



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

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

In Re: 23095911

Date: DEC. 27, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (National Interest Waiver)

The Petitioner, a private university, 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 individuals 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 that she was internationally recognized as outstanding in her academic field. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

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].

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 set forth at 8 C.F.R. § 204.5(i)(3)(i)(A)-(F). This, however, is only the first step, and the successful submission of evidence meeting at least two criteria does not, in and of itself, establish eligibility for this

classification.¹ When a petitioner submits sufficient evidence at the first step, we will then conduct a final merits determination to decide whether the evidence in its totality shows that the beneficiary is recognized as outstanding in his or her academic field. 8 C.F.R. § 204.5(i)(3)(i).

In addition, 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 Petitioner seeks to continue to employ the Beneficiary as an Assistant Professor in the Department of Chemical Engineering, where she would conduct research in the field of [REDACTED] science. She has held this position since 2017, after receiving her Ph.D. from [REDACTED] University the pervious year.

A. Evidentiary Criteria

The Director determined that the Beneficiary met three of the evidentiary criteria under 8 C.F.R. 204.5(i)(3)(i), relating to her participation as a judge of the work of others, her original scientific research contributions to the field, and her authorship of scholarly articles. We agree with the Director's conclusions regarding these criteria. As the Petitioner has established that the Beneficiary meets at least two of the evidentiary criteria, the sole issue for review on appeal is whether it has shown that she is internationally recognized as outstanding in her academic field.

B. Final Merits Determination

In a final merits determination, we weigh the totality of the evidence to determine whether a petitioner has established, by a preponderance of the evidence, that the beneficiary's achievements have been internationally recognized as outstanding in the academic field. Here, we agree with the Director that the Petitioner has not demonstrated the Beneficiary's eligibility.

The Petitioner submits additional evidence with her appeal, including three additional reference letters. Where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). Thus this evidence will not be considered in our analysis below.

In his decision, the Director first turned to an analysis of the Beneficiary's activities as a peer reviewer for scientific journals and conferences, noting that the record lacked evidence to show that her work as a reviewer required her to be recognized as outstanding. He acknowledged the evidence showing that the Beneficiary had reviewed applications for research fellowships and funding, but referred to the related evidentiary criterion when stating that these activities did not constitute "formal judging."

¹ USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of outstanding professors and researchers. USCIS Policy Memorandum, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14*, PM-602-0005.1 (Dec. 22, 2010).

But we note that in a final merits determination all of the evidence is considered together, regardless of whether it met one of the evidentiary criteria, and is evaluated to determine whether a beneficiary is internationally recognized as outstanding in their academic field.

In addressing her activities as a reviewer on appeal, the Petitioner points out that the National Science Foundation (NSF) states that it looks for “outstanding researchers from a wide range of institutions, geographic locations, and backgrounds” to serve on review panels for its [redacted] Program. But the evidence of other reviewing activities highlighted by the Petitioner does not show that selection for those roles was based on similar standards. For example, Professor P- confirms her role as a [redacted] for the annual meeting of the American Institute of Chemical Engineers (AIChE) from 2018-20, but he does not elaborate on the basis of her selection for these roles or indicate that her performance in them elevated her standing and recognition in the field. He also notes her election to the [redacted] of CoMSEF (Computational Molecular Science and Engineering Forum of the AIChE) in 2020, which he attributes to her contributions to CoMSEF.

Other evidence of her peer review activities includes several emails confirming her reviews of manuscripts sent for publication in several journals in her field. Professor J-, who serves on the editorial board of *Macromolecules*, writes that he and his peers “frequently solicit [the Petitioner’s] expertise in reviewing manuscripts.” We recognize that this journal and others for which she has conducted manuscript reviews seek experts in their fields to serve as peer reviewers, but the evidence does not show that the Petitioner has gained recognition as outstanding through her service as a peer reviewer. Although the Petitioner has provided evidence that *Macromolecules* and other journals for which she has conducted peer review are prestigious because they are highly ranked, the evidence does not demonstrate that the journals are more selective in accepting peer reviewers or that her service for them otherwise indicates international recognition as outstanding.

Turning to the publication of the Petitioner’s research at scientific conferences and in journals in her field, the Petitioner again refers to the high rankings (according to Google Scholar metrics) of journals in which her work has been published, a group comprised of *Macromolecules*, *Journal of Chemical Physics*, and *Soft Matter*. But the rankings are in varying subfields of chemistry and physics, and she does not explain the relevance of these subfields to her published research. For example, the Petitioner refers to the ranking of *Soft Matter*, the journal in which more than half of her papers have been published, as fourth in the field of [redacted] chemistry, but does not indicate that her field of [redacted] science is related to [redacted] chemistry or that the subject of her paper, [redacted] is related to [redacted] chemistry. She also points out that this article was featured on the cover of the edition of *Soft Matter* in which it was published, but does not submit evidence of the cover image selection criteria or the significance of this selection. The evidence is thus insufficient to show that the publication of her work in these particular journals, as opposed to others, has contributed to any recognition as outstanding in the field of [redacted] science.

