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U.S. Citizenship
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Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date: **APR 30 2008**

IN RE:

Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as 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.

Maura Beadrick
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The petitioner appealed that decision. On appeal, the Administrative Appeals Office (AAO) remanded the matter to the director for further consideration. The matter is now before the AAO on certification. The director's decision will be affirmed.

The petitioner is a cubic nitride, diamond and polycrystalline supplier. 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 an application development engineer. The director initially determined that the petitioner had not established that it had offered the beneficiary a permanent job as of the date of filing.

On appeal, counsel asserted that the original job offer did not exist and is not required initial evidence but submitted the previously lacking document. Thus, the AAO remanded the matter to the director for a determination as to whether the petitioner had established that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

On January 14, 2008, the director denied the petition, concluding that the petitioner had not established that the beneficiary is recognized as outstanding in his academic field. The director certified that decision to the AAO pursuant to 8 C.F.R. § 103.4(a)(1). Pursuant to 8 C.F.R. § 103.4(a)(2), the director advised the petitioner that it could submit a brief or written statement to support the petition within 30 days. Subsequently, counsel submitted a brief and additional letter. For the reasons discussed below, we affirm the director's decision.

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):

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(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.

The regulation at 8 C.F.R. § 204.5(i)(3) states that a petition for an outstanding professor or researcher must be accompanied by:

(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 current or former employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

This petition was filed on March 21, 2005 to classify the beneficiary as an outstanding researcher in the field of materials science and engineering. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field as of that date, and that the beneficiary's work has been recognized internationally within the field as outstanding. The beneficiary received his Ph.D. in August 2002, less than three years before the petition was filed. In accordance with 8 C.F.R. § 204.5(i)(3)(ii), quoted above, in order to rely on his research while working towards that advanced degree, he must demonstrate that his doctoral research was recognized 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 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. More specifically, outstanding professors and researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulation at

issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991)(enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)). The petitioner claims to have satisfied the following criteria.¹

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

The petitioner initially submitted evidence of the beneficiary's membership in Sigma Xi as of 2004 and the Indiana Alpha Chapter of Tau Beta Pi as of 1999. The certificate from Tau Beta Pi recognizes the beneficiary's "scholarship and exemplary character *while a student at Purdue University*." (Emphasis added.) The initial evidence included a letter from Patrick Sculley, Executive Director of Sigma Xi, advising that Sigma Xi honors "those who have made noteworthy contributions in research." The initial evidence also included a letter from [REDACTED], Assistant Secretary Treasurer for Tau Beta Pi, advising that the society recognizes "outstanding achievement and exemplary character" and that there are 460,000 members of Tau Beta Pi. A "Fact Sheet" about Tau Beta Pi indicates that it recognizes "outstanding engineers" and lists "notable achievers" who are members.

In response to the director's October 10, 2006 request for additional evidence, issued following the remand order by this office, the petitioner submitted Internet materials confirming that full membership in Sigma Xi is by nomination and requires a "noteworthy achievement." The materials further provide, however, that a noteworthy achievement "must be evidenced by publication as a first author on two articles published in a refereed journal, patents, written reports or a thesis or dissertation." The petitioner also submitted a list of Nobel Laureates who are members of Sigma Xi. In addition, the petitioner submitted Internet materials about Tau Beta Pi. These materials reflect that membership is by invitation of the collegiate chapter and that graduate students are required to be in the top fifth of their class or obtain a letter of recommendation from their academic advisor. On certification, counsel notes that neither honor society admits members based solely on the payment of dues. Moreover, counsel asserts that authoring an article is insufficient, the prospective member must be the primary investigator and author. Finally, counsel focuses on the requirements for Tau Beta Pi membership for practicing engineers, ignoring that the beneficiary was admitted as a student.

We affirm the director's finding that neither honor society requires outstanding achievements of their members. The regulation does not simply require that the alien is a member of an association that requires more than the payment of dues. The associations must require outstanding achievements of their members. The regulatory criteria are to be used in evaluating whether a professor or researcher stands apart in the academic community. 56 Fed. Reg. at 30705. Thus, we interpret "outstanding achievement" to mean more than a notable achievement for a student or recent graduate. The achievement must be an outstanding achievement in the academic community as a whole, which includes the most experienced faculty. The *Department of Labor's Occupational Outlook Handbook*,

¹ The petitioner does not claim that the beneficiary meets any criteria not discussed in this decision and the record contains no evidence relating to the omitted criteria.

