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]

File: EAC 99 174 52859 Office: Vermont Service Center Date: OCT 17 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]

Public Copy
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 that 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 that 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 that 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 the research and development department of a manufacturer and distributor of industrial and consumer products. 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 an electrical engineer. 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.

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:

(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. . . . ;

(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; and

(iii) An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or

(C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it 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.

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 asserts that the beneficiary served "as a member of the IEEE Communications Society editorial staff." A document from the IEEE Communications Society contains the heading "Editorial Staff 1992," followed by a list of names and titles. The beneficiary's name does not appear on this list.

The same document contains a separate list, headed "1992 Technical Reviewers." The beneficiary's name appears on this list. The list, however, contains hundreds of names. The first page (on which the list begins close to the bottom of the page) contains 59 names beginning "Aa" through "Be." This first page is numbered 1822. Page 1826, which lists the beneficiary's name, contains 222 names. Presumably the missing pages 1823, 1824 and 1825 contain similar numbers of names, and we can also infer additional names on at least one further page, 1827, not contained in the record.

The fragmentary evidence suggests that this one society utilized close to one thousand technical reviewers in a single year. Given the sheer volume of technical reviewers, we cannot conclude that every one of these individuals is internationally recognized as outstanding. Also, given that "Technical Reviewers" were named under a different heading than the "Editorial Staff," we cannot conclude that the technical reviewers were considered to be members of the editorial staff.

Because the visa classification sought is expressly limited to aliens whose outstanding abilities have brought them international recognition, we cannot accept evidence which applies so widely that it is of no use in distinguishing the outstanding from others in the field. In this case, peer review of submitted manuscripts appears to be so widespread a practice that we cannot conclude that only researchers who are internationally recognized as outstanding are called upon to perform such reviews.

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 submits several affidavits. Angelia P. Bukley, senior project engineer for Aerospace Corporation, studied

alongside the beneficiary at the International Space University Summer Session Program in 1993. She states:

> [The beneficiary] and I not only took the same core curriculum courses together, but we also worked together through a very intensive design project effort. The focus of the design project was the design of the Global Emergency Observation and Warning System (GEOWARN). GEOWARN was a concept for a global hazard and disaster management system. The final report was taken quite seriously by NASA. . . . [The beneficiary] made significant contributions to the project and was clearly a team player.
>
> Since our time together at ISU . . . [the beneficiary] has done significant work in the area of radar and communications systems design and analysis.

Robert Collyer, manager of Systems Engineering at Raytheon Canada Ltd., was the beneficiary's supervisor at that company from 1994 to 1996. He states that the beneficiary "contributed significantly" to "the development of radar signal processing architectures."

Professor John B. Anderson of Rensselaer Polytechnic Institute identifies himself as "a part-time staff member" at the petitioning facility. He states:

> During the last two years, [the beneficiary] and I have worked together at the Center on projects in coded modulation, satellite communication, and mobile radio communication. His duties were to develop, construct and test (in software) very sophisticated digital radio receivers.

Professor Desmond P. Taylor of the University of Canterbury in New Zealand previously supervised the beneficiary's graduate studies at McMaster University in Canada. He states:

> While he was working under my supervision, [the beneficiary] made two important contributions to the field of communications. The first was his derivation of the joint estimation receiver for demodulating trellis coded modulation. In this work, he developed the receiver structure for jointly estimating carrier phase, symbol timing and carrier phase. This was a significant [sic] since it allows for a single-chip digital signal processing implementation of the complete optimal receiver for trellis coded modulation. [The beneficiary's] second significant contribution was his development of a[n] approach to signal space encoded modulation based on the concept of mapping Reed Solomon codes defined in the Galois field, $GF(q)$, onto a signal constellation having q elements and his development of a near optimum practicable decoding algorithm. This has led later researchers to investigate the important problem of developing good mappings

between the encoders and the modulation formats. This mapping can have a significant influence on overall system performance.

