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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

MAR 11 2004

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]

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.

Marie Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a semiconductor manufacturer. 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 in the United States as a senior process engineer. The director determined that the petitioner had not established that the beneficiary has earned international recognition 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.

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 . . . ; 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.

Citizenship and Immigration Services (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. Counsel has claimed, at various times, that the petitioner has fulfilled all six criteria. The evidence, and the director's response to that evidence, shall be discussed with regard to each of the individual criteria. Most of the petitioner's claims do not withstand scrutiny, but what remains is sufficient to support approval of the petition.

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

Counsel observes that the beneficiary won the Elite Scholarship from the Chinese Academy of Sciences and the Shepard Memorial Fund Award from the Department of Chemistry at Johns Hopkins University (JHU), where the beneficiary obtained her doctorate in 2001.

The director asserted that the above awards "are not considered major prizes or awards, but are limited to the individual school making the awards." The director requested further evidence to establish the international significance of the awards. In response, the petitioner submits evidence to show that these awards are given only to top students at those institutions. It remains that both of the scholarships are student awards, limited to students at those two particular institutions. The petitioner has not shown that either of these student awards is internationally regarded as a major prize or award. The awards are presented not by international panels or organizations, but by the particular universities or subdivisions thereof.

The director denied the petition, repeating that the awards are scholarships, each limited to students at one particular institution, and thus do not represent major international awards. The director also stated that arguments as to the reputations of the awarding institutions do not overcome this finding. The petitioner does not contest this finding on appeal.

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

Counsel cites the beneficiary's membership in three associations: the American Chemical Society (ACS), the Electrochemical Society (ECS) and the Optical Society of America (OSA). Counsel describes these associations in the introductory letter accompanying the petition, but does not address the associations' membership standards as the regulations require.

Materials in the record show that ACS has over 160,000 members – a very substantial size that appears to rule out highly selective or exclusive membership criteria. Background materials also indicate that ECS has more than 7,000 members, while OSA has over 13,000 members. Materials submitted by the petitioner indicate that "Regular Membership in the Optical Society is open to all scientists, engineers, and technicians working in optics or a related field." Thus, the petitioner's own evidence proves that OSA does not require outstanding achievements of its members. The petitioner has not submitted membership criteria for ACS or ECS.

The director instructed the petitioner to submit documentation of the membership requirements of the above associations. Neither the petitioner's response, nor the subsequent appeal submission, includes any further effort to pursue this particular claim.

> *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.*

The petitioner has initially submitted a list of 49 citations of the beneficiary's published work; only five of these articles were themselves included with the initial submission. Of the 49 citations listed, at least 27 are self-citations by the beneficiary and/or her co-authors.

The director observed that the articles containing the citations are not about the alien's work. Rather, they are about an area of common interest to the authors and to the beneficiary. The beneficiary's work is not the main focus of the articles. Rather, the petitioner's articles, like dozens of others, are mentioned in passing and credited in bibliographic endnotes or footnotes. The director instructed the petitioner to submit published material that establishes the impact and influence of the beneficiary's work.

In response, the petitioner submits copies of additional citing articles beyond the five initially submitted. Counsel points to three examples of these articles to indicate that the citations are not mere passing references, but detailed discussions of the beneficiary's work. Two of the examples emphasized by counsel are self-citations by Professo[redacted] and thus these examples illustrate not influence on the field, but self-reference in relation to an ongoing area of inquiry in Prof[redacted]aboratory. Such self-citation is accepted and common practice in academia, but it does not show breadth of influence. The remaining example cited by counsel illustrates a three-sentence passage in a nine-page article, with nothing indicating that those three sentences represent a key section of the overall piece. There is no persuasive indication that this article, or any other article in the record, constitutes published material about the alien's work, and we are not persuaded that short excerpts, selectively edited from larger articles, constitute "published materials" in their own right.

The director, in denying the petition, found that the submitted citations do not show that the articles containing those citations are about the beneficiary's work. On appeal, counsel continues to maintain that the citations of the beneficiary's work represent published materials about the beneficiary's work. We have already addressed this argument, above.

Generally (as noted in background materials from ACS that the petitioner has included in its submission), the purpose of journal articles is to report new research, not to discuss the impact of earlier publications. Furthermore, another evidentiary criterion discusses the beneficiary's published work in the field. The construction of the regulations does not indicate that an alien's publication record alone should suffice to establish eligibility, yet by counsel's reasoning, the beneficiary's published work should be counted twice, once simply for appearing in print, and a second time for being cited by researchers, thus satisfying two criteria and establishing

eligibility. Obviously, a researcher's publication record and its impact must be considered, but it must be part of a larger picture rather than self-sufficient proof of eligibility.

