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U.S. Citizenship
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APR 11 2005

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

WAC 03 241 52909

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, 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 medical device company. It seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B), as an outstanding professor or researcher. The petitioner seeks to employ the beneficiary as an "Environmental Research Scientist." The director found that the petitioner had not established that the beneficiary is recognized internationally as outstanding in his academic field. The director also concluded that the petitioner had not demonstrated its ability to pay the proffered wage.

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

(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.

This petition was filed on August 22, 2003. 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 regulation lists six criteria, of which the beneficiary must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. We find that the evidence presented by the petitioner satisfies the following two criteria.

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

The petitioner submitted several witness letters in support of the petition. We cite representative examples here.

[REDACTED] Professor of Clinical Medicine, University of Southern California, Keck School of Medicine, states:

Although [the beneficiary's] publications in scientific journals are significant in themselves for their scientific value, it goes beyond that by providing guidance for other researchers to direct their research in the right direction. For example, until [the beneficiary's] research was published on the subject, doctors and researchers had no reliable information on the effect of insulin analogues (insulin-like chemicals) on the treatment of diabetes in pregnant women. I cannot think of anything more significant than providing the right information for others to follow.

[REDACTED] Diabetes Research Group, Yale University, states:

[The beneficiary] has already established her reputation on the international level, especially in the field of diabetes and pregnancy.

There are two major approaches in the management of gestational diabetes. Medical nutrition therapy and insulin therapy. Appropriate management of diabetes during pregnancy can significantly reduce the maternal as well as neonatal complications and reduced long term complication that are visible in the pediatric population born out of poorly controlled diabetic pregnancies. *American Journal of Perinatology* published . . . outstanding findings that [the beneficiary] has discovered evaluating different types of meals and postprandial glucose response to them. This findings [sic] will reduce the necessity of intensive insulin therapy in those patient [sic] managed by original meal composition suggested by [the beneficiary].

[The beneficiary's] recent publication in . . . *Diabetes Care* is perceived as the publication of the highest scientific value. *Diabetes Care* manuscript was the only randomized study in the world to assess the safety and efficacy of the new rapid action insulin treatment for the gestational diabetics and therefore, currently serves as the therapy guidelines.

The record contains evidence showing that this article has been cited numerous times by independent researchers. Independent citations (such as those contained in the record) show that other researchers have been influenced by the beneficiary's work and are familiar with it.

[REDACTED] Professor and Chair, Department of Pathology of Pregnancy, University of Belgrade, states: "[The beneficiary] has already made a large number of significant, original contributions over a wide range of topics, from metabolic alterations of pregnancy, to the breakthrough in nutritional medical management of insulin impaired or resistant states."

[REDACTED] Professor of Medicine, University of Berlin, states:

I have known [the beneficiary's] work for several years. She has achieved international recognition in the field of diabetes specifically working on the pregnancy complicated by various forms of diabetes . . . [The beneficiary's] work is well published in the peer [sic] reviewed journals and serves as the guidelines, especially when the medical nutrition therapy is recommended for the management of gestational diabetes.

In this case, the evidence indicates that the beneficiary's contributions are important not only to the research institutions where she has worked, but also throughout the greater field. Medical experts from around the world have acknowledged the value of the beneficiary's work and that her contributions have attracted international recognition. Therefore, we find that the petitioner's evidence satisfies this criterion.

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

The petitioner submitted evidence of the beneficiary's authorship of articles appearing in publications such as *Diabetes Care*, *Diabetologia*, and *Diabetes*. Also submitted was a citation index showing that the beneficiary's published articles have garnered numerous independent citations. When judging the influence and impact that the beneficiary's published work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the beneficiary's findings. In the present matter, the significant number of citations of the beneficiary's published articles demonstrates widespread international interest in, and reliance on, her work. These citations show that many other researchers have acknowledged the beneficiary's influence and found her work to be significant.

In this case, while not all of the petitioner's evidence carries the weight imputed to it by counsel, we find that the evidence presented satisfies at least two of the regulatory criteria at 8 C.F.R. § 204.5(i)(3)(i).

The remaining issue to be determined is whether the petitioner has adequately demonstrated its ability to pay the beneficiary's wage as indicated under Part 6 of the I-140 petition.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence.

In determining the petitioner's ability to pay the proffered wage of \$185,000 per year, Citizenship and Immigration Services (CIS) may examine whether the petitioner employed and paid the beneficiary the proffered wage at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence

will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the present case, the petitioner submitted the beneficiary's Form W-2, Wage and Tax Statement, for 2003 reflecting a salary of \$77,956.54. Information in the record indicates that the beneficiary did not commence employment with the petitioner until August 2003. Therefore, after annualizing the amount paid to the beneficiary from August 2003 through December 31, 2003, it is reasonable to conclude that the petitioner has adequately demonstrated its ability to pay the proffered wage.

In this matter, we find that the petitioner has overcome the stated grounds for denial and thereby established that the beneficiary qualifies under section 203(b)(1)(B) of the Act as an outstanding researcher. The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

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