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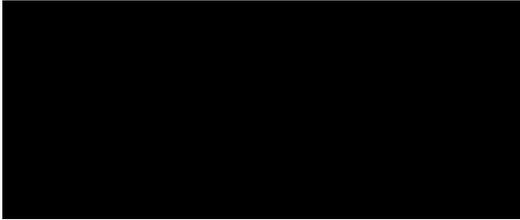
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U.S. Citizenship
and Immigration
Services

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FILE: 

Office: NEBRASKA SERVICE CENTER

Date: **JAN 21 2004**

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a university. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary as a research scientist. The director determined that the petitioner had not established that (1) the position offered is permanent, (2) the beneficiary possesses the minimum three years of experience, or (3) the beneficiary is recognized internationally as outstanding in her academic field, as required for classification as an outstanding researcher.

Section 203(b) of the Act states, in pertinent part:

(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.

Citizenship and Immigration Services (CIS) 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.

The first issue raised in the director's decision is whether the petitioner has adequately documented an offer of permanent employment. Section 203(b)(1)(B)(iii)(II) of the Act, 8 U.S.C. § 1153(b)(1)(B)(iii)(II), states that an alien seeking classification as an outstanding researcher must seek to enter the United States "for a comparable [to tenured or tenure-track] position within a university or institution of higher education." 8 C.F.R. § 204.5(i)(3)(iii) requires the petitioner to submit "[a]n offer of employment from a prospective United States employer." The regulation specifies that the offer "shall be in the form of a letter from . . . [a] United States university or institution of higher learning." For research positions, 8 C.F.R. § 204.5(i)(3)(iii)(B) indicates that the job offer letter must offer "the alien a permanent research position in the alien's academic field." 8 C.F.R. § 204.5(i)(2) defines "permanent" as "for a term of unlimited or indefinite duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination."

The initial submission contained no job offer letter from the petitioner. Counsel states that the record includes an "employment verification letter," labeled exhibit 6. Exhibit 6 is a letter from Dr. Imad Y. Haddad, associate professor of Pediatrics at the petitioning university. Dr. Haddad does verify that the beneficiary works there, but the letter contains no mention of the duration or terms of the employment.

The director instructed the petitioner to "submit a letter offering the beneficiary . . . a permanent research position." The director observed that it cannot suffice to state that the employment has no fixed term. In response, Robert A. Super, administrative director of the petitioner's Department of Pediatrics, states "I would like to confirm that [the beneficiary] is employed as a Scientist conducting research in an on-going, full-time position." This is not a job offer letter to the beneficiary, showing that a permanent job offer existed when the petition was filed. Rather, this is a letter to the Immigration and Naturalization Service, stating that the beneficiary's position is "on-going." The word "permanent" never appears in the letter, and Mr. Super does not explain what distinction, if any, exists between permanent employment and "on-going" employment.

The director denied the petition, stating that the petitioner has not shown that the petitioner has offered the beneficiary a permanent position. On appeal, counsel states that the beneficiary "is offered a full-time research position with no specified period of time, which is comparable to a tenure-track position provided in INA Section 203(b)(1)(B)(iii)(II)." The regulatory standard, however, is not "comparable to a tenure-track position." The regulations at 8 C.F.R. §§ 204.5(i)(3)(iii)(B) and 204.5(i)(2) specifically require an offer of "permanent" employment, and offer a controlling definition of the term "permanent." Counsel's unsupported

assertion that the position is “comparable to a tenure-track position” does not and cannot supersede the pertinent regulations on this point.