Stephen M. Hladik, an electrical engineer at the petitioning entity, states:

> I am personally familiar with [the beneficiary's] contributions to a research project to develop a real-time decoder for advanced error correcting codes known as turbo codes. In particular, his work was instrumental in translating an integer decoding algorithm description into a high-speed, real-time digital signal processing architecture. [The beneficiary] wrote VHDL code to describe portions of an application-specific integrated circuit (ASIC) implementation of the turbo decoder. He also developed a C-language program, which modeled the signal processing of the ASIC design, to use a tool to verify the ASIC design description. [The beneficiary] designed the control circuits for the decoder ASIC, invented several ways to increase the chip's decoding speed, and utilized Synopsis computer-aided design tools to conduct behavioral simulations for the purpose of verifying and debugging the ASIC design.
>
> A second project on which I worked with [the beneficiary] was the development of a reduced-complexity demodulator for continuous phase modulation signals. On this project, he developed C-language and MATLAB simulation models which were used to investigate and compare the performance of various candidate demodulation, career tracking, and symbol epoch tracking methods.

Abdallah M. Itani, manager of the petitioner's Integrated Electronics and Sensors Program, describes projects on which he and the petitioner collaborated:

> [The beneficiary] developed a fixed point realization of a floating point decoder algorithm that could be put into ASIC form. He performed the chip architecture of the decoder, realized the CHIP using VHDL, and developed C and VHDL simulations to perform rigorous testing of the fixed point algorithms. . . . He performed system architecture of a communications receiver with interference rejection capabilities. The system utilized direct sequence spread spectrum (DSSS) and adaptive null steering to allow the receiver to operate in interference and jamming scenarios. He developed simulations to aid the design of the adaptive algorithms. Currently implementing parts of the beamforming algorithms on field programmable gate arrays (FPGA) using VHDL.
>
> [The beneficiary] has contributed to significant scientific developments in a [variety] of areas related to [the petitioner's] products. His knowledge in error control coding . . . , wireless communication systems . . . , modulation . . . , phase modulation systems . . . , synchronization . . . ,

> radar signal processing . . . , beamforming . . . , and computer simulation . . . put him in a unique position to support the developments of our systems and ASIC's not only in the area of communication, but also in medical businesses and appliances.

In a subsequent submission, Dr. Gary J. Saulnier, associate professor at Rensselaer Polytechnic Institute, states that he has collaborated with the beneficiary as a consultant at the petitioning facility. Dr. Saulnier states that the beneficiary "has made important contribution to a number of areas that are at the forefront of modern communications," and that the beneficiary's "recent work on continuous-phase modulation (CPM) has resulted in a receiver structure that is of lower complexity than any discussed in the literature as well as an implementation architecture that will allow the receiver to be implemented for very high rate data communications." Dr. Saulnier acknowledges that, because the beneficiary works for a private corporation, in many instances "documentation is confined to internal documents."

While these individuals have certainly described the beneficiary's work in great detail, they do not clearly explain how these particular innovations are especially significant in the field. Furthermore, every one of the above witnesses has supervised, collaborated, or studied with the beneficiary. Their statements do not establish that the beneficiary has earned a significant reputation outside of his own circle of mentors and co-workers.

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

The record contains copies of four published articles by the beneficiary, and six outside articles that contain citations of the beneficiary's published work, showing that other researchers utilize the beneficiary's findings.

On November 12, 1999, the director instructed the petitioner to submit further evidence, including "documentation . . . from independent experts in the beneficiary's field of endeavor." In response, the petitioner has submitted documentation showing that the beneficiary's work resulted in one approved patent (issued two days before the petition's filing date) and several additional pending applications. A patent recognizes an invention's originality, but not necessarily its significance, and it does not establish international recognition.

The petitioner has also submitted two new witness letters, both from the beneficiary's direct collaborators (Dr. Gary Saulnier of Rensselaer Polytechnic Institute and Dr. Ralph T. Hoctor of the petitioning company).

The petitioner's submission also includes copies of newly-published articles. These articles did not exist in print at the time the petition was filed. A certificate shows that the beneficiary was elected to membership in Sigma Xi "in the year 2000." The submission of this certificate appears to be an attempt to satisfy the following regulatory criterion:

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

The 2000 Sigma Xi certificate does not apply to the beneficiary's qualifications as of the petition's May 13, 1999 filing date. See Matter of Katigbak, 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.

