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U.S. Citizenship
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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: Apr 20 2011
WAC 04 038 51529

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

Maia Johnson

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 dismissed.

The petitioner for the amended petition is a university. 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 permanently in the United States as a professor of finance. The director determined that the petitioner had not established the significance of the beneficiary's research, or that the beneficiary is recognized internationally as outstanding in her academic field, as required for classification as an outstanding researcher. In addition, the director, after inviting the initial self-petitioner to amend the petition with a new eligible petitioner, concluded that the initial self-petitioner was not eligible to file a petition in the classification sought as a self-petitioner.

On appeal, counsel notes that the petition was amended to change the petitioner (in response to the director's invitation to do so) and asserts that the petitioner submitted sufficient evidence of the beneficiary's eligibility.

The regulation at 8 C.F.R. § 204.5(i)(1) provides:

Any United States employer desiring and intending to employ a professor or researcher who is outstanding in an academic field under section 203(b)(1)(B) of the Act may file an I-140 visa petition for such classification.

The beneficiary filed the initial petition on her own behalf. Thus, at the time, the petition was deniable without any further need to request additional documentation at that time. 8 C.F.R. § 103.2(b)(8). Nevertheless, the director did not take such action. Rather, the director issued a request for additional evidence (RFE) that included the following language:

If the petitioner wants to keep box "b" checked, the petitioner has to complete part 1 (Company or Organization) of the petition and resubmit the copy, complete part 5, and the petitioner has to sign part 8 of the petition.

In response, the petitioner submitted a new petition as requested. Without explanation or even acknowledging his own invitation to amend the petition and the submission of an amended petition, the director concluded that the beneficiary impermissibly filed the petition. The language in the RFE strongly suggests that the director was inviting the self-petitioner to amend the petition by changing the petitioner to an employer. We can find no legal provision that obligates (or even permits) the director to extend such a courtesy. Nevertheless, since he did so, and since the petitioner responded with the documentation requested, a petition signed by the beneficiary's employer, we withdraw the director's subsequent failure to accept the amendment without explanation. For the reasons discussed below, however, we uphold the director's finding that the petitioner did not establish that the beneficiary is recognized internationally as outstanding.

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.

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.

This petition was filed on November 25, 2003 to classify the beneficiary as an outstanding researcher in the field of finance. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching experience in the field of finance as of that date, and that the beneficiary's work has been recognized internationally within the field of finance as outstanding. The petitioner confirms employing the beneficiary as an assistant professor since August 1999 and the petitioner submitted the beneficiary's Forms W-2 dating back to 2000.

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 petitioner 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. The petitioner claims that the beneficiary has satisfied the following criteria.¹

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

The director concluded that the record contained no evidence of major awards for outstanding achievement. On appeal, counsel asserts that the petitioner did submit evidence of the beneficiary's awards in response to the director's RFE, although we note that counsel did not address this criterion at that time. We will consider this evidence. Out the outset, however, we note that not all recognition constitutes "major" awards for "outstanding achievement in the academic field." To hold otherwise would render the use of those words meaningless. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5th Cir. 1987). A similar approach is reasonable when interpreting regulations.

The petitioner was one of four recipients of the 2004 Faculty Development Grant from the Chinese American Faculty Association of Southern California (CAFA). The record contains does not contain the grant itself or any information about the purpose of the grant and how it is administered. The name of the association implies that the grant is limited to faculty in Southern California. As such, the grant is not indicative of international recognition. Moreover, a grant is generally intended to fund future activity based on the submission of a proposal as apposed to recognition of past outstanding achievements. Finally, there is nothing in the record to suggest this grant is related to the beneficiary's field of finance. As such, the petitioner has not established that the grant is a major award for outstanding achievements *in the beneficiary's academic field of finance*. Regardless, the award was issued in 2004, after the date of filing, and is not evidence of the beneficiary's eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In addition, Dr. Thomas Williams, an assistant professor at Fayetteville State University who coauthored two articles with the beneficiary while both were Ph.D. candidates at Texas A&M University, asserts that one of the articles won the Distinguished Research Award at the Allied Academies 2002 Fall International Conference. On appeal, the petitioner submits evidence from the Allied Academies, indicating that the founders of this academy hosted its first conference in 1994 to promote new ideas and small schools. While the materials assert an "international presence," the materials also acknowledge that readership of the academy's journals must be expanded "so we can increase their impact." The materials name the petitioner as a winner of the distinguished research award, but it appears from a review of all the materials that this "award" merely connotes a presenter whose work was accepted for publication. Acceptance for publication, while notable and often competitive, is not a major award. Thus petitioner has not established that the distinguished research award is a major award for outstanding achievement to which experts in the field of finance aspire to win.

