



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF T-, INC.

DATE: JULY 31, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a pharmaceutical company, seeks to classify the Beneficiary as an outstanding researcher. Immigration and Nationality Act (the Act) section 203(b)(1)(B), 8 U.S.C. § 1153(b)(1)(B). This first preference classification makes immigrant visas available to foreign nationals who are internationally recognized as outstanding in their academic field.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary is internationally recognized as outstanding in her academic field, pharmaceutical science.

On appeal, the Petitioner asserts that the evidence of the Beneficiary's peer review for scholarly journals, authorship of scholarly articles and book chapters, and contributions to her field establishes that she is internationally recognized in the field of pharmaceutical science.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The statute requires that beneficiaries under this immigrant visa classification should stand apart in their academic area based on international recognition. To establish a professor or researcher's eligibility, a petitioner must provide initial qualifying documentation that meets at least two of six categories of specific objective evidence and demonstrates the beneficiary is recognized internationally within the academic field as outstanding.

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 petitioner must provide initial qualifying documentation for the beneficiary that meets at least two of the six regulatory criteria listed at 8 C.F.R. § 204.5(i)(3)(i)(A)-(F) (including items such as awards, published material in certain media, and scholarly articles authored by the beneficiary.) The

submission of evidence relating to at least two criteria does not, in and of itself, establish eligibility for this classification.¹

Specifically, section 203(b)(1)(B)(i) of the Act provides that a foreign national is an outstanding professor or researcher 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 [for a qualifying position with a university, institution of higher education, or certain private employers].

Finally, the regulation at 8 C.F.R. § 204.5(i)(3)(ii) provides that a petition for an outstanding professor or researcher must be accompanied evidence that the foreign national has at least three years of experience in teaching and/or research in the academic field.

II. ANALYSIS

The Beneficiary is employed by the Petitioner as a formulation scientist, and her research is in the academic area of pharmaceutical science, with a focus on the development of delivery systems for insulin and other drugs. The Director found that the Beneficiary met the requirements of three of the six evidentiary criteria, those pertaining to the authorship of scholarly articles, original contributions to her field, and judging the work of others in the field, but did not find that she is internationally recognized as outstanding in her field. Upon review we agree with the Director's decision regarding these three criteria, and will therefore turn to the final merits analysis.

In her final merits analysis, the Director first stated that the evidence does not establish that the Beneficiary's participation in the peer review process separates her from the many others who perform this function. On appeal, the Petitioner resubmits an article in the scholarly journal [REDACTED] which indicates that 20% of researchers perform at least 69% of peer reviews, and asserts that this fact alone sets the Beneficiary apart from her peers. However, while the article acknowledges that "[r]esearchers are invited by editors on the basis of their expertise in the relevant research area

¹ See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that U.S. Citizenship and Immigration Services (USCIS) examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true"); see also *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination). The immigrant visa classification at issue in *Kazarian*, section 203(b)(1)(A) of the Act, requires qualifying evidence under three criteria whereas the classification at issue in this matter, section 203(b)(1)(B) of the Act, requires qualifying evidence under only two criteria.

and methodology,” it proposes a lack of qualified reviewers as a possible reason, among several others, for the disproportionate burden born by those researchers who conduct peer reviews. The main focus of the study was to determine whether the current system of peer review is sustainable, and the conclusions reached by its authors do not support the Petitioner’s assertion that performing peer review, by itself, is indicative of international recognition in an academic field.

The Petitioner also asserts that conducting peer review for prestigious journals demonstrates that the Beneficiary has received recognition in her field, and submits a reference letter (dated October 23, 2017) from [REDACTED] of [REDACTED] at [REDACTED] who is also the Editor-in-Chief of [REDACTED] one of the journals for which the Beneficiary has conducted reviews. He writes that the Beneficiary’s research in polymeric delivery systems “is a critical reason for her involvement as a reviewer in one of the top pharmaceutical journals in the field.” This statement is similar to that in the study discussed above in that it acknowledges that the Beneficiary’s service as a reviewer for this journal was based upon her expertise in the field, but does not support the assertion that it is a sign of international recognition as outstanding. Another letter from [REDACTED] dated October 10, 2016, acknowledges that “[t]he peer review process depends on expert reviewers who are willing to give their time...,” reinforcing both the voluntary nature of peer review and the need for reviewers to be knowledgeable about the material being reviewed.

In further support of her assertion regarding peer review, the Petitioner submits a letter from [REDACTED] of the [REDACTED] who serves as Editor-in-Chief of [REDACTED]. He writes that “[a]uthors submitting an article are requested to nominate well known scientists with a prior track record of success and high impact in the field.” However, the journal’s website includes a link to instructions for submitting manuscripts, which reads in pertinent part:

Authors are required to submit with their articles, the names, complete affiliations (spelled out), country and contact details (including current and valid (preferably business) e-mail address) of six potential reviewers... When compiling this list of potential reviewers please consider the following important criteria: they must be knowledgeable about the manuscript subject area; must not be from your own institution; at least two of the suggested reviewers must be from another country than the authors’; and they should not have recent (less than four years) joint publications with any of the authors. However, the final choice of reviewers is at the editors’ discretion.²

This explanation of the reviewer selection process does not include the elevated standards described by [REDACTED] and also includes several factors which limit the pool of available reviewers. Accordingly, the record does not support the Petitioner’s assertion that conducting peer review for scholarly journals demonstrates international recognition as outstanding. In addition, the evidence

² [https://\[REDACTED\]](https://[REDACTED])

does not support the Petitioner's assertion that these journals are considered to be prestigious, or that reviewing manuscripts for them has enhanced the Beneficiary's recognition in her field. While we do not doubt the Beneficiary's qualifications to serve as a peer reviewer, the evidence does not establish that the quality, amount, or character of her participation in the peer review process marks her as an internationally recognized researcher in her field.

