U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: LIN 05 106 51329 Office: NEBRASKA SERVICE CENTER Date: AUG 11 2006

IN RE: Petitioner: [redacted]
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:

[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, Chief
Administrative Appeals Office

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

The petitioner is a university. 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 permanently in the United States as a research associate. The director determined that the petitioner had not established that it had offered the beneficiary a permanent job as of the date of filing. The director further determined that the petitioner had not established that the beneficiary has attained the outstanding level of achievement required for the category of outstanding professor or researcher.

On appeal, counsel submits a brief. While we do not concur with all of counsel's assertions and find that some of the director's findings were valid, we find that the record supports the beneficiary's eligibility for the classification sought. Specifically, the record contains the original job offer issued to the beneficiary and establishes the beneficiary's contributions to his field and the significance of his scholarly articles.

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.

Permanent Job Offer

The regulation at 8 C.F.R. § 204.5(i)(3)(iii) provides that a petition must be accompanied by:

> 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.

(Emphasis added.) Black's Law Dictionary 1111 (7th ed. 1999) defines "offer" as "the act or an instance of presenting something for acceptance" or "a display of willingness to enter into a contract on specified terms, made in a way that would lead a reasonable person to understand that an acceptance, having been sought, will result in a binding contract." Black's Law Dictionary does not define "offeror" or "offeree." The online law dictionary by American Lawyer Media (ALM), available at www.law.com, defines offer as "a specific proposal to enter into an agreement with another. An offer is essential to the formation of an enforceable contract. An offer and acceptance of the offer creates the contract." Significantly, the same dictionary defines offeree as "a person or entity *to whom an offer to enter into a contract is made* by another (the offeror)," and offeror as "a person or entity who makes a specific proposal *to another (the offeree)* to enter into a contract." (Emphasis added.)

In light of the above, we find that the ordinary meaning of an "offer" requires that it be made to the offeree, not a third party. As such, regulatory language requiring that the offer be made "to the beneficiary" would simply be redundant. Thus, a letter addressed to Citizenship and Immigration

Services (CIS) *affirming* the beneficiary's employment is not a job *offer* within the ordinary meaning of that phrase.

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

> *Permanent,* in reference to a research position, means either tenured, tenure track, or for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination.

On Part 6 of the petition, the petitioner indicated that the proposed employment was a permanent position. The petitioner submitted a December 15, 2004 letter from [redacted], Chairman of the petitioner's Department of Radiology, addressed to the beneficiary offering him a regular, Unclassified Professional Staff position as a Research Associate 2. The letter provides that the position "is permanent with no pre-determined date for termination." On May 9, 2005, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary and the petitioner's human resource policies, rules and regulations pertinent to the position offered.

In response, the petitioner submitted a new "official letter of offer" from [redacted] sued to the beneficiary advising him that he had "every expectation of continued employment, as do all [of the petitioner's] employees in regular positions such as this one." The petitioner also submitted its Office of International Education (OIE) Guidelines for Permanent Residency Sponsorship reflecting that a department wishing to sponsor an individual for permanent residency "must be prepared to write a letter of offer stating that the employment is indefinite (i.e., permanent)."

The director questioned the legitimacy of the letters from [redacted] relying on Rule 4.20(I) of the petitioner's Appointment Policy and official guidance advising that letters of offer should not reference "permanent" as reflected on the petitioner's website. The director advised the petitioner of this information for the first time in the denial. Thus, the petitioner was not afforded an opportunity to rebut this information prior to the denial.

On appeal, counsel asserts that Ohio "is a work-at-will state; therefore permanently hiring [the beneficiary] 'unless there is good cause for termination' would be illegal." Counsel further asserts that the information on the petitioner's website is meant to preclude an "inadvertent hiring contract," not to preclude every permanent job offer. The petitioner resubmits previously submitted information.

Counsel is not entirely persuasive that the petitioner is precluded by law from offering positions that can only be terminated for cause. The beneficiary's position is "unclassified," suggesting that the petitioner also offers "classified" positions. Moreover, the OIE guidelines are not relevant to petitions filed under the outstanding research classification as they appear to relate to sponsorships via the Department of Labor (DOL). Specifically, the OIE guidelines provide that the "initial paper work for such requests must be submitted to the Ohio Department of Job and Family Services within 18 months

of the date on the original faculty letter of offer." (Emphasis in original.) This time limit is clearly in reference to the DOL regulation at 20 C.F.R. § 656.21a(a)(1)(iii)(E) which provides: "Applications for permanent alien labor certification for job opportunities as college and university teachers shall be filed within 18 months after a selection is made pursuant to a competitive recruitment and selection process."