The petitioner submits a new letter from Mr. Super, who asserts that the beneficiary’s position is “on-going” and “not limited . . . to a specified period of time.” This does not show that the position is permanent. *Black’s Law Dictionary* 545 (7th ed. 1999) defines “employment at will” as “[e]mployment that is usu. undertaken without a contract and that may be terminated at any time, by either the employer or the employee, without cause.” Thus, the definition of “employment at will,” which allows termination “without cause,” is not consistent with the regulatory definition of “permanent,” which requires “good cause for termination.” Nevertheless, employment at will has no fixed ending date, without constituting “permanent” employment. The AAO cannot ignore that the petitioner has failed to use the term “permanent” in any of its descriptions of the beneficiary’s position. The AAO also cannot disregard the absence of an official job offer letter from the petitioner to the beneficiary, demonstrating that the petitioner had offered a position, described as permanent, to the beneficiary on or before the petition’s filing date. The petitioner could, at any time, have resolved this issue by providing official university documentation, verifying that that research scientists are employed permanently rather than at will or on some other basis, but the petitioner has not done so. Counsel’s description of the position as comparable to “tenure track” is consistent with a finding that the beneficiary’s position, while having no fixed ending date, is nevertheless not permanent.

The second issue involves the beneficiary’s experience. 8 C.F.R. § 204.5(i)(3)(ii) requires the petitioner to submit:

Evidence that the alien has at least three years of experience in . . . research in the academic field. Experience in . . . research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and . . . if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of . . . 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.

The petition was filed on November 22, 2002, and therefore the petitioner must show that the beneficiary has at least three years of research experience as of that date. The director, in denying the petition, stated only that the petitioner failed to submit evidence to meet this requirement. The record, however, contains a letter from the petitioner (which is the beneficiary’s current employer) attesting to the beneficiary’s employment for a continuous period of well over three years. The director has not explained why this evidence, which conforms to the regulatory language, is insufficient. The petitioner has also documented other qualifying non-student experience with previous employers. We hereby withdraw the director’s finding that the petitioner has not established that the beneficiary possesses the required experience.

The remaining issue in contention is whether the petitioner has established that the beneficiary is internationally recognized as outstanding in his field. Citizenship and Immigration Services regulations at 8 C.F.R. § 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by evidence that meets at least two of six stated criteria. The petitioner claims to have met 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.

Counsel refers to two published review articles, as well as citations of the beneficiary’s work. These citations are more appropriately considered in light of the impact of the beneficiary’s own published work, discussed under a separate criterion further below. That the beneficiary co-wrote one of dozens of articles cited in a given paper

does not mean that the paper is about the alien's work in the academic field. Rather, each article is primarily about the authors' own work, with acknowledgment to earlier work by many others.

The first of the two review articles is a 15-page "Year in Review" article that appeared in a journal identified by the abbreviated title *Am J Respir Crit Care Med* in 2001. The beneficiary co-authored one of 112 articles cited in the review piece. Specific discussion of the beneficiary's work is limited to a single paragraph. The other review article, 17 pages long, appeared in *Am J Physiol Lun Cell Mol Physiol*. The beneficiary's article is one of 165 works cited. Like the first review article, this second one briefly discusses the beneficiary's work, but does not indicate that it stands out in any significant way from the dozens of other articles mentioned in the review piece. If these review articles are fairly representative, then the many medical research journals in print collectively discuss thousands of articles each year in the context of review articles. It is difficult to conclude that hundreds of researchers achieve international recognition each time such a review is published. There is no evidence that trade publications have specifically singled out the petitioner's work for special notice, rather than mentioning it fleetingly in the context of broad overviews of recent research.

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

The petitioner claims to have satisfied this criterion, and initially submitted six witness letters to support this claim. Five of these witnesses are on the faculty of the petitioning university. The beneficiary's reputation with her employers does not demonstrate or imply international recognition as an outstanding researcher. The remaining witness is Prof. Sadis Matalon, associate dean for postdoctoral education at the University of Alabama, Birmingham (UAB). Prof. Matalon, who holds two degrees from the petitioning university, collaborated on numerous projects with Dr. Imad Y. Haddad when Dr. Haddad was an assistant professor at UAB. Dr. Haddad, in turn, is now the beneficiary's supervisor. This extremely narrow witness base cannot establish that the beneficiary's work in the academic field is internationally recognized as outstanding. The letters cannot show, first-hand, that the beneficiary has earned any kind of significant reputation outside of the university where she works and her mentor's circle of collaborators.