The submission includes several undated certificates, showing the beneficiary's receipt of cash awards for his work. It appears that this evidence is intended to satisfy another regulatory criterion:

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

These certificates are from the petitioning entity itself, and thus they do not establish any recognition outside of the company that seeks to employ the beneficiary. Furthermore, the record contained no mention of these awards until after the director requested further evidence, including evidence pertaining to awards, which suggests that the petitioner may have presented the awards in response to the director's request for information. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. See Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998), and Matter of Katigbak, supra.

The director's request for information, conforming with regulations at 8 C.F.R. 103.2(a)(8), allowed the petitioner 12 weeks to respond and indicated that the entire response must be submitted at once. The cited regulations specifically state "additional time may not be granted." The 12-week period expired on February 24, 2000; the above submission was timely.

On April 17, 2000, the petitioner submitted additional evidence even though there is no regulatory provision to allow its acceptance. The new evidence consists of electronic mail messages that the beneficiary received in late March and early April of 2000. In these messages, the editor-in-chief of IEEE Communications Letters, asks the beneficiary "to handle the review process" for a paper submitted for publication, and then appoints the beneficiary "an associate editor for an initial period of two years."

As noted above, these developments took place after the petition's filing, and indeed after the request for additional information. Furthermore, we cannot ignore that the editor-in-chief of the publication in question is identified as "Des Taylor" with an electronic mail address of "elec.canterbury.ac.nz." This individual appears to be the same Professor Desmond Taylor of the University of Canterbury, New Zealand, who has previously stated that he personally supervised the beneficiary's studies. As with the other submissions, this documentation, even if it were timely submitted, would not show that the beneficiary has earned international recognition as an outstanding researcher. The fact that the beneficiary's collaborators are now located in different countries does not establish an international reputation if the beneficiary's reputation is limited to those collaborators.

The director denied the petition, stating that there is no indication that "the greater scientific community" outside of the beneficiary's own circle of mentors and collaborators considers the beneficiary to be an internationally recognized, outstanding researcher.

On appeal, counsel asserts that "[n]ew evidence, which did not become available until after the RFE [request for evidence] due date," establishes the beneficiary's eligibility. Among this "new evidence" is the beneficiary's aforementioned appointment by his former supervisor to an assistant editorship.

Also cited is a newly-submitted letter from Dr. Dennis Goeckel, whom counsel deems "an independent evaluator, with no previous personal or professional relationship with" the beneficiary. Dr. Goeckel, who works at the University of Massachusetts, Amherst, states:

> As a researcher in the field of coded modulation, I am aware of [the beneficiary's] work in this area. In particular, it appears that [the beneficiary] has made significant contributions in four distinct topics in this area:
>
> 1. Tail-biting recursive systematic convolutional (RSC) codes.
> 2. Hardware implementations of turbo decoding algorithms.
>
> 3. Joint synchronization and data demodulation for trellis-coded modulation (TCM) schemes.
>
> 4. Signal space codes for Rayleigh fading channels.
>
> This breadth of accomplishment is outstanding for a researcher at this stage of his career.

Dr. Goeckel then comments more specifically on the above contributions, stating that they could be highly significant with regard to the efficiency and accuracy of data transmission and information processing.

Another witness on appeal is Dr. William E. Ryan, associate professor at the University of Arizona, who states that he does not personally know the beneficiary. Dr. Ryan states "[a]fter reviewing [the beneficiary's] resume, patent, and papers, I have concluded that he has indeed made significant contributions to his field and his company." Dr. Ryan then adds that, before he was asked to review the beneficiary's work for the purposes of this petition, he "was not aware of [the beneficiary's] work on joint synchronization and demodulation."