Regardless, while the petitioner's policies and rules are relevant, we must look at the actual job offer that was issued to the beneficiary. In this matter, prior to the date of filing, the petitioner offered the beneficiary a position with no time limit. The petitioner has subsequently assured the beneficiary and this office that the beneficiary has an expectation of continued employment. In promulgating the final regulation, the Immigration and Naturalization Services, now CIS, recognized that it is unusual for colleges and universities to place researchers in tenured or tenure-track positions. Thus, the commentary to the final rule accepts that research positions "*having no fixed term* and in which the employee will *ordinarily* have an *expectation* of permanent employment" as comparable. (Emphasis added.) 56 Fed. Reg. 60867, 60899 (November 29, 1991). Thus, we are persuaded that, in this matter, the petitioner has established that it had offered the beneficiary a qualifying job as of the date of filing.

Eligibility as an Outstanding Researcher

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 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 second issue to be considered in this proceeding is whether the beneficiary's scientific accomplishments are internationally recognized as those of an outstanding researcher in his field. 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." Outstanding professors and researchers should stand apart in the academic community through eminence and distinction based on international recognition. 56 Fed. Reg. 30703, 30705 (July 5, 1991). On appeal, counsel asserts that the director erred in considering whether the evidence submitted to meet a given criterion was indicative of outstanding ability. The regulation at issue, however, "provides criteria to be used in *evaluating* whether a professor or researcher is deemed outstanding." (Emphasis added.) *Id.* While each piece of evidence need not individually establish eligibility, the evidence submitted to meet a given criterion

must be indicative of international recognition in the field if that statutory standard is to have any meaning. The petitioner must meet at least two of six stated criteria. While counsel's appellate assertions regarding the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(D) are not persuasive, we find that the beneficiary meets the following criteria:

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

The petitioner has submitted several reference letters and evidence of his publication record, including his own articles and their citation history. The director concluded that the beneficiary completed his research while working in junior level positions and that the letters did not establish that the beneficiary's work was recognized beyond his immediate circle of colleagues and mentors. On appeal, counsel asserts that the petitioner submitted letters from objective experts and citations of the beneficiary's work. Counsel then reviews the evidence previously submitted.

Obviously, 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."

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of international recognition. 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 (Comm. 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 795-796. 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 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread recognition 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 beneficiary through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the beneficiary and are merely responding to a solicitation to review the beneficiary's curriculum vitae and work and provide an opinion based solely on this

review. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with international recognition should be able to produce unsolicited materials reflecting that recognition.

The beneficiary received a Master's of Medicine from Peking Union Medical College in 1997. He then completed his residency and worked as an attending physician at Beijing Hospital. In February 2000, the beneficiary began a research fellowship at the University of California, San Francisco (UCSF) and in October 2000 began another fellowship at West Virginia University Hospital. The beneficiary has held his current job with the petitioner since October 2002.

The focus of the beneficiary's work throughout his career has been imaging research. At Beijing Hospital, the beneficiary focused on the early diagnosis of chronic obstructive pulmonary diseases (COPD). According to [redacted] Chairman of the Department of Radiology at Beijing Hospital, the beneficiary designed a scan protocol on the electron beam tomography (EBT) scanner, increasing the resulting data from the scan. The beneficiary was the first to obtain and report on the whole lung density, as opposed to a representative three-layer sample. According to [redacted] the beneficiary's work in this area "gave us great help in the early diagnosis of COPD at [an] early functional stage and made the accurate imaging diagnosis possible." The beneficiary also used EBT for coronary artery imaging, providing a direct way to display disease by scoring calcification in the artery. The data from this work will allow Chinese radiologists and gerontologists "to re-evaluate the cost-effective ratio of this diagnostic method."

At UCSF, the beneficiary worked in the laboratory of [redacted] explains that he met the beneficiary in China and that, due to the beneficiary's "skillful and diligent work" using EBT to evaluate coronary artery calcification, he was accepted as a visiting research scholar by [redacted] laboratory "to study cardiac." The beneficiary's study of MR angiography in atrial fibrillation patients after radiofrequency ablation and congenital heart disease, published in 2001, resulted in the technique being "regarded as the major follow-up diagnosis method."

[redacted] another professor at UCSF, explains the above work in more detail.

> [The beneficiary] described the MRI findings of pulmonary vein stenosis, which can develop as a consequence of the newly-approved technique of radiofrequency ablation for the treatment of atrial fibrillation. Using the latest pulse sequences and sophisticated image processing on a computer workstation, he succeeded in imaging the stenotic pulmonary vein, which is unusually difficult to visualize with other techniques. Moreover, he proved that MRI is superior to transesophageal echocardiography. Right now, his methods has been accepted by radiologist[s] and cardiologist[s] worldwide and regarded as the new standard in following up arrhythmia patients given this procedure.

