

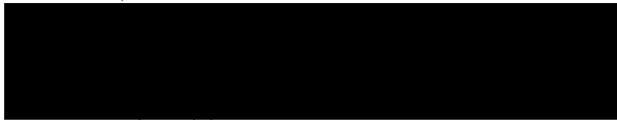


U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

File: EAC-99-178-53132

Office: Vermont Service Center

Date: NOV 6 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:



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, Vermont 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 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 post-doctoral research fellow/scientist. 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 director failed to consider the evidence.

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:

(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.

This petition was filed on May 24, 1999 to classify the beneficiary as an outstanding researcher in the field of statistics. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field of statistics as of May 24, 1999, and that the beneficiary's work has been recognized internationally within the field of statistics as outstanding. On January 3, 2000, the director requested additional documentation to demonstrate that the beneficiary had worked three years prior to May 24, 1999. In response, the petitioner submitted a February 17, 2000 letter from Dr. Rudolph L. Leibel, a professor at Columbia University, College of Physicians and Surgeons, asserting that the beneficiary had "spent the last three years developing statistical methods to discover genes that cause one of the leading public health diseases - human obesity." Dr. Leibel does not specify the beneficiary's starting date. The petitioner also submitted a letter from Dr. David Allison at St. Luke's Roosevelt University Hospital of Columbia University asserting that the petitioner began working there in September 1996. September 1996 to May 24, 1999 is not a full three-year period. Thus, the director concluded the beneficiary did not have the necessary experience at the time of filing.

On appeal, counsel asserts that the beneficiary's Curriculum Vitae establishes that the beneficiary has two years of teaching experience at Yonsei University, two years of teaching experience at the University of Rochester, seven years of research at the University of Rochester, and three years of experience at Columbia University. As quoted above, the regulations require that evidence of the necessary three years of experience be documented by a letter from the employer. The petitioner has only documented 32 months of research experience. Moreover, there is no evidence that the petitioner's teaching and research experience acquired while obtaining a degree meets the requirements quoted above in the regulations. Specifically, the record does not establish whether the petitioner had full responsibility for the class or that the research conducted while a student was recognized by the international community as outstanding. Thus, we concur with the director's conclusion that the record does not establish the necessary three years of research experience.

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

The record contains a letter from St. Luke's Roosevelt Hospital Center approving the beneficiary's application to attend a North American Association for the Study of Obesity (NAASO) sponsored workshop. The letter confirming the approval indicates St. Luke's Roosevelt Hospital Center, the petitioner and the beneficiary's employer, would pay all of the beneficiary's expenses. Counsel argues that this payment constitutes a major prize or award. We do not agree. It is not clear that the petitioner's decision to pay the beneficiary's expenses to attend the workshop constitutes a prize at all. Employers frequently pay to send their employees to workshops. In addition, it is not clear what criteria the petitioner used to approve the beneficiary's travel expenses. Even if it were considered a prize or award, it is not clear that anyone other than employees of the petitioner were considered. Thus, we cannot consider the beneficiary's selection a *major* prize or award.

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

Counsel asserts that the beneficiary's membership in NAASO meets this criterion. The record contains a letter addressed "Dear NAASO member" and certificates verifying the beneficiary's attendance at NAASO's 1999 annual meeting. As the member letter does not include the beneficiary's name and there is no evidence only members can attend national meetings, these documents do not document the beneficiary's membership in NAASO. Moreover, the record contains no evidence suggesting that NAASO requires outstanding achievements of its members.

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

As evidence for this criterion, the petitioner submits an editorial published in the same issue of *The New England Journal of Medicine* which published the results of the Multicenter Automatic Defibrillator Implantation Trial (MADIT). The beneficiary is one of several authors of the MADIT article. The editorial concludes that the MADIT study cannot answer whether treatment with implantable cardioverter-defibrillators offers any survival benefit over truly conventional therapy. The editorial certainly does not reflect that the beneficiary attained international recognition due to his participation in the MADIT study. While one letter to the editor regarding the MADIT article lauds the results, a separate letter to the editor criticizes the study's results which may have been "confounded by other important differences between the two treatment groups."

The petitioner also submits another editorial which simply provides a one-line summary of a second article co-authored by the beneficiary. This editorial is not primarily about the beneficiary's work and cannot be considered as evidence of the beneficiary's international recognition.

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 submits a letter dated September 27, 1999 from Dr. Hietjan at the Columbia University Joseph L. Mailman School of Public Health requesting that the beneficiary review an article submitted for publication in the *Journal of the American Statistical Association*. As this letter is from one of the beneficiary's colleagues at Columbia University, it is not clear that the beneficiary was chosen to review the article based on his international recognition. In fact, it is not clear whether the journal requested that the beneficiary personally review the article or whether the journal requested that Dr. Hietjan have the article reviewed and he merely assigned the duty to the beneficiary. Regardless, the letter is dated four months after the petition was filed. Thus, it cannot establish the beneficiary's eligibility at the time the petition was filed.

The record also contains a July 26, 1999 letter advising the beneficiary of a launch of a new journal, *The Pushpa Journal of Theoretical Statistics*. The letter also requests that the beneficiary contribute an article to the new journal. This letter does not indicate that the beneficiary reviewed any articles for publication in this new journal or any other journal.

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

Dr. Leibel asserts that the beneficiary has contributed to the obesity research community. Specifically, the beneficiary has developed:

statistical methods to discover genes that cause one [of] the leading public health diseases – human obesity. These innovative methods have been published in scholarly journals such as the *American Journal of Human Genetics*, *Human Heredity*, and *Genetics*.

The record is absent evidence, however, that the beneficiary's statistical methods have been influential in his field. The record does not include any reference letters from disinterested experts affirming that the beneficiary has attained international recognition for his statistical methods. While a letter from the petitioner asserts that the beneficiary's articles have been cited, the record contains no evidence of these alleged citations.

On appeal, Dr. David Allison submits a new letter asserting that the *petitioner* has contributed to the study of obesity, that the beneficiary played an important role in the petitioner's studies, and that the beneficiary's statistical expertise is rare. While Dr. Allison notes that the beneficiary has given presentations at international conferences, this is not an uncommon practice for researchers. There is no evidence that the beneficiary's presentation at those conferences has led to adoption of his methods or otherwise influenced the field of statistics. There remains no evidence from disinterested experts that the beneficiary's contributions to the statistical evaluation of obesity has brought him international recognition.

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

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "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," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of international recognition; we must consider the research community's reaction to those articles. Aside from the mixed editorials and letters to the editor discussed above, the record contains no evidence of the community's reaction to the beneficiary's articles. There is no evidence that the articles have been cited or otherwise recognized internationally.

The petitioner has shown that the beneficiary is a talented and prolific statistician, who has won the respect of his collaborators, employers, and mentors, while securing some degree of international exposure for his work. The record, however, stops short of demonstrating the beneficiary's international reputation as an outstanding researcher or professor. 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.