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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

File: [Redacted]

Office: Texas Service Center

Date:

JUN 8 2001

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 preference visa petition was denied by the Director, Texas Service Center. The Associate Commissioner for Examinations dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted and the petition will be approved.

The motion consists of various evidence and a brief from Irene [REDACTED] international scholar advisor for the petitioning university. Because [REDACTED] argues on behalf of the petitioner, her statements and arguments on motion are attributed simply to "the petitioner."

The petitioner is a university. It seeks classification of 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 an assistant professor. The director determined that the petitioner had not established that the beneficiary has attained the outstanding level of achievement required for the category of outstanding professor or researcher. The Administrative Appeals Office ("AAO"), acting on behalf of the Associate Commissioner, concurred with this finding and dismissed the petitioner's appeal on July, 19, 1999.

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.

The sole issue to be considered in this proceeding is whether the beneficiary's scientific accomplishments are internationally recognized as those of an outstanding researcher in his 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, which follow below.

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

The petitioner had initially cited various scholarships which the beneficiary had received as a student. The AAO determined that academic scholarships are not major prizes or awards. The petitioner, on motion, does not contest this finding.

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

The AAO acknowledged that the beneficiary is a member of four professional associations, but found that the petitioner had not shown that the associations require outstanding achievements of their members.

On motion, the petitioner submits documentation from the American Registry of Professional Animal Scientists, indicating that certification as a Professional Animal Scientist is "based on degree, experience, examination & CEUs." None of these factors are outstanding achievements. The documentation indicates that this organization was established, among other reasons, "[t]o register professionally competent Animal Scientists." "Professional competence" is not an outstanding achievement.

A letter from the American Institute of Nutrition confirms the beneficiary's membership, but says nothing about its membership requirements.

The petitioner submits documentation from the American Society for Nutritional Sciences, indicating that members must document "Original Meritorious Research." The documentation goes on to indicate that a researcher can fulfill this requirement through "peer reviewed research publications, resulting from post-graduate research." Publication of one's work, however, is not an

outstanding achievement. "Meritorious" and "outstanding" are not synonymous with one another, unless one presumes that only outstanding research has merit.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its [REDACTED] March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition was the assertion "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected" of postdoctoral researchers, rather than an outstanding achievement.

For the above reasons, the AAO's prior finding will stand with regard to 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 AAO had observed that articles which merely cite the beneficiary's work are not primarily about the beneficiary's work in the field. On motion, the petitioner submits an article from [REDACTED] a newsletter distributed by [REDACTED] Animal Health. This article is, indeed, specifically about the beneficiary and his work in the field. It was not published, however, until August 1998, eight months after the petition's December 1997 filing date. Thus, this article cannot show that the petitioner had met this criterion as of the filing date. [REDACTED] 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

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 AAO had concluded in the initial decision that the petitioner has satisfied this criterion and we will not revisit this issue.

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

The AAO, in its dismissal notice, had stated:

The petitioner submits letters from several witnesses, attesting to the value of the beneficiary's research. Review of the letters shows that every one of the witnesses has

supervised or worked directly with the beneficiary in some capacity. . . . [T]he petitioner cannot establish that the beneficiary enjoys an international reputation simply by obtaining letters from former co-workers and professors.

On motion, the petitioner asserts that the petitioner had submitted letters from witnesses in [redacted] and the United Kingdom, who had never been the petitioner's supervisors or co-workers. One of these witnesses, [redacted] scientific and marketing director of [redacted] Agriproducts Division, states that he has known the beneficiary "for several years" and that he has "had the opportunity to recruit his expertise in cooperative research products." It is not unreasonable to conclude from these statements that Dr. Garcia has collaborated with the beneficiary in the past.

[redacted] general manager of Technical Services at Bunge Meat Industries Ltd., indicates that he has "interacted" with the beneficiary, but there is no indication that he and the petitioner have worked together as researchers rather than simply discussing areas of common interest. [redacted] also specifically states that he knows the beneficiary's "research from his publications in several journals and from international meetings," thus indicating that his initial familiarity with the beneficiary's work derives from the publication and presentation of that work, rather than from collaboration.

[redacted] research and development manager of Swine Enzymes at Finnfeeds International Ltd., states that he and the beneficiary have "discuss[ed] potential cooperative research projects" but there is no indication that such collaboration has in fact taken place.

Upon consideration of the above letters, we concur with the petitioner that the AAO's initial interpretation was evidently based on an incomplete or inaccurate reading of the letters. Further letters submitted on motion reinforce the petitioner's assertion that the beneficiary is highly regarded throughout the international community in his field. Therefore, the petitioner has fulfilled this criterion.

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

In dismissing the appeal, the AAO acknowledged that the beneficiary had published articles in two journals, but asserted that the record contained no evidence that those journals circulate internationally. On motion, the petitioner asserts "[t]he AAO ignored the evidence that [redacted] has a foreign subscription list of 1200 and the membership roster

includes members from approximately 90 countries." Review of the record confirms the petitioner's assertion, showing that the appeal included a letter from the journal's technical editor, confirming the journal's international circulation.

The petitioner cites new evidence on motion, showing that the beneficiary "has recently been named as a new editorial board member" of the above journal. The letter welcoming the beneficiary to the board is dated June 1999, a year and a half after the petition's December 1997 filing date. While it may show that the beneficiary has sustained his reputation, it cannot have any bearing on whether the beneficiary was eligible when the petition was filed. [REDACTED] supra. Nevertheless, the evidence previously submitted is sufficient to indicate that the AAO's earlier conclusions in this regard were baseless.

The record indicates that the beneficiary meets three of the six criteria listed at 8 C.F.R. 204.5(i)(3)(i), and that the AAO erred in concluding otherwise based on the evidence that was then available to the AAO. Based on the evidence submitted, it is concluded that the petitioner has established that the beneficiary qualifies under section 203(b)(1)(B) of the Act as an outstanding researcher.

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 met that burden. Accordingly, the petition will be approved.

ORDER: The Associate Commissioner's decision of July 19, 1999 is withdrawn, and the petition is approved.