviously, the petitioner cannot satisfy this criterion simply by listing the beneficiary's past projects, and demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research. Research work that is unoriginal would be unlikely to secure the beneficiary a master's degree, let alone classification as an outstanding researcher. Because the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher, it stands to reason that the beneficiary's research contributions have won comparable recognition. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

The petitioner claims that the beneficiary satisfies this criterion, and as evidence the petitioner cites the petitioner's publications and grant funding. The petitioner does not explain how the beneficiary's work in the field is more significant than that of countless other researchers in the field of physics.

The petitioner submits letters from various figures in the beneficiary's field. Professor [redacted] of Cornell University, who first encountered the beneficiary when the beneficiary was a graduate student, states that the beneficiary "is highly visible among international scientists." Another of the beneficiary's former collaborators, Professor Subir K. Bose of the University of Central Florida, states:

I became familiar with [the beneficiary's] scientific work . . . when I became interested in working on the problem of phonon relaxation. [The beneficiary's] work was one of the most important on the subject. . . . In my opinion [the beneficiary] is one of a small group of physicists who has been able to make Georgia the leading place in solid state spectroscopy in the country.

Clearly, [the beneficiary] has already established himself as a physicist of international reputation in the fields of phonon spectroscopy, and the application of Free Electron Laser in physical problems.

Professor [redacted] director of the Free Electron Laser Center at Stanford University, states that the beneficiary "has . . . gained an independent international reputation." Prof. Schwettman states that he has collaborated with the beneficiary.

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

At the time of the petition's filing, the beneficiary had written 37 published articles, with additional articles submitted for publication. Further articles by the beneficiary appeared in the published proceedings of professional conferences.

As noted above, researchers in several countries have repeatedly cited the beneficiary's work, indicating that the beneficiary's published articles are of value to the international academic community. The evidence submitted in support of this criterion is some of the strongest in the record.

A professor at Hitachi Research Laboratory in Japan invited the beneficiary, as "a world-recognized authority in this field," to write a review chapter for the proposed six-volume Handbook of Advanced Electronic and Photonic Materials. The electronic mail message does not mention the beneficiary by name in its text; it is headed "Dear Colleagues" and sent to an unspecified number of multiple recipients.

The beneficiary was one of four recipients, all at the petitioning university, of an invitation to write a 10,000-word article for the Wiley Encyclopedia of Electrical and Electronics Engineering. It appears that the invitation was based on the reputation of the department rather than the beneficiary as an individual.

The director instructed the petitioner to submit further evidence to show that the beneficiary has earned international recognition as an outstanding professor or researcher. In response, Joseph J. Christensen, the petitioner's assistant director for Legal Affairs, maintains that the beneficiary "is regarded as one of the foremost scientists in his field" and that it has fulfilled all six of the regulatory criteria discussed above.

Mr. [REDACTED] describes some of the beneficiary's projects, such his work with the Phosphor Technology Center of Excellence and his collaboration with Stanford University to study the use of lasers in brain surgery. While Mr. [REDACTED] explains why these projects are important, he offers no evidence to show that these projects are inherently more important than those undertaken by other faculty members of prestigious universities.

Mr. [REDACTED] observes that the beneficiary "supervises three times as many students as the average physics professor at" the petitioning institution. Mr. [REDACTED] does not establish that the most distinguished physics professors tend to supervise more students than less prominent professors.

Mr. [REDACTED] stresses the beneficiary's aforementioned receipt of three fellowships, but he provides no persuasive evidence that these fellowships amount to major awards in the field. Listing the number of people who receive these particular fellowships does not

establish that these particular fellowships are more important or prestigious than other fellowships in the field. As noted above, the fellowships amount to temporary paid positions as a researcher or lecturer, rather than a prize or award to recognize prior achievements in the field.

Mr. [REDACTED] speculates as to the possible consequences to the petitioning university if it is unable to continue to employ the beneficiary. The petitioner's desire or perceived need to employ the beneficiary is immaterial to the question of whether or not the beneficiary is internationally recognized as an outstanding professor or researcher.

