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

[redacted] Public Copy

File: WAC 98 217 52965 Office: California Service Center Date: APR 2 3 2001

IN RE: Petitioner: [redacted]
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:

[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

Robert P. Wiemann, 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 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 a professor and clinical supervisor. 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 professor.

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 the following criteria.

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

An article written by the beneficiary won "the Gold Prize" at the "First American International Conference of Acupuncture and Traditional Medicine and Expo 1994." The petitioner must establish that this prize is generally recognized as a major prize. It cannot suffice that the beneficiary received the award at an event with the word "International" in its title.

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

The petitioner asserts that the beneficiary is a member of the American Society of Microbiology, the American Acupuncture Academy, the American Acupuncture Council, the Chinese Association of Traditional Chinese Medicine, and the Chinese Association of Acupuncture. The record contains no evidence to show that any of these associations require outstanding achievements as a condition of membership.

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 has not shown that the beneficiary's work has attracted significant attention in professional publications. An article in the locally-circulated Orange County section of the Los Angeles Times mentions the beneficiary, but the article is not about him. The article is about a local athlete who sought treatment for chronic fatigue syndrome. The article identifies the beneficiary as "an acupuncturist" rather than as a researcher or professor, and the two passages which mention the beneficiary do so only in the context of his clinical treatment of this one patient; there is no mention of his research or his work as a professor. The article is not about the beneficiary's work in the academic field.

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 states that the beneficiary acts as a judge of the work of others because he is an Expert Examiner and Expert Consultant/Witness for the Acupuncture Committee of the Medical Board of California. The record contains no documentation from the Medical Board of California to confirm these titles or to explain the beneficiary's duties.

While the petitioner has provided the address and telephone number of the Acupuncture Committee, this information is not evidence of the beneficiary's service as a judge. The petitioner cannot shift its burden of proof to the Service simply by telling the Service where to seek evidence which should have been submitted with the petition.

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."

Professor Benjamin H.S. Lau of Loma Linda University, where the beneficiary had worked as a research associate from 1991 to 1994, describes the beneficiary's "research in the field of cancer therapy":

> [The beneficiary's] study [of the] phytochemical, Gypenosides has proved that Gypenosides . . . protected biomembranes from oxidative injury thus increasing mitochondrial enzyme activity in vascular endothelial cells. The extensive antioxidant effects of various diseases such as cancer, atherosclerosis which causes heart attack and stroke, liver diseases, inflammations such as arthritis, and aging. . . .
>
> Another research project [the beneficiary] has done was to improve the cancer treatment by combining the phytochemicals into current chemotherapy. Adoptive immunotherapy using

> recombinant interleukin-2 (rIL-2) and lymphokine-activated killer (LAK) cells has shown objective responses in patients with several tumors. . . .
>
> Unfortunately, the success of this treatment modality has been hampered by severe toxicity with high doses of rIL-2. [The beneficiary's] research found a phytochemical immune modulator, Cordyceps sinensis, [that] may reduce the dosage of rIL-2 without loss of clinical efficacy.

Prof. Lau indicates that the beneficiary's discoveries "may" have an effect on cancer treatment, but he does not specify the degree to which clinical trials have confirmed the efficacy of the beneficiary's innovations, nor does the record indicate how much attention the beneficiary's work under Prof. Lau has attracted outside of Loma Linda University.

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

The petitioner has written conference presentations and articles in various journals. The petitioner has not established the circulation of these journals, and the record does not demonstrate that the petitioner's publications have attracted significant international attention. While an alien can earn an international reputation by publishing outstanding work, it does not follow that the very act of publication confers such a reputation, or that only individuals with international recognition are published in the first place.

The director instructed the petitioner to submit further evidence to establish that the beneficiary is internationally recognized as an outstanding professor or researcher. The director also requested evidence regarding other questions which appear to have been resolved, as these issues did not figure in the director's decision.

In response to this notice, the petitioner has submitted new documents and copies of previously submitted documents. Counsel asserts that the petitioner has satisfied four of the six regulatory criteria. By this assertion, counsel tacitly concurs that the petitioner has not satisfied the criteria pertaining to the beneficiary's membership in associations or publications about the beneficiary in professional publications.

With regard to the beneficiary's eligibility for the classification sought, the petitioner has submitted no new evidence in response to the director's notice. Rather, the petitioner has submitted copies of previously submitted documents along with a new letter from the

president of the petitioning institution. This letter reaffirms previous claims but offers no significant new information.

In denying the petition, the director stated that the petitioner has not established that the beneficiary is internationally recognized as an outstanding researcher. The director added:

> Oriental Medicine and Acupuncture is, at best, a medicine practiced local and regional [sic] in certain parts of the world and is not practiced internationally as the more conventional brands of medicine and, currently, will not garner its practitioners outstanding international acclaim.

Counsel argues that the director "incorrectly and in a sense offensively dismissed the field of Oriental Medicine." We concur with counsel that the field of Oriental Medicine constitutes an academic field, as it meets the definition of "academic field" set forth at 8 C.F.R. 204.5(i)(2). The director offers no support for the restrictive definition of the term "international" used in the decision. Oriental medicine is taught and practiced in more than one country and it is therefore possible for an individual to earn an international reputation as outstanding in that field. We must also note, however, that counsel on appeal makes several assertions regarding Oriental Medicine which have no evidentiary support in the record, such as the contention that major universities such as Harvard, Yale, and Stanford teach courses in Oriental Medicine. While this claim may be true, nothing in the record supports it. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

"International" need not necessarily mean "worldwide," nor need it apply to every single nation or a majority of nations. That being said, just because international recognition is possible in the field of Oriental Medicine does not mean that this beneficiary has attained such recognition. We interpret the phrase "international recognition" as referring to "national recognition" in more than one country, rather than limited recognition by small groups that happen to be in more than one country. To hold otherwise would render the term "international recognition" almost meaningless, because everyone who seeks this visa classification is, by definition, an alien with a job offer from a U.S. institution. To use a loose definition of "international recognition" would encompass virtually every foreign-born scholar who seeks employment in the United States, with the possible exception of aliens whose entire post-secondary education, training and experience took place in the United States.

The petitioner has not shown that the beneficiary has won significant recognition in the United States outside of southern

California, or that the beneficiary is seen as an outstanding professor in his native China or any other country. While the record establishes that the beneficiary was a professor in China for several years, nothing in the record shows that the beneficiary earned any particular distinction during his tenure at Capital University of Medical Sciences in Beijing. Similarly, the fact that the beneficiary traveled elsewhere in the United States (to Atlanta, Georgia, for example) for professional gatherings does not demonstrate that other attendees at such gatherings regard the beneficiary as outstanding, or that one must by definition be an outstanding professor in order to appear at such gatherings.

In a brief submitted subsequent to the appeal, counsel repeats previous arguments but offers no new evidence. For example, counsel once again deems the "Gold Prize" from a conference to be a major prize, but the record offers no information at all about this prize except that it is, in fact, a prize. Counsel also reiterates the oft-repeated but never documented claim that the beneficiary acts as a judge for the Medical Board of California.

Given these serious evidentiary omissions in the record, we cannot accept counsel's contention that the denial of the petition "seems to stem from a rejection of acupuncture and oriental medicine." Many of the petitioner's claims are simply unsubstantiated. Where evidence has been submitted, it offers only partial support for crucial claims.

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