The Petitioner also argues that her work has been relied upon by other researchers in her field, thus establishing her widespread recognition as outstanding. The rate and quality of citation to a researcher’s published work may support its significance and recognition in an academic field. See generally 6 USCIS Policy Manual F.3(B)(1), *Appendices Tab*, <http://www.uscis.gov/policymanual>.

The Petitioner asserts on appeal that her work “has been repeatedly cited in a field not known for high levels of citations,” but does not refer to evidence comparing her rate or number of citations to that of other researchers in her field. Instead, she quotes from the reference letter submitted by Professor E-, under whom she completed her graduate studies at [redacted] University. Professor E- focuses in his letter on the Petitioner’s work published in *Macromolecules* in 2016, which he explains was based on [redacted] developed by the Petitioner. He notes that this work made a significant impact on his research group’s work, and that students in his group have since expanded upon the Petitioner’s techniques, leading to Ph.D. theses. But this continuation of her work within the same research group does not demonstrate its international recognition as outstanding.

Professor E- also describes the work of other research groups who have built upon the Petitioner’s work published in 2016. He describes and quotes a 2020 review article that discusses this work as presenting one of two approaches for the [redacted]. However, the Petitioner’s publication is one of several cited in the review article in reference to one of those approaches, and the article does not place any emphasis on her technique or findings. While other articles described by Professor E- which cite the Petitioner’s work use her results as a basis for comparison to their own, this evidence, when considered as part of the totality of the record, does not show that these other groups or the field overall consider the Petitioner to be outstanding when compared to others making similar contributions in [redacted] science.

Other reference letters in the record also describe the Beneficiary’s [redacted] technique and note that it is the most well-cited of her papers. For example, Professor J- of the University of [redacted] indicates that the Beneficiary’s “work on computational development is very useful for scientists like myself,” and that it is “regarded for both methodological contributions and novel results.” In addition, the letters also discuss other aspects of the Beneficiary’s research. Professor Z- of [redacted] University, who supervised the Beneficiary as a post-doctoral researcher, describes her research on the [redacted] and notes that it answered a long-standing open questions in this area. This led to the previously mentioned article which was featured on the cover of *Soft Matter*. Professor D-G- of [redacted] University discussed the same research and concluded that its impact could be measured by “several citations from international authors in international journals,” including herself. Although all of these letters are complimentary of the Beneficiary’s work and describe its impact on her field, they are not supported by evidence that it has been recognized at the international level as outstanding. Notably, the record includes several partial copies of papers citing to these and other papers published by the Beneficiary, but the Petitioner has not established that either the quantity or quality of these citations show the level of recognition necessary to be considered outstanding.

The Petitioner also asserts that the amount of funding the Beneficiary has received shows her recognition as standing out from her peers in the field of [redacted] science. The Petitioner first refers to evidence of the Beneficiary’s receipt of a \$480,000 grant from the U.S. Army [redacted] as one of three principal investigators for research on the manufacture of a [redacted]. While the Petitioner claims on appeal that the Beneficiary was selected “as the top candidate for the project,” it stated in response to the Director’s notice of intent to deny that its chemical engineering department was approached by the Army [redacted] for this project “due to the proximity to [redacted] which is an industrial leader in producing [redacted] at the industrial scale.” Although the Beneficiary’s role as one of three principal

investigators demonstrates that she possesses the necessary skills and access to resources to successfully complete this project, the evidence does not show that the grant was awarded based upon her recognition in the field, or that the size or nature of the award is indicative of an elevated standing in her field.

In addition, the Petitioner points to evidence of the Beneficiary's receipt of a grant award from its College of Engineering, which it states was the third highest award for the department in 2020. A letter from Professor D- confirms her receipt of two awards, for over \$9000 in 2019 and over \$4800 in 2020, both of which focused on the development of the Petitioner's [redacted] research program. As these awards were internal to the Petitioner, they do not reflect recognition at the level required for the requested immigrant visa classification.

The record shows that the Beneficiary has contributed to the field of [redacted] science through her original research published in scientific journals and presented at conferences, as well as through her service as a peer reviewer. Several reference letters describe her research and its impact on the field, and copies of citing articles show that others have built upon her work. However, after consideration of the totality of this evidence, which also includes information about the journals in which her work has been published and her citation history, as well as evidence of her receipt of grants and her professional activities, we conclude that it does not establish that she is internationally recognized as an outstanding researcher in her academic field.

ORDER: The appeal is dismissed.