> *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 petitioner did not initially claim to have satisfied this criterion. Subsequently, counsel has claimed that the beneficiary "has reviewed the work of her peers in an exhaustive book chapter . . . for inclusion in the 5 volume series, 'Electron Transfer in Chemistry.' . . . This series is highly influential." The book chapter, "Dye Sensitization of Electrodes," is an overview of the subject. The chapter mentions the work of other researchers, in the context of giving them due credit for their work, but the petitioner has not explained how an informational overview of this kind amounts to judging the work of others.

The director determined that the beneficiary's authorship of book chapters is not qualifying work as a judge of the work of others. The petitioner, on appeal, does not contest this finding.

Because the petitioner has not satisfied any of the above four criteria, the petitioner must satisfy both remaining criteria in order to establish the beneficiary's eligibility. Upon careful consideration of the voluminous record of proceeding, we conclude that the petitioner has, on balance, submitted sufficient evidence to satisfy these criteria.

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

Counsel states that the petitioner has filed one patent for the beneficiary's work, and a disclosure for a second patent application is "currently under review" by the petitioner as of the petition's filing date. The director, in denying the petition, stated that filing a patent application, or beginning preliminary paperwork to do so, does not establish the significance of an invention or innovation, but that "the actual granting of a patent would likely satisfy the scholarly research contribution requirement." We cannot concur with the director's assertion that an approved patent "would likely satisfy" this requirement. The United States Patent Office receives hundreds of thousands of patent applications every year and approves roughly half of them.[1] In 2001 alone, 85,170 patents were granted to "foreign residents," indicating that United States patents are not rare among foreign scientists. Given this very high (and increasing) volume, we cannot conclude that a patent application, approved or not, sets a researcher apart in a way that intrinsically demonstrates international recognition as outstanding. More significant is the international research community's reaction to the patented innovation.

The petitioner's initial submission includes five letters from witnesses who had worked with the beneficiary at JHU or at the petitioning company. Thus, the scope of the initial witnesses does not demonstrate recognition outside of the beneficiary's circle of mentors and collaborators. JHU Professor [redacted] states that he "recently learned that an entirely new research program in Sweden and one in Germany are being undertaken to exploit [the beneficiary's] thesis research findings on long distance interfacial electron transfer," but the initial submission contains no further information about these programs or from its unidentified participants. Dr [redacted] a design/product engineering manager at the petitioning company, asserts that the petitioner's work "will have a fundamental impact on the optical fiber communication industry," but Dr. [redacted] does not indicate how much of an effect the beneficiary's work has already had.

[1] Source: "Patent Activity, U.S., 1790-2001," http://www.uspto.gov/web/offices/ac/ido/oeip/taf/h_counts.htm.

In a request for further evidence, the director stated "the mere filing of a patent application might not be considered sufficient evidence" regarding the beneficiary's contributions. The director also noted that the petitioner's initial witnesses all have demonstrable ties to the beneficiary, and their statements do not represent first-hand evidence of international recognition. Responding to this notice, counsel has asserted that "the regulations do NOT require that letters come from officials who have not worked with the beneficiary." Nevertheless, the regulations, following the statute, require evidence of international recognition. A reputation confined to institutions where the beneficiary has worked or studied falls considerably short of international recognition.

Counsel states that the petitioner's response to the director's notice includes four new witness letters. One of these is actually a copy of a previously submitted letter (from one of the beneficiary's former collaborators), leaving three new letters. senior scientist at the National Renewable Energy Laboratory, whose only claimed connection to the beneficiary is that he met her "at several research conferences," indicates that the beneficiary "was instrumental in furthering our understanding of the factors that control electron injection from an adsorbed sensitizing dye into a semiconductor." Dr associate professor at Emory University, states that his knowledge of the beneficiary's work "is not from direct collaboration but through my reading of her journal articles, attendance of her paper presentations and through conversations we have had." Dr states "[t]he originality and significance of [the beneficiary's] research is recognized internationally," but he does not elaborate, and the only specific examples he provides of the beneficiary's influence concern collaborative projects involving JHU. Professor of Northwestern University states "[a]lthough I do not know her personally, I am familiar with [the beneficiary's] research as there is a strong overlap between her area of research area [sic] and mine – specifically her work on TiO_2 surface acidity and the interaction between metal coordination compound and semiconductor nanoparticle surfaces. These works have provided new insights and have been influential in the broader research." Prof. asserts that the beneficiary's work at JHU and the petitioning company amount to major contributions. Like other witnesses, Prof. asserts that the beneficiary's work has influenced other researchers but does not elaborate.

