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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 98 271 51999 Office: VERMONT SERVICE CENTER Date: MAR 18 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]

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a university business school. It seeks to classify the beneficiary as an outstanding professor 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 a tenure-track position as an assistant professor. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in his academic field, or that the beneficiary possesses at least three years of qualifying teaching experience, as required for classification as an outstanding professor.

On appeal, counsel argues that the petitioner has presented sufficient evidence. Counsel also cites an appellate decision which, counsel claims, constitutes binding precedent.

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. Such evidence shall consist of at least two of the following:

(A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;

(B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;

(C) 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;

(D) 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;

(E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or

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

(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.

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:

> *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 cites William MacLennan's review of an article by the beneficiary. This review is represented in the record in the form of manuscript sent to the beneficiary by Mr. MacLennan via electronic mail. The accompanying message contains the instruction "[p]repare a review of a selected journal article of your choice." There is no clear evidence that this review was even prepared for publication, let alone that it has actually been published.

Counsel contends that citations of the petitioner's work fall under this heading. Such citations, however, do not show that the articles in which they appear are about the alien's work. Citations are of greater value when determining the impact of the beneficiary's own published work, discussed in a separate criterion, further below.

> *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.*

Counsel observes that the beneficiary reviewed two books. The record shows that the beneficiary took part in the "Great Books" rating committee for *Engineering and Management Review*. The editor of that journal, Dr. David Wells, is on the faculty of the petitioning university. Thus, the beneficiary's selection for this committee does not reflect recognition beyond the university that seeks to employ him.

The record shows that the beneficiary has been invited to review two manuscripts submitted for publication or conference presentation. Counsel notes that one invitation letter refers to the beneficiary as "an expert in this field." The standard for eligibility is international recognition as an outstanding professor, rather than the much lower standard of expertise in the field. Some amount of peer review of manuscripts appears to be expected within academia, rather than a rare privilege extended to the elite. One of the invitation letters is addressed simply "Dear Colleague," consistent with a "form" letter. The petitioner has not shown that the beneficiary's work as a reviewer or judge has been at so high a level as to support the finding that the beneficiary is outstanding in his academic field, or that the beneficiary's services in that capacity are widely and frequently sought by many different sources worldwide.

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

The petitioner submits several witness letters. Dr. Fredric C. Menz, dean of the petitioning school, states:

> I am impressed with [the beneficiary's] research work and his original contribution to the information systems literature. His research work on the deployment of the Web and Internet by businesses has wide ranging implications for US businesses. The method and the methodology that he has developed as part of his research will address the issue of productivity gains from the use of the information technology in the present era of information-intensive businesses.
>
> Besides being an outstanding researcher, [the beneficiary] is also a capable teacher. He has taught the capstone IS course for the [petitioner's] MBA program and two computer network and communications courses and one undergraduate information systems course with distinction.

Dr. Menz asserts that the beneficiary's work "has wide ranging implications," and speculates as to the issues that this work "will address," but this letter does not establish that the beneficiary's original contributions have won him international recognition.

Sanjay Pandey, director of medical information systems at the Whitney M. Young, Jr. Health Center in Albany, New York, has known the beneficiary "for about 5 years" and "intend[s] to hire him as a consultant to redesign our business processes." Mr. Pandey offers general praise for the beneficiary's abilities but identifies no specific contribution to his academic field.

The remaining witnesses have all collaborated with the beneficiary. The fact that these individuals are familiar with the beneficiary's work is not indicative of international recognition as an outstanding professor or researcher. These collaborators echo Dr. Menz's focus on the "implications" of the beneficiary's work, and what it "will" accomplish at some future point in time. For obvious reasons, these witnesses' assessment of the importance of their own collaborative work with the beneficiary lacks objectivity.

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

The record contains copies of three published articles by the beneficiary, and evidence that one of these articles has been cited once. This minimal publication and citation record does not demonstrate that the beneficiary's published work has won him international recognition as an outstanding professor. The very existence of the adage "publish or perish" documents that, to some extent, publication is an expected duty in academia, and thus the mere existence of published materials by the beneficiary cannot suffice to infer the required level of recognition.

The director requested additional evidence, stating that the petitioner's initial submission is insufficient to establish that the beneficiary is internationally recognized as an outstanding researcher. In response, the petitioner has submitted further letters and documentation, mostly concerning developments that took place after the petition's filing date (such as the petitioner's inauguration of its first Web-based course, designed in large part by the beneficiary). Regardless of their significance, such developments cannot retroactively demonstrate that the beneficiary was already eligible as of the 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). The new submissions emphasize the beneficiary's support at the petitioning university and the college where he obtained his graduate degrees, but they do not contribute to a finding that the beneficiary has earned international recognition as an outstanding professor.

