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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

[redacted]

JUL 10 2003

File: [redacted] (LIN-02-114-55189) Office: Nebraska Service Center Date:

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)

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 the Bureau of Citizenship and Immigration Services (Bureau) 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, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a high energy physics research company. 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 computer professional V. 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.

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 February 19, 2002 to classify the beneficiary as an outstanding researcher in the field of physics. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field of physics as of February 19, 2002, and that the beneficiary's work has been recognized internationally within the field of physics as outstanding.

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. The petitioner claims to have satisfied the following criteria.

> *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 support of this criterion, the petitioner refers to articles that cite the beneficiary's co-authored articles. In his request for additional evidence, the director concluded that citations of articles for which the beneficiary was one of forty authors was not evidence that he is personally known in the field. In response, the petitioner submits articles from unknown publications that cite "the calculation of the antiproton beam energy for which [the beneficiary] was solely responsible." The petitioner asserts that these articles are citing the beneficiary's personal calculation although they must cite the full article according to convention. In support of this assertion, Dr [redacted] Deputy Head of the Particle Physics Division with the petitioning laboratory, states:

> What [the beneficiary] has which makes him an outstandingly effective researcher is the personal maturity and intellectual ability to understand, master and work effectively on complex engineering systems. An example was the new control system he implemented for our gas-jet target which allowed us to vary the target density and allowed us to take three times as much data as otherwise. This work is described in an article published in N.I.M., the international journal for new technology. [The beneficiary] has also been responsible for the calculation of the antiproton beam energy – a quantity that is crucial in all our analysis of charmonium formation.

In his final decision, the director concluded: "Published work by others have not focused on, or even mentioned, [the beneficiary's specific contributions to] the experiments."

On appeal, the petitioner argues:

> While [the beneficiary's] name may not have been directly mentioned in the citations, it has been established in the initial submission and in the Request for Evidence that the citations within these articles were in reference to the specific contribution [the beneficiary] made to the E-835 Experiment.

As stated above, the evidence submitted to support each criterion must be indicative of international *recognition* in order to be sufficient to meet a particular criterion. Articles that do not mention the beneficiary by name cannot be considered evidence of his recognition in the field. We acknowledge that evidence that an article has been widely cited is indicative of that article's influence in the field. Such evidence, however, is more relevant to the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(E) relating to the beneficiary's publication history. More specifically, as will be discussed below, publication is inherent to the field of scientific research, and a history of citations can establish that the beneficiary's published articles are indicative of international recognition. The plain language of this criterion, however, precludes citations. Scientific research articles that cite another researcher's work are not primarily about the cited work. Rather, they are primarily about the work performed by the authors of the citing article. While the authors may be building on work reported in the citing article, they are primarily discussing their own findings. As implied by the director, the record contains no articles in trade publications, science journals, or the general media reporting on the significance of the beneficiary's calculations or the beneficiary's contributions to the E-835 Experiment. Thus, we concur with the director that the beneficiary does not meet this criterion.

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

Initially, the petitioner did not claim that the beneficiary met this criterion. In response to the director's request for additional documentation, the petitioner argues that the beneficiary meets this criterion by supervising students, serving as co-leader on a project and co-managing an international group. The director concluded that these duties did not constitute participating as a judge of others in his academic field or an allied field and did not establish international recognition as outstanding. The petitioner does not contest the director's conclusion on this criterion and we concur with the director. Not every student supervisor or manager has international recognition. The record does not contain any evidence that the beneficiary has served as an editor for an international journal, served on a panel reviewing the research of others in his field or an allied field for grant money or awards, or judging responsibilities at a similar level.

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

The director did not contest that the beneficiary met this criterion. As stated above, however, the evidence submitted to meet a criterion must be indicative of international recognition. It can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. It does not follow that every researcher producing original and useful results has international recognition for his work. Further, having colleagues in more than one country because one has performed research in more than one country is not necessarily evidence of international recognition beyond one's immediate circle of colleagues. Given these considerations, we will examine the evidence of record.

Dr. [redacted] Deputy Head of the Particle Physics Division at the petitioning laboratory and co-spokesman for experiment E-835, discusses the petitioner's work on this project. Dr. [redacted] indicates that the beneficiary worked on four projects at the petitioning laboratory: the hydrogen gas-jet, the antiproton-beam energy measuring system, the Data Acquisition system for the experiment, and the experiment web page and documentation system. Dr. [redacted] continues that the systems on which the beneficiary worked were critical to the experiments being conducted at the petitioning laboratory. As quoted above, Dr. [redacted] provided additional detail regarding the beneficiary's work on the gas-jet target, allowing the group to vary the target density and obtain three times more data and the beneficiary's contribution to the calculation of the antiproton beam energy. Dr. [redacted] concludes that the beneficiary "is listed as an author on all the E835 publications in international physics journals because of his crucial contributions – to the data generation process through his work on the gas-jet and to the analysis process through the beam energy calculations."

Dr. [redacted] Associate Head of the Computing Division at the petitioning laboratory, discusses the beneficiary's programming contributions to various experiments after the beneficiary left his science and engineering positions to work in his current computer professional position. As will be discussed in more detail below, however, it is not clear that this work constitutes research experience.