224 (2006-2007 ed.) indicates that university faculty spend a significant amount of their time doing research and often publish their findings. In addition, the handbook acknowledges that faculty face “the pressure to do research and publish their findings.” *Id.* at 225. As such, we cannot conclude that the “noteworthy achievement” required for Sigma Xi membership, defined as primary authorship of two papers, written reports or a thesis or dissertation, is an outstanding achievement that sets the author apart from the academic community.

Moreover, Tau Beta Pi’s membership requirements, class standing and a recommendation from one’s own academic advisor, are not outstanding achievements that set the member apart from the academic community. Finally, election by one’s own collegiate chapter is not indicative of or consistent with international recognition as outstanding.

That both societies include members who have won the Nobel Prize does not impart that distinction to the vast majority of their members who have not been so recognized. It remains, while neither society is open to any applicant who pays a fee, they simply do not require outstanding achievements of their members. Thus, the petitioner has not established that the beneficiary meets this criterion.

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

The petitioner cannot satisfy this criterion simply by listing the beneficiary’s past projects and demonstrating that the beneficiary’s work was “original” in that it did not merely duplicate prior research. Research work that is unoriginal would be unlikely to secure the beneficiary a master’s degree, let alone classification as an outstanding researcher. Because the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher, it stands to reason that the beneficiary’s research contributions have won comparable recognition. To argue that all original research is, by definition, “outstanding” is to weaken that adjective beyond any useful meaning, and to presume that most research is “unoriginal.”

As stated above, outstanding researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. 56 Fed. Reg. 30703, 30705 (July 5, 1991). Any Ph.D. thesis, postdoctoral or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. To conclude that every researcher who performs original research that adds to the general pool of knowledge meets this criterion would render this criterion meaningless.

Furthermore, the regulations include a separate criterion for scholarly articles. 8 C.F.R. § 204.5(i)(3)(i)(F). Thus, the mere authorship of original work in scholarly articles cannot serve as presumptive evidence to meet this criterion. To hold otherwise would render the regulatory requirement that a beneficiary meet at least two criteria meaningless.

██████████, Director of the Center for Materials Processing and Tribology at Purdue University, is the beneficiary's coauthor for all of his articles while at Purdue. ██████████ notes that the beneficiary's work at Purdue has been published and was funded by companies such as General Motors (GM). While the beneficiary's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. As stated above, publication of scholarly articles is a separate criterion and cannot serve as presumptive evidence to meet this criterion. Moreover, most, if not all, research receives funding. We are not persuaded that every Ph.D. candidate working on a funded research project must be presumed to have made contributions that are recognized internationally in the field as outstanding.

██████████ explains that the beneficiary focused on developing novel methods for characterizing various forms of thermal damage on surfaces of engine components, which is "of immense help to automotive components manufacturers, for instance, in eliminating costly re-working of damaged components and reducing the number of scrap parts arising from improper grinding procedures." According to ██████████, most thermal damage is confined to very thin layers that are difficult to study, but the beneficiary developed methods that superseded prior methods by tracking changes in surface characteristics with sub-micrometer resolution. Dr. ██████████ further explains that the beneficiary's original grinding temperature measurement research enabled the beneficiary to subsequently develop "ground breaking computer models for accurate prediction and control of the thermal damage." ██████████ concludes that the beneficiary's models "obviate the need for complicated experimental setups when designing new processes for production environments" and "are the best among those currently available." Dr. ██████████ does not, however, assert that the beneficiary's models are being widely adopted or provide examples of industry adopting these models.

██████████, a former graduate research assistant at Purdue University while the beneficiary was a doctoral student there, provides somewhat more technical detail regarding the beneficiary's models and their benefits to the automotive industry. ██████████, Head of the School of Aeronautics and Astronautics at Purdue University and one of the beneficiary's collaborators, provides a similar letter, concluding that the beneficiary's work "provided a much-awaited confirmation of predictive temperature models." Neither ██████████ nor ██████████ however, provides examples of these models being utilized in industry.

██████████, a senior manufacturing engineer at GM, asserts that he supplied the beneficiary test materials and equipment. As stated above, GM provided some of the funding for the beneficiary's Ph.D. research. ██████████ asserts that the beneficiary has produced superior models and that the information produced by the beneficiary "can be practically applied in manufacturing environments to minimize the non-productive time associated with grinding wheel preparation, for instance." ██████████ does not, however, even confirm that GM is using these models. Regardless,

it can be expected that a contribution recognized as outstanding in the field would be in wider use beyond the company that funded the research.

