

U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass., 3/F
425 I Street N.W.
Washington, D.C. 20536

[REDACTED]

JAN 07 2004

File: [REDACTED]
SRC 02 027 56297

Office: Texas Service Center

Date:

IN RE: Petitioner:
Beneficiary:

[REDACTED]

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]

Identifying data deleted to
prevent invasion of personal privacy

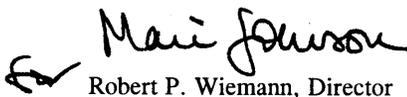
INSTRUCTIONS:

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 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, a non-profit biomedical research institution, seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B), as an outstanding professor or researcher. The petitioner seeks to employ the beneficiary as an "Associate Member (Scientist)" in its Cardiovascular Biology Research Program. The director determined the petitioner had not established that it extended an offer of permanent employment to the beneficiary.

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 regulation at 8 C.F.R. § 204.5(i)(3) states that a petition for an outstanding professor or researcher must be accompanied by:

(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.

As used in this section, the term "permanent," in reference to a research position, means either tenured, tenure-track, or for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination. 8 C.F.R. § 204.5(i)(2).

The petition was filed on September 25, 2001. The evidence accompanying the petition included no formal job offer letter, i.e., a letter from the petitioner addressed to the beneficiary that sets forth a binding offer of employment, including specific terms thereof. The initial submission includes a brief notation, appearing under Part 9 of Form I-140, stating: "Oklahoma Medical Research Foundation ("OMRF") has offered [the beneficiary] a 'permanent position' within the meaning of 8 C.F.R. § 204.5(i)(3)(iii)." That regulation, however, specifically states that "[t]he offer of employment **shall be in the form of a letter from... a department, division, or institute of a private employer offering the alien a permanent research position** in the alien's academic field." [emphasis added]

On September 5, 2002, the director requested specific documentation pertaining to the absence of a job offer letter from the petitioner to the beneficiary. The director's request for evidence stated:

Please submit a copy of the position description for the position offered to the beneficiary (internal position description from the Human Resources Department).

Please submit a copy of the contract between the petitioner and beneficiary.

Please submit a copy of the "start-up package" given to the beneficiary. Please submit any and all agreements or understandings between the petitioner and the beneficiary.

In response, the petitioner submitted a letter, dated September 8, 2000, from Dr. [REDACTED] Member and Head, Cardiovascular Research Program, OMRF, and Dr. [REDACTED] President, OMRF, to the beneficiary, stating:

OMRF is pleased to offer you a position in the Cardiovascular Research Program....

A. Position

1. Associate Member Cardiovascular Biology Research Program.
3. Annual salary \$75,000, and subject to annual increments...
5. Three-year appointment as Associate Member, assuming satisfactory performance.

The letter concluded by stating: "Please notify us of your decision in writing of your intention to accept this position..."

A subsequent letter from the above individuals at OMRF, dated September 22, 2000, states:

OMRF agrees to increase your three-year start-up package from \$400,000 to \$500,000 to address your concerns over start-up equipment, supplies, and salary support for Christina and Andrew. Please understand that this start-up package is in addition to your salary support and the shared equipment in the Imaging Facility.

All other terms and conditions stated in the September 8, 2000 [letter] continue to apply.

A "three-year appointment" does not constitute a permanent research position, as defined at 8 C.F.R. § 204.5(i)(2). The director denied the petition, stating: "In this case, there is not a permanent job offer. The job offer is for three years only." We concur with the director's observations.

On appeal, [REDACTED] Vice President of Business Operations, OMRF, states:

OMRF again reaffirms herein that [the beneficiary] occupies a permanent position at OMRF as a scientist. In the initial filing, we submitted the... Form I-140 that specifically indicated that the beneficiary's position was a permanent position at OMRF.... [The beneficiary] is a senior level scientist for our organization and his position has no fixed termination date.

Although [REDACTED] claims that the beneficiary's position "has no fixed termination date," the September 2000 letters to the beneficiary from OMRF contradict his assertion. Moreover, the record contains no subsequent evidence, i.e., a letter from the petitioner to the beneficiary that sets forth a binding offer of employment (which predates the petition's filing date), showing that the research position offered is permanent. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

[REDACTED] further states:

The Texas Service Center did not review or discuss our notation of the I-140 Form, which affirmed the position was permanent. The Texas Service Center also never raised any inference in its request for evidence that it questioned the permanency of the position in the Request for Evidence.

A notation on Form I-140 does not relieve the petitioner of providing an “offer of employment... in the form of a letter from... a department, division, or institute of a private employer offering the alien a permanent research position” as required under 8 C.F.R. § 204.5(i)(3)(iii). Moreover, we reject the assertion that the Service Center “never raised any inference in its request for evidence that it questioned the permanency of the position.” The language quoted above from the request for evidence directly refutes this statement. Regardless, at this point, the decision already having been rendered, the most expedient remedy for the above complaint is the full consideration on appeal of any evidence that the petitioner would have submitted in response to such a request. The petitioner, however, provides no evidence of a job offer letter or written agreement, pre-dating the petition’s filing date, which demonstrates the extension of a *permanent* job offer from the petitioner to the beneficiary. [REDACTED] observation that OMRF does “not offer contracts to any of our researchers” does not relieve the petitioner from providing evidence required under 8 C.F.R. § 204.5(i)(3)(iii).

