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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 Mass, 3/F

425 Eye Street, N.W.

Washington, DC 20536

OCT 23 2003

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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

**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 Citizenship and Immigration Services (CIS) 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.



Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a federal government agency. 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 associate service fellow. 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. In addition, the director determined that the petitioner had not provided evidence of a permanent job offer or the beneficiary's three years of research experience.

On appeal, the petitioner asserts that the new evidence on appeal establishes the beneficiary's experience and international recognition, and that the petitioner has made a permanent job offer to the beneficiary. For the reasons discussed below, we find that while the new evidence now establishes that the beneficiary has sufficient experience for the classification sought, the petitioner has not overcome the director's remaining concerns.

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.

**Required Experience**

8 C.F.R. § 204.5(i)(3) states 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 September 26, 2002 to classify the beneficiary as an outstanding researcher. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience as of that date, and that the beneficiary's work has been recognized internationally as outstanding.

Initially, the petitioner did not submit any evidence of the beneficiary's research experience other than published articles and some speaking engagements. In response to the director's request for additional documentation, the petitioner submitted a chart of the beneficiary's past experience supported by the beneficiary's published articles. In her final decision, the director noted that the regulations require that the evidence of the necessary experience "be in the form of letter(s) from former or current employer(s)," and concluded that the petitioner had not submitted such evidence.

On appeal, the petitioner submitted several employment letters. John K. Conner, Manager of Analytic Development at Pantheon, confirms that the beneficiary was a group leader in one of the company's laboratories from November 2000 through February 2002. Sahid Abdullah, Senior Chemist for Fine Pharmaceutical Laboratories, Ltd., confirms that the beneficiary was a laboratory supervisor for that company from June 3, 1997 to May 19, 2000. Arunaloke Chakrabarti, "Incharge" of the Mycology Division, Department of Medical Microbiology, at the Postgraduate Institute of Medical Education and Research in India, confirms that the beneficiary participated in research under Mr. Chakrabarti's supervision as a medical technologist from October 1985 through April 1996. These letters overcome the directors concern regarding the lack of evidence relating to the beneficiary's research experience.

**International Recognition**

8 C.F.R. § 204.5(i)(3)(i) states 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. Prior to the appeal, the petitioner had never specified to which criteria the evidence relates. The petitioner now claims to have satisfied the following criteria.<sup>1</sup>

*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*

On appeal, the petitioner asserts that the beneficiary meets this criterion through his reviews of articles submitted for publication and poster presentations for conferences, participation as a panel member reviewing laboratory improvements and video training programs. In support of these claims, the petitioner submits:

1. An October 18, 2002, letter from the beneficiary to the Editor of the Journals Department of the American Society for Microbiology noting a flaw in a published article.
2. A response from Tasha Thomasian acknowledging receiving the above letter and advising that the beneficiary would be required to provide an e-mail address if his letter were accepted for publication.
3. A nondisclosure statement signed by the beneficiary on April 8, 2003, relating to a technical review panel for the construction of a laboratory extension in Chennai, India.
4. A cable dated September 18, 2002, from the American Consulate in Chennai, India, granting country clearance for the beneficiary to visit and provide technical assistance to the petitioner's Global AIDS Program (GAP).
5. An e-mail dated August 19, 2002, sent to Vanessa Gorden and courtesy copied to the beneficiary indicating the purpose of the beneficiary's visit to Chennai was to evaluate the proposed renovations to a laboratory, assess selected regional public health laboratories, establish research collaborations, and review the status of a National Quality Assurance Program.

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<sup>1</sup> While the petitioner does not claim that the beneficiary meets the awards criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(A), on appeal the petitioner submits several certificates issued to the beneficiary for the completion of programs and training courses sponsored by the petitioner and as evidence of participation in conferences sponsored by the petitioner. We simply note that these certificates are not major prizes or awards for outstanding achievement.

6. International Trip Reports prepared by the beneficiary describing his visits to India and Ethiopia which involved assessing laboratory renovations, providing quality assurance seminars, discussing a proposed contract with Global AIDS/India, and evaluating regional laboratories in Ethiopia for their capacity to support GAP programs.
7. An e-mail from another employer at the petitioning agency requesting that the beneficiary and several others review a Rapid Test Training Videotape (Zimbabwe).
8. Several e-mails relating to changes the beneficiary made to a poster presentation based on the comments of outside reviewers.
9. A letter from the petitioning agency asserting that the beneficiary is involved in providing GAP Country Assessments and reviewing CDC guidelines training material.
10. An abstract published in the Proceedings of the 4<sup>th</sup> National Conference on Laboratory Aspects of Tuberculosis entitled, "Comparison of National Guidelines for TB Laboratory Testing with Assessment of TB Laboratory Practice in the U.S."

Items 1 and 2, relating to an unsolicited letter to the editor composed after the date of filing, is not evidence of the beneficiary's eligibility as of the date of filing. Moreover, there is no evidence that the editor specifically requested the beneficiary's opinion. As such, his submission of the letter and the letter acknowledging its receipt are not evidence of the beneficiary's international recognition. Item 3 is also dated after the date of filing and is not evidence of the beneficiary's eligibility as of that date. Moreover, for the reasons discussed below, the nondisclosure agreement represents the beneficiary's performance of duties inherent to his position with the petitioning agency and is not indicative of international recognition.