The director denied the petition, stating that the petitioner has failed to demonstrate "that the beneficiary is an **internationally recognized** outstanding researcher" (emphasis in original). On appeal, counsel cites an appellate decision in which the AAO reversed the denial of an outstanding researcher petition filed on behalf of another alien. Counsel states that this constitutes a "ruling precedent decision" and "controlling authority" in the proceeding now at hand. The cited decision, however, has never been published as a precedent decision, and therefore it has no "controlling authority" as precedent. Not every appellate decision issued by the AAO constitutes binding precedent; only a very small number of AAO decisions are so designated. Furthermore, counsel never explains how the cited non-precedent decision is relevant to the proceeding at hand. The four-page decision cited by counsel contains only two paragraphs of discussion germane to the issue of international recognition. These two paragraphs discuss factors that are specific to the petition then under consideration, rather than general principles that compel approval of other petitions. The only common factors that we can discern are (1) both aliens sought the same classification and (2) the same attorney

prepared both appeals. Otherwise, we can detect no similarities that would demonstrate a similar fact pattern. The fact that AAO sustained a particular appeal does not, by any means, compel the approval of every petition in that classification. In the outstanding professor/researcher classification, the AAO dismisses substantially more appeals than it sustains.

Counsel maintains that the petitioner has submitted sufficient evidence to meet four of the six criteria listed at 8 C.F.R. § 204.5(i)(3)(i). Counsel does not address the director's specific findings regarding those criteria. Counsel argues that the beneficiary's "contributions are significantly greater than others in his field," and that the beneficiary "is more accomplished than other similarly placed faculty." As the director repeatedly observed in the decision, the statutory and regulatory standard is international recognition as outstanding. The assertion that the beneficiary has outperformed other graduate students at a particular school, even if true, does not establish the required international recognition. The petitioner has established only that the beneficiary has impressed his collaborators, and is respected at the institutions where he has worked and studied.

Counsel asserts, on appeal, that the beneficiary "is a pioneer in Web-based learning." The initial submission contains no mention of Web-based learning; instead, the discussion focuses on business applications of the Internet. Discussion of Web-based learning surfaced only after the director requested further evidence, several months after the petition's filing date. We have already cited case law to show that developments after the filing date cannot retroactively qualify a beneficiary who was not yet qualified as of the filing date. If the petitioner wishes this new evidence to be considered, the proper forum for consideration would be a new petition, filed at a sufficiently late date to take into account the new circumstances.[1]

The other issue raised in the director's decision concerns the beneficiary's experience. CIS regulations at 8 C.F.R. § 204.5(i)(3)(ii) require the submission of:

> Evidence that the alien has at least three years of experience in teaching . . . in the academic field. Experience in teaching . . . 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. . . . Evidence of teaching . . . 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 above regulatory language reflects the statutory requirement at section 203(b)(1)(B)(ii) that "the alien has at least 3 years of experience in teaching . . . in the academic area." Because the petitioner seeks to employ the beneficiary in a tenure-track position as a professor, rather than in a permanent position as a researcher, the petitioner must demonstrate that the beneficiary has three years of experience in teaching.

In a letter accompanying the initial filing, Professor Cheng Hsu of Rensselaer Polytechnic Institute, where the beneficiary earned his graduate degrees, states that the beneficiary "taught independent lab sessions for Management Information Courses for three years."

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[1] Computerized CIS records show that the petitioner did, in fact, file a new petition on the beneficiary's behalf less than a month after this appeal was filed. That second petition, receipt number EAC 99 266 51956, has been approved. Because the AAO has not seen the record of proceeding for the approved petition, we cannot comment on the merits of that petition or offer any meaningful comparison between that petition and the matter now before the AAO on appeal.

The director requested further evidence, because Prof. Hsu's description indicated that "the beneficiary was clearly working under the direct guidance of a professor and did not have control over course content or methods." In response, the petitioner submits a new letter from Prof. Hsu, who states:

> In the area of MIS, a lab session is usually an independent part of a course and, for all practical purposes, can be regarded as a separate section. It is a customary practice in this area that two different instructors impart instructions to students, each one having independent accountability for his/her portion of the course. In [the beneficiary's] case, he was responsible for his section. He designed his course work, imparted instructions to students, monitored their progresses, and graded their work.

In denying the petition, the director stated "it does not appear that the beneficiary has the required three years of experience." On appeal, counsel cites Prof. Hsu's second letter, but otherwise offers no further response except to declare that a "reasonable person" would conclude that the beneficiary had full responsibility for the class taught.

The above-cited regulation requires evidence that the beneficiary's "teaching duties were such that he or she had full responsibility for the class taught." Prof. Hsu's letter indicates that the beneficiary was not fully responsible for the (unidentified) class. Rather, the beneficiary was responsible only for the lab session. Prof. Hsu contends that the lab session "for all practical purposes, can be regarded as a separate section," but there is no evidence that a student's transcript would show separate grades for class activity and lab work, or that the college's course catalog lists the lab session as an independent course, rather than an inseparable component of a class taught by someone else. Because grades and course selection are very much "practical" considerations for colleges and students, we cannot conclude that the beneficiary's responsibility for one section of a class is, "for all practical purposes," identical to "full responsibility for the class taught." Counsel and the petitioner cannot circumvent the regulations by arbitrarily redefining the terms "class" and "full responsibility."

We conclude, for the above reasons, that the petitioner has not demonstrated that the beneficiary had at least three years of qualifying teaching experience as of the petition's filing date. We have also concluded, further above, that the petitioner has not established that the beneficiary has earned international recognition as outstanding in his academic field. 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.