For the above stated reasons, we find the evidence of record does not establish that the research position offered to the beneficiary is permanent, as defined at 8 C.F.R. § 204.5(i)(2).

On appeal, the petitioner also disputes the director’s observation that the “[e]vidence in the record does not make it clear what the alien will be doing.” The director’s decision appears to question whether the petitioner’s activities as a microscopist constitute employment in a research position. In addressing the director’s statements in that regard [REDACTED] states:

The decision contained a significant discussion of the term “microscopist.” The decision then discussed the minimum requirements for a technician position. The position identified in the petition for immigrant worker is that of a scientist. The support letters from our organization explained in detail the job duties of the “scientist.” Nothing in the filing even remotely suggests that the filing was for a technician.

We concur with the petitioner’s arguments in this regard. The record contains a letter from [REDACTED] President, OMRF, dated August 13, 2001, stating:

[The beneficiary] is an internationally recognized expert in experimental pathology and has a long-standing experience in structural analysis of cells and tissues using advanced microscopy approaches... This type of expertise is unique at OMRF. Due to his expertise in experimental pathology, the applicant was hired by OMRF to develop his own research on the anticoagulant properties of the vessel wall and to contribute to the recently initiated program studying genetically modified mice as models of human arteriosclerosis and thrombosis.

* * *

[The beneficiary] is the author of over 70 original research reports published in high impact factor journals such as *Nature*, *Cell*, *Journal of Cell Biology*, etc.... [The beneficiary's] publications have been cited more than 1,400 times in other publications as reported in the citation search conducted by Dr. [REDACTED] from Mount Sinai School of Medicine, New York.

Additional evidence contained in the record clearly shows that the beneficiary has engaged, and continues to engage, in scientific research for the petitioner. Any suggestion in the director's decision indicating otherwise is hereby withdrawn.

The petitioner's appeal also disputes the director's findings pertaining to the regulatory criteria for an outstanding professor or researcher. The regulation at 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 beneficiary 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. We find that the petitioner's evidence satisfies the following two 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.

On appeal, counsel disputes the director's observations regarding this criterion, stating: "The Texas Service Center made a blanket statement about scientists/researchers to the effect that, in most cases it only takes a volunteer to be a reviewer." We note here that peer review of manuscripts is a routine element of the process by which articles are selected for publication in scholarly journals. Occasional participation in the peer review process does not automatically demonstrate that the petitioner has achieved international recognition as outstanding in his academic field.

In this case, however, there is evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed a substantial number of articles, received independent requests from various journals (as opposed to actively approaching the journals to volunteer his services), and served in editorial positions for distinguished journals. This evidence clearly demonstrates the beneficiary's international recognition as an expert in the field.

A letter from the Editor-in-Chief of *Thrombosis and Haemostatis* states: "[The beneficiary] has long served as an expert reviewer for our journal and is currently a member of the Editorial Board." The record also contains letters from editors of the *American Heart Association Journal*, *Arteriosclerosis, Thrombosis and Vascular Biology*, confirming the petitioner's regular participation as an "esteemed" reviewer. Also submitted was a letter from the Editor-in-Chief of

Gene Therapy stating that [the beneficiary] “has been one [the journal’s] most valued reviewers and consistently given the journal informed judgement.” Other evidence has been provided listing the petitioner as a member of the editorial committee for *Haemostasis*.

We concur with the petitioner that the director erred in concluding that the evidence presented did not fulfill this criterion. Therefore, that portion of the director’s decision is withdrawn.

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

We also withdraw the director’s finding that the petitioner’s evidence does not satisfy this criterion. The petitioner submitted evidence of his authorship of numerous articles appearing in distinguished scientific journals such as *Nature Medicine*, *Thrombosis and Haemostasis*, *Circulation*, *Gene Therapy*, *Arteriosclerosis, Thrombosis and Vascular Biology*, *Blood*, *Cancer Research*, *Cell*, *Journal of Cell Biology*, and *Nature Genetics*. Also submitted was evidence from a scientific citation database showing that the petitioner’s published articles have garnered hundreds of citations. Mike Morgan asserts on appeal that the beneficiary has published over seventy articles and that “his work has been cited 1,565 times throughout his career.”

When judging the influence and impact that the petitioner’s published work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner’s findings. In this case, the large number of citations of the petitioner’s published articles demonstrates widespread international interest in, and reliance on, the petitioner’s work. While some of these citations are self-citations by the petitioner or his collaborators, the overwhelming majority of the citations demonstrate the favorable response of independent researchers. These citations show that many other scientists have acknowledged the petitioner’s influence and found his work to be significant.

Based on the evidence submitted, we find that the evidence presented satisfies at least two of the regulatory criteria at 8 C.F.R. § 204.5(i)(3)(i). However, the petitioner has not provided evidence, which existed at the time of filing, demonstrating the extension of an offer of permanent employment to the beneficiary in accordance with 8 C.F.R. § 204.5(i)(3)(iii). For this reason, the petitioner has not established the beneficiary’s eligibility pursuant to section 203(b)(1)(B) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.