U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted] PUBLIC COPY

File [redacted] Office: TEXAS SERVICE CENTER Date: JAN 22 2004

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:

[redacted]

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 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.

for Mari Johnson
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 designs, manufactures and markets telecommunications equipment. 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 research scientist. The director determined that the petitioner had not established (1) documented research accomplishments, (2) that the beneficiary possesses the minimum three years of experience, or (3) 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:

> (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):
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> > (B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --
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> > > (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.

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
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> (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:
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> > (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 is whether the petitioner has achieved documented accomplishments in an academic field. The director cites a letter from the operations manager of the petitioner's Corporate Research Center, stating "[d]ue to the recent start of this group, we have not yet received any research grants from US government or other agencies, nor have we been granted any patents." This letter, however, is dated April 12, 2000, well before the petition's July 2001 filing date. Furthermore, the same letter indicates "we have published, or are in the process of publishing, over 30 articles in refereed technical journals and conferences." Some of these materials are in the record. We withdraw the director's finding that the petitioner has no documented research accomplishments in an academic field.

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 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.

The beneficiary's diploma and transcripts from Southern Methodist University (SMU) indicate that the beneficiary was considered a full-time doctoral student through the spring 1999 semester, and that he acquired his doctoral degree on May 15, 1999. As of July 31, 2001, when the petition was filed, the beneficiary had less than two years and three months of employment experience that was not gained while the beneficiary was working on an advanced degree.

Therefore, by regulation, the petitioner must show that the beneficiary's research conducted toward his advanced degrees has been recognized within the academic field as outstanding. This relates to the third and final stated ground for denial, because if the petitioner cannot overcome that ground, then necessarily the petitioner has also failed to overcome the second ground discussed immediately above.

In denying the petition, the director asserted that the beneficiary's teaching experience would not suffice because the beneficiary did not have full responsibility for the classes taught. Any reference to the beneficiary's teaching experience is irrelevant here, for the beneficiary seeks classification not as an outstanding professor, but as an outstanding researcher. The regulatory references to "teaching or research" correspond to the two distinct but linked classifications (professor and researcher), rather than indicate that teaching and research are interchangeable.

The third and final ground for denial relates to international recognition as an outstanding researcher. CIS regulations at 8 C.F.R. § 204.5(i)(3)(i) require evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. The petitioner must submit evidence to fulfill at least two of six listed criteria. The petitioner claims to have fulfilled the following criteria:

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

Dr. Richard Helgason, an associate professor at SMU's Department of Computer Science and Engineering, states that the petitioner "has received two departmental awards, the 'Rick Barrett award' for service to department computing in 1997 and the 'Outstanding Graduate Student award' in 1998." The petitioner submits a photocopy of his "Outstanding Graduate Student Award" plaque, but no first-hand evidence of the Rick Barrett Award. Dr. Helgason does not claim that

either award is considered a major award, commensurate with international recognition as an outstanding researcher.

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

The petitioner claims to have met this criterion through the beneficiary's membership in the Association for Computing Machinery (ACM) and the Institute of Electrical and Electronics Engineers (IEEE). A membership certificate from the ACM states that the beneficiary has "fulfilled the requirements for Professional Membership," but there is no indication as to what those requirements are. The certificate is dated July 1998, at which time the beneficiary was still a full-time graduate student. The petitioner's IEEE membership card likewise contains no information about membership requirements.

The petitioner submits no documentation from ACM or IEEE to establish that either association requires outstanding achievements of its members. If neither ACM nor IEEE requires outstanding achievements of their members, then the petitioner's claim to the contrary necessarily impairs the petitioner's overall credibility.[1] Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

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 initial petition included no claim to have fulfilled this criterion. In a subsequent submission, counsel has cited "five requests for [the beneficiary] to review and edit articles for journal publications." Only two of these requests are from before the July 2001 filing date. The remaining

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[1] According to the official web sites of ACM and IEEE, neither association requires outstanding achievements of its members. An application form, available at http://www.acm.org, indicates that an applicant for Professional membership (which is the type of membership the beneficiary holds) must hold a "Bachelor's Degree (in any subject area)," "Equivalent Level of Education," or "Two years full-time employment in the IT field." None of these minimal requirements are outstanding achievements. IEEE membership information at http://www.ieee.org defines several grades of membership. The grade of Fellow "recognizes unusual distinction in the profession and shall be conferred only by invitation of the Board of Directors upon a person of outstanding and experience in IEEE-designated fields." The beneficiary is not a Fellow of the IEEE. The beneficiary's membership rank is Member. According the IEEE's web site, "[t]he grade of Member is limited to those who have satisfied IEEE-specified educational requirements and/or who have demonstrated professional competence in IEEE-designated fields of interest." More specifically, a prospective Member must hold a baccalaureate degree or "at least six years of professional work experience." As above, education and experience are not outstanding achievements; rather, they are routine job requirements. Anyone who knows the above membership requirements cannot credibly state that the ACM or IEEE require outstanding achievements, and anyone who does not know those requirements is in no position to claim that the associations require outstanding achievements. Any assertion by the petitioner regarding the "outstanding" nature of the beneficiary's work must, necessarily, be viewed in light of the fact that the petitioner appears to regard a bachelor's degree and two years' experience as "outstanding." Both ACM and IEEE have very large membership sizes (75,000 and 382,000, respectively), consistent with lenient rather than restrictive membership requirements.