Copies of various documents accompany Mr. [REDACTED] letter, but these documents add little of substance to the documentation already in the record.

The director denied the petition, stating that the petitioner has failed to establish the beneficiary's eligibility. For instance, the director found that the petitioner has not shown that the beneficiary has won major international prizes, or that the beneficiary's research is internationally recognized as outstanding.

On appeal, Mr. [REDACTED] observes that the beneficiary is responsible for obtaining over \$400,000 in grant money. Mr. Christensen states that "[g]rants are normally given for research in areas that are of benefit to the United States." It is certainly true that one is unlikely to procure grant funding for useless, purposeless or valueless research, but it does not follow that any research supported by grant funding must be outstanding. The petitioner has not established that only a small minority of professors obtain such funding, nor has it compared the level of the beneficiary's grant funding to that of other professors in its own Physics department.

Mr. [REDACTED] states "[t]he beneficiary has in fact won distinguished prizes and awards in the field of physics. An award is distinguished and 'major' if it is difficult to obtain." Mr. [REDACTED] does not offer any source for this definition of what constitutes a major prize or award, nor does he explain what prizes or awards are not difficult to obtain. It remains that the regulation demands "major prizes or awards for outstanding achievement," indicating that the award should recognize past work, rather than represent funding for research which has not yet been done or a stipend to cover expenses for lectures which have not yet been delivered. To choose the most obvious example, the Nobel Prize is given in recognition of specific prior accomplishments. The petitioner has not shown that the beneficiary received his fellowships as a result of specific achievements in the field, as

opposed to his academic performance or the subjective perception of future promise.

Mr. [REDACTED] asserts that the beneficiary has published and presented his work internationally. The evidence is strong for this criterion, but it remains that research does not become intrinsically outstanding by virtue of appearing in a journal which circulates across national boundaries.

Mr. [REDACTED] asserts that the beneficiary "is clearly distinguished as one of the top physics researchers" because he received a fellowship "to perform research at Cornell University, a major United States University whose Physics Department is ranked 6 among 148 institutions." This fellowship was in connection with a postdoctoral research position, which represents temporary, advanced training. The petitioner offers no persuasive evidence that postdoctoral researchers who have not yet completed their professional training rank among the top researchers as claimed, or that international recognition automatically adheres to researchers who study at top institutions.

Regarding membership in associations, Mr. [REDACTED] asserts on appeal that the beneficiary "is a member of the Alexander von Humboldt Foundation and the American Physical Society." Mr. Christensen asserts that the American Physical Society ("APS") has "more than 40,000" members, and the record shows there are over 18,000 members of the Humboldt Foundation. The petitioner has not submitted any evidence of the membership requirements for either association. The observation that "[t]he APS publishes some of the world's leading physics research journals" does not imply that only outstanding researchers are admitted to membership.¹

No new evidence accompanies the appeal except for published articles by the beneficiary. This evidence satisfies one of the six criteria, but the very act of publication does not establish the significance of the beneficiary's research. Otherwise, the criterion requiring evidence of major original contributions would be superfluous. There is no one criterion which, if satisfied, implies satisfaction of other criteria.

The record establishes that the beneficiary has presented his research in international forums and that other researchers have,

¹According to the APS' own web site, "[m]embership in the APS . . . is open to all those with an interest in and love for physics" (www.aps.org/memb/gen_info.html). Clearly, such a membership does not require outstanding achievement and any claim to the contrary, being demonstrably false, necessarily raises questions about the reliability of the petitioner's other unsupported claims.

by citing his work, expressed their confidence in his findings. The petitioner has not shown, however, that the international community collectively regards the petitioner as a particularly distinguished or outstanding researcher or professor, whose work is of greater value than that of other qualified physicists from recognized institutions. International acknowledgement is not synonymous with international recognition as an outstanding professor or researcher.

In this matter, the petitioner has not established that the beneficiary has won international recognition as outstanding in the field of physics. 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.