Items 3, 4, 5, 6, 9 and 10 relate to the beneficiary's evaluation of public health facilities in India and Ethiopia, duties that are inherent to the beneficiary's job. We note that we have consistently held that when evaluations and assessments are inherent to the job, they cannot serve to meet this criterion. For example, evaluating the work of one's students is inherent to the job of a professor. This criterion would be meaningless for classification as an outstanding professor if merely grading one's students was deemed sufficient to meet this criterion. Similarly, we cannot conclude that performance of his job duties is evidence that the beneficiary has any recognition as an outstanding researcher beyond his employer. In addition, it is not clear that the beneficiary is judging the work of other researchers. Rather, his duties involve evaluating health facilities and quality assurance guidelines. Similarly, item 7, the request to review the videotape, is from the petitioning agency and does not involve evaluating research.

Finally, item 8, the e-mails relating to the poster presentation, indicate only that the beneficiary prepared a poster presentation and was responsive to the suggestions of outside reviewers. Such evidence does not suggest that the beneficiary was involved in judging the work of others but, rather, that his own work was judged.

In light of the above, none of the items submitted as evidence to meet this criterion are indicative of or consistent with international recognition.

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

In response to the director's request for additional documentation, the petitioner submitted a February 13, 2003 e-mail within the petitioning agency announcing that the beneficiary "has been collecting a great deal of literature and information from the rapid HIV test kit manufacturers for a CD-ROM that DLS will be distributing to laboratories in the Global AIDS Program." On appeal, the petitioner asserts generally that the beneficiary's country assessments have "made major contribution towards achieving goals of Global AIDS Program" and discusses the importance of the CD-ROM.

While we do not doubt the value of country assessments to the petitioning agency's work, the record contains no discussion by independent experts, supported with objective evidence, explaining how the beneficiary's country assessments constitute original *scientific or scholarly research* contributions to the beneficiary's academic field. Similarly, while the CD-ROM may be an important tool for GAP, it is not clear that compiling training materials from other sources constitutes an *original* scientific or scholarly contribution.

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

Initially, the petitioner submitted four published articles co-authored by the beneficiary and an abstract of a conference poster presentation. In response to the director's request for additional documentation, the petitioner resubmitted the articles. The director noted that the beneficiary was not the first author of the articles and concluded that the record lacked evidence establishing how these articles demonstrate the beneficiary's eligibility. On appeal, the petitioner resubmits the same articles and submits an abstract of a presentation given after the date of filing. The abstract is not evidence of the beneficiary's eligibility as of the date of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). While we do not find the lack of a first-authored article to be determinative, it is the petitioner's burden to demonstrate that the articles submitted are indicative of or consistent with international recognition.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, sets forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are 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 CIS’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. The record contains no evidence that the articles have been frequently cited or other evidence of their international influence. Thus, the petitioner has not established that the beneficiary meets this criterion.

**Permanent Job Offer**

8 C.F.R. § 204.5(i)(3)(iii) provides that a petition must be accompanied by:

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.

(Emphasis added.) The petitioner is not a university, institute of higher learning, or a private employer, but a government agency. Even assuming that the use of “private” in the regulations was not meant to preclude petitions from government agencies in this classification,<sup>2</sup> we concur with the director that the petitioner has not submitted evidence of a permanent job offer to the beneficiary. Initially, the petitioner did not submit any evidence relating to a job offer. In response to the director’s request for additional documentation, the petitioner submitted a February 8, 2002, job offer to the beneficiary for an associate service fellow, the position described on the petition as the proposed employment. The

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<sup>2</sup> We find that the use of the word “private” may be intentional since government agencies are generally precluded from offering permanent jobs to non-citizens and, thus, would be unable to comply with the permanent job offer requirement of this classification. This interpretation does not preclude government agencies from filing petitions in behalf of researchers. An agency may request that the job offer requirement be waived in the national interest for aliens of exceptional ability or advanced degree professionals pursuant to Section 203(b)(2) of the Act. The instant petition, however, does not seek that classification for the beneficiary and, pursuant to *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971), may not be amended to do so.

appointment is temporary, not to exceed December 25, 2004. The petitioner also submitted a letter from Robert Martin, Director of the Division of Laboratory Systems within the petitioning agency, addressed "to whom it may concern," asserting that "upon his acquiring U.S. Citizenship, [the beneficiary] will be offered a Permanent Full-Time Civil Service Position." The director concluded that the petitioner had not established that the job was "immediately available to the beneficiary upon his adjustment of status to a lawful permanent resident."

On appeal, Mr. Martin asserts that a "Health Scientist position is immediately available to [the beneficiary] upon his adjustment of status to a lawful permanent resident." A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Mr. Martin's appellate letter does not constitute a job offer to the beneficiary that had been offered as of the date of filing. Moreover, Mr. Martin does not explain the discrepancy between his two letters. It is the petitioner's burden to establish that this full-time civil service position can be offered to an applicant for permanent residence contingent upon his attainment of that status. The record does not include a letter from a high-level personnel official at the petitioning agency confirming that the agency is able to hire non-citizens as full-time employees<sup>3</sup> and that Mr. Martin has the authority to issue legally binding offers of full-time employment to prospective employees.

Finally, beyond the director's decision, the beneficiary's job description involves country assessments and the preparation of training materials and quality assurance procedures. The petitioner has not explained how this job description meets the statutory requirement that the beneficiary seeks to enter the United States "to conduct research."

In light of the above, the petitioner has not overcome the director's concern regarding the lack of a permanent job offer.

The petitioner has shown that the beneficiary is a talented and prolific researcher, 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 elevating the beneficiary to an international reputation as an outstanding researcher or professor. Moreover, the petitioner has not submitted a permanent job offer issued to the beneficiary effective as of the date of filing. 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.

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<sup>3</sup> A search of the petitioning agency's vacancy announcements posted on the Internet reveals that all Health Scientist applicants must be U.S. citizens or currently employed by the agency in a permanent position.