requests are dated between September 2001 and April 2002, and thus cannot retroactively demonstrate eligibility as of the filing date. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The remaining two requests consist of a "form" electronic mail message, dated February 4, 1998 and beginning with the salutation "Dear ISCA Reviewer," and a "form" letter, dated August 28, 1998, with the beneficiary's name and address handwritten into blank spaces on a pre-printed letter. Both requests concern peer review of manuscripts submitted for publication or presentation. The use of "form" documents in both cases suggests that peer review of this kind is frequent enough to justify the existence of such forms.

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

The petitioner lists the beneficiary's conference presentations and doctoral dissertation. These writings represent original contributions, but by themselves they do not indicate international recognition. If originality alone were sufficient to satisfy this criterion, it would appear that the vast majority of researchers would satisfy it. The petitioner has not shown that any journal or university generally or predominantly accepts unoriginal (and, therefore, redundant) research.

Dr. Helgason, identified above, states that the beneficiary "has international recognition as an outstanding researcher in the Computer Engineering area, attested to by [his] refereed publications." Dr. Helgason does not elaborate. John Blanton, a research scientist who has collaborated with the beneficiary at the petitioning company, states that the concept underlying the beneficiary's doctoral thesis "was in the forefront of computer technology at the time." Dr. Gregory H. Aicklen, senior system engineer at FSCX, Inc., states "I have read [the beneficiary's doctoral] dissertation, and was present at his defense. This work is important for manufacturing high-speed processors for both computers and communication devices. He made original contributions in this field; some of the contributions are useful for next generation computing devices. Clearly, [the beneficiary's] research is recognized as outstanding on both the national and international levels." Dr. Sukh Nair, an associate professor who served on the beneficiary's dissertation committee at SMU, discusses the beneficiary's work at SMU and the petitioning company and states "[b]ased on his impressive research background, it is clear that [the beneficiary] is an outstanding researcher in the field of computer architecture and network engineering."

All of the above witnesses have either collaborated with him or evaluated his doctoral dissertation. Their familiarity with his work is to be expected, and is not in any way indicative of international recognition. The witnesses' assertions that the beneficiary "clearly" enjoys such recognition cannot serve in place of direct, first-hand evidence to establish that the beneficiary's work has attracted any significant notice outside of SMU and the petitioning company.

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

The petitioner submits copies of several articles and papers. Most of these are conference papers, reproduced as abstracts. The record shows that these conferences each featured dozens of presentations. Similarly, thousands of journal articles appear every year. 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. Nothing in the record shows that the beneficiary's published writings stand out from the countless other scholarly articles published each year. For instance, the record does not show heavy international citation of the beneficiary's work.

The director denied the petition, stating that the petitioner's evidence does not satisfy the regulatory criteria. The director noted that the beneficiary "has co-authored several research projects." On appeal, counsel asserts that a brief will be forthcoming within 30 days. To date, over a year after the filing of the appeal, the record contains no further submission. We will consider the record to be complete as it now stands.

On appeal, counsel states that the petitioner has satisfied three criteria because the beneficiary "has authored scholarly articles and a book in the field, he has participated as the judge of the work of others, and he has made original research contributions to the field." The director had addressed these claims in the denial notice, but counsel offers no specific rebuttal. The assertion that the director "failed to properly consider all the evidence in the record" cannot suffice.

Counsel defends the beneficiary's co-authorship of several papers, stating that joint authorship is common in scholarly articles. While the director noted that most of the beneficiary's work was jointly written, there is no indication that this was a major factor in denying the petition.

Counsel asserts that the director "failed to give the appropriate weight to the testimony by four experts in the field." Three of these witnesses were on the beneficiary's dissertation committee, and the fourth is the beneficiary's collaborator at the petitioning company. Their largely general comments about the beneficiary's work do not, and cannot, establish international recognition. There is no evidence that their opinions regarding the beneficiary's work are shared throughout the international community in the field.

The director had stated "the petitioner appears to have filed this petition for a higher classification than the alien qualifies for in order to circumvent the labor certification process" which attaches to some lower classifications. Counsel, on appeal, asserts that this statement "is factually inaccurate . . . and is irrelevant, uncorroborated hearsay outside of the administrative record." The director's observation does appear to represent speculation rather than any evidence-based finding. Nevertheless, there is no indication that this speculation affected the outcome of the decision. To the contrary, the director's assertion relies on the prior premise that the beneficiary is not eligible for the classification sought. The director must, first, have concluded that the beneficiary is ineligible, and only then engaged in speculation as to the petitioner's motives for seeking the classification. Because the outcome of the petition had already been decided, the director's

statement represents, at worst, an irrelevant *dictum* rather than, as counsel contends, "an abuse of discretion."

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in his academic field. Without such recognition, the beneficiary's two years and three months of non-student research experience does not meet the minimum experience threshold. 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.