Following the director's request for additional evidence, the petitioner has submitted letters from two individuals outside of the petitioning university and UAB. Professor Jo Rae Wright of Duke University Medical Center (DUMC), states that the beneficiary's "work first came to my attention when I was asked . . . to write an editorial on [the beneficiary's] article" in the American Journal of Respiratory and Molecular Biology. Prof. Wright asserts that the findings in the beneficiary's article "are very important" and "may lead to treatment strategies" for lung inflammation that sometimes follows bone marrow transplantation. We take note of this endorsement, but we must also note that Prof. Wright had never heard of the beneficiary before she was asked to write the editorial.

Dr. Rodney J. Folz, associate professor at DUMC, who has also discussed the beneficiary's work in editorials, asserts that the beneficiary "is rapidly gaining in national and international recognition and stature." Dr. Folz also states "I expect that her insights into the mechanisms of lung injury after bone marrow transplantation will lead us in the near future to several major breakthroughs in the treatment of this severe transplant-related complication." Dr. Folz has participated in a number of conferences at the petitioning university.

The above assertions are not without weight, but they do not establish that the petitioner has earned international recognition, which is the standard in the statute and regulations. The letters establish recognition among the faculty of three universities, all in the United States. Furthermore, the endorsements from DUMC focus on what might, eventually, result from the petitioner's work, rather than therapeutic improvements that have already developed from the beneficiary's research.

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

The phrase "publish or perish," familiar in academia, shows that it would be absurd to assert that the very existence of published articles or books by the beneficiary is *prima facie* evidence of international recognition as an outstanding researcher. We interpret this regulation to mean that an alien's published scholarly work can contribute to such recognition, contingent on the international community's response. The beneficiary's publication history must be consistent with international recognition as an outstanding researcher. Such recognition does not automatically result from publication. Thus, the petitioner must not only establish the existence of published articles by the beneficiary, but also demonstrate that these articles have somehow contributed to international recognition of the beneficiary as an outstanding researcher.

Recognizing the above, counsel contends that the beneficiary's "papers have been cited extensively by other scientists in the field as authoritative." As evidence, the petitioner initially provided copies of eight articles containing citations of the petitioner's work.

In response to a request for further evidence, the petitioner has submitted copies of 14 articles that cite the petitioner's work, including duplicate copies of the eight initially submitted. Some of these citations are self-citations by the beneficiary's collaborators; others were not published until after the petition's filing date. Beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971). Even then, a career total of 14 citations is not persuasive evidence of international recognition.

In response to the director's request for additional evidence, counsel indicates that the beneficiary has also played a leading or critical role for organizations with distinguished reputations. This claim pertains to a criterion for a different immigrant classification.

The director denied the petition, in part because the petitioner's evidence does not establish that the beneficiary has earned international recognition as an outstanding researcher. On appeal, counsel argues that the evidence submitted previously is sufficient to establish eligibility. The petitioner submits copies of previously submitted documents but no newly available materials to establish eligibility as of the petition's filing date.

The record demonstrates that the beneficiary is a skilled and active researcher in her field, who has won the respect of her mentors and others at the U.S. universities where she has worked. The record also indicates that the beneficiary's research points to promising new directions in research. The available evidence, however, does not establish that the beneficiary enjoyed international recognition as an outstanding researcher as of the petition's filing date. The record also shows that the petitioner had not offered the beneficiary a permanent research position as of the filing date, a deficiency which cannot be remedied after the fact in the context of this petition (although the petitioner may file a new petition showing a bona fide offer of permanent employment). At best, this petition appears to have been filed prematurely, at a time when the beneficiary was still building her reputation and working without any formal or binding assurance that her employment would continue unless terminated for good cause.

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.