In light of the above, we concur with the director that the evidence does not establish that the beneficiary meets this criterion.

¹ The petitioner does not claim and the record does not contain evidence relating to any of the criteria not discussed in this decision.

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

In response to the director's RFE, the petitioner submitted letters attesting to the beneficiary's professional memberships. [REDACTED], Senior Membership Services Coordinator, confirms that the petitioner joined the Eastern Finance Association (EFA) in 2003. [REDACTED] asserts that the association "is a premier organization with membership comprised of university faculty and professionals overall the world." [REDACTED] a professor at the petitioning university, asserts that the beneficiary is a member of CAFA. [REDACTED] explains that CAFA "is a professional association that promotes research and research collaborations among the Chinese American faculty of the universities in the southern California area." The director concluded that the petitioner had not demonstrated that outstanding achievements are "a pre-requisite for membership."

On appeal, counsel reiterates the information in the above letters and the petitioner submits materials regarding EFA. According to the materials submitted, EFA membership can be obtained through their Internet website. The materials do not contain the actual membership requirements.

We do not assume that every association that enjoys a premier or preeminent reputation as an association has exclusive membership requirements. The petitioner has not established that EFA restricts membership in any way other than to students and professionals in a related field. Practicing or studying in one's field is not an outstanding achievement. As such, we cannot conclude that EFA requires outstanding achievements of their members. In addition, CAFA is not even an association in the petitioner's academic field of finance as required by the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B). Rather, it is an association for faculty in all fields limited by ethnicity and region. Moreover, the record contains no evidence that CAFA requires outstanding achievements of their members. Finally, the petitioner lists other memberships on her resume, but the record contains no evidence of her membership in these other associations or their membership requirements. In light of the above, we concur with the director that the beneficiary does not meet this criterion.

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

The record reflects that the beneficiary has refereed papers for the 2000 and 2001 Financial Management Association (FMA). In addition, a colleague at the petitioning university requested that the petitioner review an article for the *Journal of Insurance Issues*. The petitioner lists another conference for which she apparently served as a reviewer, but the record contains no evidence in support of that assertion. The director concluded that the record lacked sufficient corroboration of the petitioner's judging and evidence of the significance of these judging responsibilities.

On appeal, counsel asserts that the requests themselves "are evidence of a formal selection process and of [the beneficiary's] outstanding qualifications and international recognition."

We cannot ignore that conferences where research is presented are peer reviewed and rely on many professionals in the field to review submitted papers. Thus, peer review is routine in academia; not every peer reviewer enjoys international recognition. Without evidence that sets the beneficiary apart from others in her field, such as evidence that she received independent requests from a substantial number of international conferences or journals, or served in an editorial position for a distinguished international journal, we cannot

conclude that the beneficiary meets this criterion. Finally, we note that a request to review a journal manuscript from a colleague at one's own place of employment is not indicative of international recognition. In light of the above, while we withdraw the director's finding that the actual comment sheets should have been submitted, we concur with the ultimate conclusion that the beneficiary does not meet this criterion.

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

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."

[REDACTED] a professor at the petitioning university, asserts that the beneficiary "is one of a handful of scholars internationally who studies family business issues in an international context, and perhaps the only scholar of note who does this particularly with regard to the pacific basin." He professes to know of no one else with the beneficiary's "experience, talent and training."

