

**Alternatives to Labor Certification
The Priority Worker Categories**

**By
Scott M. Borene
Senior Attorney
BORENE LAW FIRM, P. A.
IMMIGRATION LAW GROUP
MINNEAPOLIS, MINNESOTA USA**

**ALTERNATIVES TO LABOR CERTIFICATION-
THE PRIORITY WORKER CATEGORIES -
EXTRAORDINARY ABILITY, OUTSTANDING PROFESSORS
AND RESEARCHERS, AND MULTINATIONAL EXECUTIVES AND MANAGERS***

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<u>to James M. Bailey, Director Northern Service Center, dated July 30,</u>	
<u>1992 re: 203(b) Aliens of Extraordinary Ability and Outstanding</u>	
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I. Introduction

A. Background

The most significant developments during the past five years in the Employment-based immigration categories have not resulted from any change in the law as much as from apparent changes in the practices of the US Labor Department. The Labor Department controls administration of the "labor certification" program widely used by employers to meet government requirements to document the unavailability of US workers as a prerequisite to many employment-based immigrant visas.

Without the benefit of any change in law or regulation, the Labor Department through a combination of administrative staffing cutbacks, internal policy directives and significantly more restrictive application and interpretation of existing rules has greatly increased the difficulty for employers to successfully sponsor international personnel using the conventional "labor certification" program. In most parts of the US an application for labor certification is much less likely to be approved when initially submitted than a similar case five or ten years ago. Even if approved, the approval is likely to take many months longer than a similar case filed in 1992 or earlier.

Partly as a consequence of the increasingly unsatisfactory labor certification program, interest in the alternative employment-based categories that do not require Labor Department approval is rising. These new categories, authorized by Congress in IMMACT 90, effective October 1, 1991, and first functionally available in mid-1992, include the Extraordinary Ability, Outstanding Professor or Researcher, Multinational Executive or Manager, and the Advanced Degree Professional or Exceptional Ability "national interest" categories.

While these cases are documentarily and technically demanding, properly prepared cases can in many cases be approved 1 to 2 years faster than the same case submitted through the conventional labor certification process. Some of these new categories also permit self-sponsorship by independent individual immigrants with no prearranged US employment.

This article will review three of these new (since IMMACT 90) priority worker categories, first, the Extraordinary Ability, or EB-1(a) category, second, the Outstanding Professors and Researchers or EB-1(b) category and last the Multinational Executives or Managers or EB-1(c) category.

B. The Importance of Appropriate Case-Screening

In preparing and handling Priority Worker cases, nothing is more important than a careful evaluation of the suitability of a particular case for priority worker treatment. At a minimum, this requires a detailed review of the prospective candidate's lifetime education and experience, and their career plans.

Drawing upon the attorney's experience and knowledge of recent case decisions in this area, a preliminary assessment of the case's potential eligibility can be made. While an exact estimate of prospective approvability is obviously impossible, an experienced immigration attorney should usually be able to at least make an initial triage assessment of the project's potential approvability as (1) about average, (2) below average, or (3) above average.

In other words, in evaluating cases for Priority Worker treatment, first consult your own past experience with these cases. If you are contemplating filing a case in the "outstanding" or "extraordinary" category for the first time, a pre-filing consultation with an experienced attorney who has successfully handled these cases may be prudent.

C. The Importance of Careful and Thorough Documentation

The INS has opined, in a now-famous letter from INS Acting Assistant Commissioner, Lawrence Weinig that evaluation of the evidence submitted in satisfaction of the Priority Worker document checklists set forth in the regulations is "**not simply a case of counting pieces of paper**". (See Letter of L. Weinig included as Appendix C herein.)

Long shot or marginal applications should not be encouraged. Filing a poorly documented case can be as great a waste of time and money as filing a poorly selected one.

Extensive, accurate, dead-on-point, well-organized supporting documentation is crucial to approval of I-140 Petitions in the "Outstanding Professor or Researcher" and "Extraordinary Ability" categories.

II. Extraordinary Ability

Frequently referred to as the "Nobel Prize" category, the recently created "extraordinary ability" category is not limited solely to international prizewinners or to world famous scientists and scholars.