The beneficiary also worked on another project which, while accepted for publication, had not yet been published as of the date of filing.

[redacted] former Chief of Body Imaging at West Virginia University explains that the beneficiary joined [redacted] at that university to research Magnetic Resonance Imaging (MRI) of the colon, known as MR Colonography. The beneficiary made significant contributions to the protocol for this technique using an animal model that has now been developed into a clinical trial. [redacted] asserts that the beneficiary and his colleagues "were the first group to demonstrate that warm water alone could be used as an optimal contrast medium for the large bowel, with MR imaging parameters optimized for bowel wall lesion detection." The beneficiary presented this work and it was published in 2002.

[redacted] also discusses the beneficiary's work comparing Positron Emission Tomography (PET) scans to MRI scans in the diagnosis of liver metastasis. [redacted] states:

> This work contributed to the understanding that MR can be used to not just detect, but to also characterize soft tissue tumors. This is important in regards to both disease diagnosis and for therapy management as radical treatment of liver metastases, for example from colon cancer, can improve the survival rate of such patients. Although PET was regarded as the frontier of functional diagnosis, it was shown that MR can detect tumors with similar sensitivity, but with greater specificity with regards to both local and nature of the tumors.

This work was presented and published.

[redacted] Director of Abdominal Imaging at the University of Toronto, asserts that the beneficiary has authored important articles in the field, most of which "have been cited by international peers in both clinical and research fields."

At the petitioning university, the beneficiary worked in the laboratory of [redacted] Director of the Interventional Neuroradiology Department. [redacted] explains that the beneficiary is investigating the use of 8 Tesla MRI machines to identify microvessels within brain tumors. The beneficiary is also working on a rodent stroke model that enables researchers to follow the progression of the disease noninvasively by MRI. [redacted] asserts that the beneficiary has already contributed to initial results submitted for publication and presented at conferences. Based on his expertise, the beneficiary was selected to co-supervise a visiting scholar studying tumor microvascularity.

The above letters are supported by more objective evidence in the record. For example, as stated above, several references assert that the beneficiary has been cited by both researchers and clinical teams using his techniques. The record contains evidence that independent researchers and doctors consistently cite the beneficiary's work. Moreover, the citations themselves reflect the impact of the beneficiary's work. A case report by [redacted] and [redacted] cites the beneficiary's work for their own use of MR imaging after radiofrequency ablation. [redacted]

and [redacted] the beneficiary's work for the proposition that the "anatomy of the pulmonary veins is becoming increasingly important with ablative therapies for cardiac arrhythmia and their follow-up." These citations, and others in the record, support the assertions of the beneficiary's references that his work is being applied in the clinical field.

As stated above, the director expressed his concern that the beneficiary was not primarily responsible for the results in his publications. While reference letters from colleagues by themselves cannot establish international recognition beyond those colleagues, they are useful in evaluating the beneficiary's role on a given project. We are satisfied that the work discussed above represents the beneficiary's contributions to his field. Thus, given the community's demonstrated reaction to this work, we are satisfied 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 the beneficiary's published articles and evidence of his presentations at scientific conferences. The director correctly noted that publication is inherent to the field of research and that mere publication does not set a researcher apart from others in the field. The director concluded that the beneficiary had published far fewer articles than his references and, thus, his publication record was not indicative of outstanding recognition.

On appeal, counsel asserts that publication is all that is required of the regulation at 8 C.F.R. § 204.5(i)(3)(iii)(F). As stated above, the regulatory criteria are to be used in evaluating whether a professor or researcher is deemed outstanding. 56 Fed. Reg. 30703, 30705 (July 5, 1991). The evidence submitted to meet a given criterion must be indicative of international recognition in the field if that statutory standard is to have any meaning. That said, we concur with counsel that the director erred in failing to consider the beneficiary's citation record. The consistent citation of the beneficiary's articles by independent research and clinical groups is indicative of international recognition. Thus, we are satisfied that the beneficiary meets this criterion.

The record indicates that the beneficiary meets at least two of the six criteria listed at 8 C.F.R. 204.5(i)(3)(i). The record also contains the original job offer issued to the beneficiary predating the filing of the petition. Based on the evidence submitted, it is concluded that the petitioner has established that the beneficiary qualifies under section 203(b)(1)(B) of the Act as an outstanding researcher.

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 and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.