The final letter submitted initially is from a current Ph.D. student at Purdue. As noted in our remand order, the above letters are all from the beneficiary's collaborators and immediate colleagues. While such letters are important in providing details about the beneficiary's role in various projects, they cannot by themselves establish the beneficiary's international recognition as outstanding.

In response to the director's October 10, 2006 request for additional evidence, the petitioner submitted a new letter from [REDACTED], a graduate of Purdue University, although his time there did not overlap with the beneficiary. [REDACTED] asserts that the beneficiary's Ph.D. dissertation **used data to validate [REDACTED]'s model** and that his results "make it possible to design grinding routines that minimize grinding waste and ensure the integrity of the mechanical properties of mission-critical components used in the aerospace and automotive industries." [REDACTED] does not, however, provide examples of any aerospace or automotive industry using the beneficiary's models.

On certification, the petitioner submits a second letter from [REDACTED] Dr. [REDACTED] reiterates that the beneficiary validated the results from [REDACTED]'s doctoral research but affirms that he and the beneficiary did not collaborate and that their time at Purdue University did not overlap. [REDACTED] reaffirms that the beneficiary's work is novel and that his results "have a significant role in better explaining the phenomena occurring during abrasive processes." [REDACTED] **further asserts that the beneficiary's measurements are important for devising optimal and efficient grinding processes.** Once again, while we do not contest that [REDACTED] is not one of the beneficiary's collaborators, Dr. Ju provides no examples of how the beneficiary's work has been applied beyond his immediate circle of colleagues.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of international recognition. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for **making the final determination regarding an alien's eligibility for the benefit sought.** *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through

his reputation and who have applied his work are the most persuasive letters in establishing international recognition.

As of the date of filing, the beneficiary had authored four published articles and had presented his work at conferences. Initially, the petitioner provided no evidence that these works were influential, such as evidence that they were cited. In response to the director's October 10, 2006 request for additional evidence, the petitioner submitted evidence that three of the beneficiary's articles had been cited. However, none of the articles had been cited more than four times, and three of those citations postdate the filing of the petition. On certification, the petitioner provides a self-serving list of 21 citations for four of the beneficiary's articles, including 10 citations for one article. Fourteen of these 21 citations postdate the filing of the petition. The petitioner must establish the beneficiary's eligibility as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Regardless, this citation record is not indicative of international recognition as outstanding.

The petitioner also submitted evidence that the beneficiary's presentation is listed on a website as "related literature." The petitioner has not demonstrated that this listing among numerous other articles on the subject is evidence that the beneficiary's work in particular is recognized as outstanding.

Finally, on certification, the petitioner submitted electronic-mail messages reflecting that a Chinese publication had expressed interest in having one of the petitioner's articles translated into Chinese for publication in China. While the beneficiary responded that he would agree to the translation, there is no evidence that the Chinese publication ultimately published the article. Moreover, while such publication might establish more international exposure, it would not necessarily demonstrate that the paper represents a contribution that is internationally recognized as outstanding.

In light of the above, we affirm the director's conclusion that the petitioner has not established that the beneficiary meets 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 that as of the date of filing, the beneficiary had authored four published articles and presented his work at conferences. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." Moreover, as stated above, the

Department of Labor's Occupational Outlook Handbook, 224 (2006-2007 ed.) provides that university faculty spend a significant amount of their time doing research and often publish their findings. In addition, the handbook acknowledges that faculty face "the pressure to do research and publish their findings." *Id.* at 225.

This information reinforces our position that publication of scholarly articles is not automatically evidence of international recognition. Even assuming that the beneficiary's work is productive for a Ph.D. student, we are not persuaded that publication in and of itself is indicative of or consistent with international recognition. Rather, we look to the community's response to the publications. On certification, counsel notes that researchers in several countries have cited the beneficiary. As stated above, however, the petitioner has not established that the beneficiary was well cited *as of the date of filing*, the date as of which the petitioner must establish the beneficiary's eligibility. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Thus, we affirm the director's conclusion that the beneficiary's publication record cannot serve to meet this criterion.

The petitioner has shown that the beneficiary is a talented researcher, who has won the respect of his collaborators, employers, and mentors, while securing some degree of international exposure for his work. The record, however, stops short of elevating the beneficiary to the level of an alien who is internationally recognized as an outstanding researcher or professor. 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 decision of the director denying the petition will be affirmed.

ORDER: The director's decision dated January 14, 2008 is affirmed. The petition is denied.