The petitioner submits a copy of a letter showing that the beneficiary has been elevated to a "Senior Member" in the Institute of Electrical and Electronics Engineers (IEEE). The letter indicates that "[f]ewer than 10 percent of the IEEE's 340,000 members hold this prestigious grade," suggesting that tens of thousands do hold the grade. The letter mentions "significant professional accomplishment" but offers no definition. The letter is undated, and the initial filing contained no mention of this honor. Therefore, even if an IEEE senior fellowship was a qualifying membership, there is no evidence that the beneficiary held this rank at the time of filing.

We note that the letter from the IEEE is a "form letter" addressed to "Dear Valued Senior IEEE Member," with the beneficiary's name and address added by computer at the top of the document, along with a bar code and what appear to be sorting codes. This evidence suggests that large numbers of IEEE members receive similar mailings.[1]

Counsel contends that, because the petitioner's published work has been cited by others, the citations fulfill another regulatory 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.*

In this instance, however, the petitioner has not shown that the beneficiary's work has inspired articles by other researchers. Rather, these researchers have relied on the work of others, and have properly given due credit in the form of bibliographical endnotes. A typical article may contain dozens of such endnotes; the beneficiary's own articles certainly contain many such

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[1]According to the IEEE's official web site, www.ieee.org, IEEE members seeking senior membership file an application and demonstrate "experience reflecting professional maturity." There is a higher membership grade, "Fellow," which "recognizes unusual distinction in the profession and shall be conferred only by invitation of the Board of Directors upon a person of outstanding and extraordinary qualifications."

endnotes. The beneficiary, however, was not writing about the work of others; he was writing about his own work, using the previous work of others as a foundation.

Bibliographic endnotes and footnotes are commonplace within the research community. Certainly, especially heavy citation would be a sign that the beneficiary's work has attracted particular attention, but the record only documents six such citations, when the most influential articles receive dozens if not hundreds of citations. Nothing in the record shows that the beneficiary's work has sparked commentary in the form of published pieces which focus, rather than simply touch, on the beneficiary's work. Certainly, such articles are not common, but that is arguably the point; it distinguishes the outstanding researcher from other published researchers. Counsel argues that the statute never specifically excludes citations from the class of "published material about the alien's work," but the alternative is to dilute the definition of "outstanding" to a point that it becomes meaningless.

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."

Counsel argues that the director mischaracterized or ignored evidence submitted with the initial petition. We have considered all of the evidence in the record, and this evidence simply does not establish that the beneficiary has earned international recognition as an outstanding researcher. The initial submission contains descriptions of the beneficiary's work, by the beneficiary's supervisors and collaborators, with no clear explanation of why the beneficiary's accomplishments are more significant than those of other researchers in the field. The petitioner has endeavored to overcome this shortcoming on appeal, but even one of the new letters, as explained above, includes the acknowledgment that the beneficiary's work was unknown to the witness until he was asked to comment on it for this petition. This evidence is not conducive to the conclusion that the beneficiary has already earned an international reputation as an outstanding researcher.

The record establishes that the beneficiary has been very active in his field, but his reputation appears to be largely (although not entirely) confined to those who have worked with him. Counsel contends "[t]his should not matter since each of the affiants . . .

are also recognized experts in [the beneficiary's] field of expertise." An individual whose work is familiar only to a few is not recognized any more widely because of the reputations of those few. Even if the witnesses themselves qualify as outstanding researchers (and many of them claim accomplishments, credentials and experience which dwarf those of the beneficiary), the beneficiary does not become outstanding merely by association.

Counsel's observation that the affidavits "were made under oath by respected professionals" is not dispositive here because there has been no allegation of perjury. The affidavits describe the beneficiary's work but do not indicate that the beneficiary has earned an international reputation as an outstanding researcher. Even if the affidavits did so state, coming as they do from persons with direct connections to the beneficiary, they would still not constitute first-hand evidence of international recognition of the degree which this restrictive visa classification requires.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in the field of electrical engineering. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought. The petitioner's argument that subsequent developments have made the beneficiary eligible is more properly addressed in the context of a new visa petition, because established case law dictates that an alien cannot retroactively qualify for an employment-based visa classification based on qualifications that the alien did not yet have as of the petition's filing date. This does not, however, represent a finding that the newer evidence definitively establishes the beneficiary's eligibility.

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.