The Petitioner also contends that the Director did not give proper consideration to the reference letters which were submitted.³ It first refers to its own letter, signed by [REDACTED], which describes the Beneficiary's duties and states that she is "one of the key scientists" working on delivery systems for three peptide drugs, but also that the details of her work are confidential. The Petitioner asserts on appeal that the Beneficiary's "discoveries have been implemented and commercialized but because of their proprietary nature, the owners of the intellectual property, the companies, do not disclose what the specific discoveries were." While we recognize the Petitioner's interest in protecting its intellectual property, this letter is insufficient to confirm the Petitioner's assertions regarding implementation of her research.

Similarly, [REDACTED] who hired the Beneficiary at her previous place of employment, [REDACTED] states in his letter that the Beneficiary "was instrumental in development of a generic injectable product and worked towards meeting the project goals..." He indicates that the Beneficiary performed well during her time with [REDACTED] and helped to accomplish project goals. This letter and the letter from [REDACTED] indicate that the Beneficiary has played an important role on projects that are important to her employers, but they lack sufficient detail to demonstrate her work's influence on the field or other factors consistent with international recognition as outstanding.

Other letters submitted by the Petitioner provide more details of the Beneficiary's work and the affect or impact it has had or will have on other researchers in her field. For example, [REDACTED] of [REDACTED], who served as a member of the Beneficiary's doctoral dissertation committee, explains the importance of the Beneficiary's area of expertise and notes that her work has been published in scholarly books in her field. In particular, he states that the Beneficiary's "chapter on the controlled delivery of hormones made a significant and original contribution to research about the subject." However, the publication of the Beneficiary's work, without evidence of its impact on the field in general and other researchers, does not by itself establish that the Beneficiary has made a contribution to the field, or that she is internationally recognized for that work. [REDACTED] goes on to state that rapid gains have been made in this area of research over "the last several decades," and that the Beneficiary's research "is in line with the kind of sophisticated work that serves as a foundation for future developments and progress." This statement indicates that the Beneficiary's original work has added to an existing knowledge base that may result in future applications.

³ While not all of the letters will be discussed in this decision, all were reviewed and considered in conducting the final merits determination.

[REDACTED] of the [REDACTED] indicates that he has cited the Beneficiary's work twice in a review article he authored for [REDACTED] in 2014. He writes that the Beneficiary's work on insulin delivery for a prolonged period "demonstrates a vast promise," and that her "original contributions have tremendous potential and applicability in the field of formulation development." The review article, submitted with the petition, discusses the Beneficiary's study in two sentences among several other studies which share advanced knowledge in the area of subcutaneous insulin delivery. Again, while we acknowledge that the evidence demonstrates that the Beneficiary has made original contributions to the field of pharmaceutical science, this letter does not establish that those contributions have already brought her international recognition as outstanding in this field.

[REDACTED] of [REDACTED] writes that she has referred to the Beneficiary's work on multiple occasions in her own published work, and that the Beneficiary "has produced some of the most groundbreaking work on drug delivery to date." The record includes three of [REDACTED] publications, which focus on the use of [REDACTED] for drug delivery, all of which cite to one of the publications co-authored by the Beneficiary as one of several studies in this area. These citation examples, however, do not reflect a significant reliance upon the Beneficiary's work. For example, the article published in [REDACTED] has the following as its first line, which is supported by citations to the Beneficiary's article among nine others: "Phase-sensitive [REDACTED] have been successfully used to deliver a variety of therapeutic agents." No further citations to or discussion of the Beneficiary's work appears in this article. Likewise, the article which appeared in [REDACTED] cites to the Beneficiary's work among eleven other articles in a single sentence describing the development of these drug implant systems.

While the Petitioner acknowledges that the Beneficiary has published scholarly work infrequently since 2012 because she has worked in the private sector in recent years, it notes on appeal that many of the articles authored by the Beneficiary were published in journals with comparatively high impact factors, and argues that this is an indicator of the Beneficiary's influence in her field. We agree that some of these journals have comparatively high impact factors. However, we will not presume that every author whose work is published in such a journal has a high degree of influence in his or her field. Rather, we look to information about the impact of the individual article. The Petitioner does not refute the number of independent citations of the Beneficiary's work obtained by the Director from the [REDACTED] website, or present evidence of their comparative significance to the field, but instead refers to the reference letters for evidence of the Beneficiary's standing in her field. For the reasons discussed above, the submitted reference letters do not establish that the Beneficiary has had influence on the field of pharmaceutical science to the extent consistent with international recognition as outstanding.

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III. CONCLUSION

The Petitioner submitted evidence which established that the Beneficiary meets at least two of the requisite evidentiary criteria. However, the totality of the evidence does not demonstrate the Beneficiary's international recognition as outstanding in the field of pharmaceutical science.

ORDER: The appeal is dismissed.

Cite as *Matter of T-, INC.*, ID# 1393306 (AAO July 31, 2018)