The director concluded that the witnesses have not satisfactorily explained the significance of the beneficiary's contributions, or demonstrated the required international recognition. On appeal, counsel asserts that the publication and citation of the beneficiary's work demonstrates its significance. Counsel has, at various times in this proceeding, claimed that the petitioner's published work satisfies four of the six criteria, by virtue of (1) being published, (2) being cited by others, (3) containing citations of others' work, and (4) the intrinsic significance of the information presented in the articles. While the petitioner's publication record is the strongest evidence in this proceeding, we cannot accept this repeated inflation of the importance of that publication record. The structure of the regulations indicates that different types of evidence are necessary to establish eligibility, rather than extrapolations drawn from a single source.

More persuasive on appeal are four new witness letters, indicating first hand, for the first time, that this witness base is international. Professor of the Universita Degli Studi di Bologna, Italy, states "I consider [the beneficiary] to be one of the foremost experts on 'dye sensitization of electrodes' in the field today."

Professor of Tulane University states that the beneficiary's "international stature . . . is well known to my colleagues and myself." Prof. Schmehl praises the beneficiary's "groundbreaking Ph.D. research." Professor f the University of Oregon states he has "never met" the petitioner, but claims "familiarity with certain of her publications." Prof. adds that the beneficiary's current work with the petitioner remains "at the forefront" of the beneficiary's chosen field.

Dr. of Lund University, Sweden, denies having met the beneficiary in person but states "I am familiar with her research through her publications and her outstanding reputation in the field. . . . [H]er excellent research produced at Johns Hopkins has a strong impact not only on my work but also on that of many of my colleagues." Dr. calls the beneficiary "an authority" with "international status."

These letters, submitted on appeal, were not available to the director at the time of the denial. Given the content and sources of the letters, it is difficult to conclude that the beneficiary's contributions have not won her international recognition. While the international witnesses are aware of the beneficiary's work through her publications, it is crucial to observe that the witnesses emphasize the significance and impact of the articles, rather than their mere existence as published works.

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

The petitioner indicates that the beneficiary has written ten published articles, seven conference presentations, and one book chapter. Witnesses have stated that the beneficiary's works are widely cited, and the petitioner, as noted above, has documented several such citations.

The director's request for further evidence implies that the petitioner has satisfied this criterion; the director acknowledged the petitioner's submission and requested nothing further. In the denial notice, however, the director (while acknowledging the earlier request for evidence) stated "the petitioner has not overcome eligibility [sic] under this criterion." The director observed that some amount of published work is essentially mandatory for scientific researchers, and no less so for doctoral students. The director asserted that the beneficiary's published articles "are not considered evidence of scholarly articles in the field because they were written while pursuing his [sic] doctoral degree."

The AAO agrees that some amount of publication is generally expected, even among graduate students and postdoctoral researchers, and therefore the mere existence of published materials cannot be said to demonstrate international recognition as an outstanding researcher. Nevertheless, the director cannot dismiss outright the beneficiary's published work simply because the beneficiary was a student when she wrote the articles. 8 C.F.R. § 204.5(i)(3)(ii) indicates that an alien's experience as a student is acceptable, within certain parameters, thus refuting the director's categorical dismissal of the beneficiary's student work. The overall impact of the articles is a key consideration, as the petitioner has acknowledged by repeatedly emphasizing the citation history of these articles.

As noted above, the petitioner initially claimed 49 citations of the beneficiary's work. In the petitioner's response to the request for further evidence, that figure increased to 76, and the number on appeal has risen to 106. (Counsel incorrectly asserts on appeal that the 106 citation figure followed the request for evidence.) While there remains a high ratio of self-citations, the evidence shows that the beneficiary's published work continues to attract international attention in the field, consistent with the independent witness letters submitted on appeal. The newest citations cannot under any circumstances be considered as published materials about the beneficiary's work, even if citations were generally so accepted, because they were not published until after the petition's filing date and thus cannot demonstrate eligibility as of that filing date. *See Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), which prohibit material changes after the filing date, and require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Citations after the filing date can, however, be properly considered as evidence of continuing acknowledgement of work that the beneficiary performed prior to the filing date. The regulations concern published articles, and therefore as long as the articles themselves predate the date of filing, there is some flexibility regarding the dates of citation. To offer an example in contrast, the regulation regarding prizes specifically calls for evidence of the alien's receipt of such prizes, and therefore a prize awarded after the filing date is not acceptable evidence.

For the reasons outlined above, we find that the petitioner has successfully met two of the six evidentiary criteria listed at 8 C.F.R. § 204.5(i)(3)(i), and has thereby overcome the sole stated ground for denial.

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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.