Dr. [redacted] a professor of physics at the University of Torino and spokesperson for experiment E-835, provides general praise of the beneficiary and his contributions to experiment E-835.

[redacted] a professor at the University of Ferrara and an experiment E-835 collaborator, provides:

> [The beneficiary] played a key role in running the hydrogen jet target, a vacuum/cryogenic machine and an essential part of the experiment:
>
> - He made the mechanical design of the pumping system to double its efficiency, thus making it possible for the experiment to run at higher luminosity and therefore to take more data;

- He developed the automatic controls of pressure and temperature which allowed the experiment to run at constant instantaneous luminosity (i.e. data talking rate): this was proven to maximize the experimental efficiency and gave the experiment homogenous running conditions with time;

Professor [redacted] further reiterates the significance of the beneficiary's work on the calculation of beam energy.

Finally, the beneficiary's former professor and another collaborator on experiment E-835, Dr. [redacted] reiterates much of the information discussed and quoted above.

The above letters are all from the petitioner's collaborators on experiment E-835. While such letters are important in providing details about the petitioner's role in this project, they cannot by themselves establish the petitioner's international recognition in the field beyond his immediate circle of colleagues.

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 seven articles on which the beneficiary is listed as a co-author and a list of 15 articles that purportedly cite the beneficiary's work, three of which are in the record. A fourth article that cites the beneficiary's work but is not on the list is also in the record. The list does not appear to be photocopied or downloaded from any official citation source. Of the 15 articles on the list, seven of them are authored by [redacted] or [redacted] co-authors of the beneficiary.

In response to the director's request for additional documentation, the petitioner submitted eight articles from an archive database that cite to the E-835 experiment results, two of which were previously submitted in published form. It is not clear whether the remaining articles appeared in peer-reviewed physics journals. In sum, the record suggests that the beneficiary's work has been cited in 14 articles by independent research groups.

The petitioner also submitted a new letter from Dr. [redacted] in which he states:

> Each paper published by our collaboration was written, that is to say the prose was constructed, by one or sometimes two individuals. It would be a little misleading, however, to describe these people as unique authors of the papers. The papers described our data and quoted results only after scrutiny by the collaboration and typically after being checked by two independent groups within the collaboration. The publications contained plots showing our data where one axis as the number of interactions of a particular type recorded and the other axis was the collision energy of these interactions. Our major results were based on analysis of the number of interactions as a function of the collision energy. While there were several groups within the collaboration which worked to identify the interactions, [the beneficiary] alone was responsible for determining the collision energy using the instrumentation of

> the antiproton accumulator. In a real scientific sense, [the beneficiary] has a singular responsibility for the data that is used in our publications. . . . It also makes him a key author of our publications.

The director concluded that the beneficiary's role as a co-author was primarily that of gathering experimental data as opposed to interpreting that data. Thus, the director concluded that the beneficiary could not meet this criterion. On appeal, the petitioner quotes the above assertions by Dr. [redacted] and asserts that the beneficiary has attained international recognition from his publications based on the invitations he has received to international conferences.

We do not find the director's attempt to distinguish between data gathering and data interpretation to be helpful. We acknowledge that the beneficiary is listed as an author on the E-835 articles. The issue, however, is whether this authorship is indicative of international recognition. Fourteen independent citations does not appear to be particularly remarkable, especially in light of the large number of co-authors. The record does not contain any review articles examining the significance of the beneficiary's contributions not just to the E835 project but to high energy physics in general. While the beneficiary claims to have participated in three conferences on his resume as of the date of filing and the record contains a schedule of a 2002 conference attended by the beneficiary, the record contains no evidence regarding the significance of these conferences or how the beneficiary was selected as a presenter. Thus, we concur with the director that the beneficiary's publication record is not indicative of international recognition.

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. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

Beyond the decision of the director, it is not clear that the position being offered is a research position. As described by the petitioner, the job offered to the beneficiary is that of Computer Professional V. Having served in this position since February 2001, the beneficiary developed and produced new systems for the Sloan Digital Sky Survey (SDSS) and the Dzero experiment data grid system. According to Dr. [redacted] the SDSS project involved "deploying a cluster of work stations running Linux and the shared file system GFS, converting the SDSS applications to run in this new environment, integration and adoption of the nearest neighbor algorithm with the SDSS object database in Objectivity, and early adoption of Grid data replication middleware tools. Dr [redacted] continues that the beneficiary made the following contributions to the Dzero project: "analysis of operation of automated disk cache usage, refill and use; adaptation of SAM [Serial Access using Metadata] interface to the ROOT C++ analysis package used by al D0 physicists; [and] development of a large presentation display giving quick quantitative information of the operating system." Dr [redacted] further states:

> It is planned that [the beneficiary] work with the Globus and Condor teams to develop advanced job scheduling and management systems over the distributed Grid. This is a

> complex problem involving monitoring of the state and performance of a system of thousands of compute and storage elements, analysis and application of the information gathered to the scheduling and deployment of data processing and access programs, inclusion of experiment analysis requirements and resource allocation policies, etc.

While we acknowledge that a knowledge of high energy physics is beneficial to the position of Computer Professional V, the description of the beneficiary's past and planned projects in this position reflects that it is primarily a programming, and not a research, position.

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.