[REDACTED] a member of the beneficiary's doctoral dissertation research committee at Texas A&M University, asserts that the beneficiary "has already contributed significantly to the professional literature in France," but provides no examples of any contributions other than to "have added the results of her research to the body of professional literature in Finance." In a subsequent letter, [REDACTED] asserts that the beneficiary has made "significant additions to the body of professional literature in Finance." General attestations of a contribution to the field without more detail are insufficient. [REDACTED] does not identify a specific contribution or explain how it has influenced the field.

[REDACTED] Chair of the beneficiary's department at the petitioning university, praises the beneficiary's abilities as a teacher, notes her publications and conference presentations, asserts that she organizes the department's "brown bag" seminar series and discusses her service as treasurer with a [REDACTED] Troop. That the beneficiary is a capable instructor is not an original contribution to the academic field as a whole. Not every published article or conference presentation that adds to the pool of knowledge can be considered indicative of international recognition. The beneficiary's organizational and volunteer assistance at the petitioning university and in the community are not relevant to the petition.

[REDACTED] an associate professor of business law at the petitioning university and a coauthor of the beneficiary, discusses the beneficiary's professionalism and asserts that she "makes meaningful contributions to the group." [REDACTED] does not identify a contribution to the field of finance as a whole or explain how it has impacted the field.

The director determined that the letters were "for the most part" from the beneficiary's professors, advisors and coworkers and concluded that the beneficiary had not demonstrated any recognition in the international

community. On appeal, counsel asserts that the beneficiary's publications and invitations to chair and speak at conferences demonstrate her international recognition.

On her resume, the petitioner lists three conferences in Cleveland, Seattle and Chicago that she allegedly chaired. [REDACTED] in addition to confirming the beneficiary's membership in EFA, confirms the beneficiary's service as "presenter, discussant and session chair in our annual conferences." The record contains no evidence that the beneficiary has chaired an entire conference as implied on her resume. We need not accept the beneficiary's self serving statements on her resume; going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft*, 14 I&N Dec. 190, 193-194 (Reg. Comm. 1972), broadened in *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) and *Matter of Ho*, 22 I&N Dec. 206, 211 (Comm. 1998).

We concur with the director that the record is void of any indication that the beneficiary's original contributions have been recognized internationally in her field. Letters from the beneficiary's immediate circle of colleagues, especially those that fail to identify or explain the beneficiary's alleged contributions, are insufficient by themselves. While the beneficiary may have presented and published her work, the record contains no evidence, such as citations or letters from independent members of the field influenced by her work, that these presentations and articles have had any notable influence on the field. Thus, we concur with the director that the beneficiary fails to meet 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 the beneficiary has authored four published articles. [REDACTED] Chair of the beneficiary's department, asserts that one of the publications that featured the beneficiary's work, the *Journal of Legal Economics* "is a leading academic journal in the field of Legal Economics." He continues that the journal "publishes pathbreaking research in litigation, fraud deterrence, and forensic economics." Finally, he states that the journal has domestic and international subscribers.

The director concluded that the petitioner had not established that the beneficiary's publication record sets her apart from others in the field. On appeal, counsel reiterates the beneficiary's publication and presentation history and the petitioner submits evidence that some of the publications in which the beneficiary's work has appeared are circulated internationally. We must evaluate the evidence as to whether it is indicative of international recognition. It is common for Ph.D. students and professors to publish their work. As stated above, the petitioner has not submitted evidence that independent members of the field have cited the beneficiary's work, letters from independent members of the field who have been influenced by the beneficiary, course reading lists from courses in the United States and abroad listing the beneficiary's work as required or recommended reading, or other comparable evidence that her published work is recognized internationally.

The petitioner has shown that the beneficiary is a talented professor, who has won the respect of her collaborators, employers, and mentors, while securing a minimal degree of international exposure for her work. The record, however, stops far short of elevating the beneficiary to an international reputation 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 appeal will be dismissed.

ORDER: The appeal is dismissed.