The statute describes a candidate as eligible if:

1. the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
2. the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
3. the alien's entry into the United States will substantially benefit prospectively the United States. Immigration and Nationality Act of 1952 (INA), Pub. L. No. 82-414, 66 Stat. 163 (codified as amended at 8 USC §§ 1101-1524) (hereinafter "INA") 203 (b) (1) (a), 8 USC § 1153 (b) (1) (a).

The statutory language has been criticized by several commentators as providing little direction in determining who in fact is eligible for inclusion in this category.

As a further guide to defining the boundaries of "extraordinary ability" the INS has promulgated regulations set forth at 8 CFR 204.5.

The INS regulations provide that:

1. "Extraordinary Ability" means a level of expertise indicating that the individual is "one of that small percentage who have risen to the very top of the field of endeavor." 8 CFR § 204.5 (h) (2).
2. The acclaim must be sustained. 8 CFR § 204.5 (h) (3).
3. The acclaim must be national *or* international. 8 CFR § 204.5 (h) (3).
4. The petition must be accompanied by evidence that the individual's achievements have been recognized in the field of expertise. 8 CFR § 204.5 (h) (3).

The evidence shall include:

- a) Evidence of a one-time achievement (that is, a major, internationally recognized award) 8 CFR § 204.5 (h) (3);

or

a) Evidence from at least three (3) of the following categories (8 CFR § 204.5 (h) (3) (i)-(x)):

(1) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(3) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translations;

(4) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, artistic, athletic or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

(7) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;

(8) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

(9) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

- (10) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales;

Alternatively, if the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit *comparable* evidence to support the alien's eligibility. 8 CFR § 204.5 (h) (4).

Note that neither a job offer nor a labor certification is required for approval in this category 8 CFR § 204.5 (h) (5). Self-sponsorship in this category is possible.

III. Outstanding Professors and Researchers

As with its sibling "extraordinary ability" category, successful use of the "outstanding professors and researchers" category is very dependent on a persuasive, detailed, well-organized presentation of the initial documentation evidencing the candidate's eligibility.

The statute says that a person qualifies as an "Outstanding Professor or Researcher" if

1. The alien is recognized internationally as outstanding in a specific area
2. the alien has at least 3 years of experience in teaching or research in the academic area, and
3. the alien seeks to enter the United States-
 - a) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,
 - b) for a comparable position with a university or institution of higher education to conduct research in the area, or
 - c) 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. INA § 203 (b) (1) (B), 8 USC § 1153 (b) (1) (B).

The INS regulations provide quite specific guidance on the types of evidence that can be useful to establish that the alien "is recognized internationally as outstanding in a specific academic area."

Acceptable initial evidence consists of documentation from at least two of the following six suggested categories set out in the regulations. 8 CFR § 204.5 (i) (3) (i).

1. Documentation of the beneficiary's receipt of major prizes or awards for outstanding achievement in the academic field.
2. Documentation of the beneficiary's membership in associations in the academic field which require outstanding achievements of their members.
3. Published material in professional publications written by others about the beneficiary's work in the academic field.
4. Evidence of the beneficiary's participation, either individually or on a panel, as judge of the work of others in the same or an allied academic field.
5. Evidence of the beneficiary's original scientific or scholarly research contributions to the academic field.
6. Evidence of the beneficiary's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

As with the "extraordinary ability" category, informed self-discipline by the immigration attorney in screening out inappropriate cases from well-intentioned but sometimes overzealous would-be beneficiaries is good practice. (i.e. a 24 year-old with a "Master's degree in Science" and minimal threshold documentation is probably not a strong candidate.) Although similarly exempt from labor certification, the Outstanding Professors and Researchers category does require a full-time permanent job offer from a U.S. employer.

IV. Multinational Executives and Managers

The third new category of Priority Workers, "Certain Multinational Executives and Managers", while sharing the Priority Worker category's defining characteristic of exemption from labor certification requirements, differs greatly from the "Extraordinary Ability" and "Outstanding Professor or Researcher" categories. A job offer in the U.S. in an executive or managerial capacity is required as well as a qualifying one year period of prior overseas employment as an executive or manager with the petitioning employer or an appropriately "affiliated" employer.

Unlike the other two Priority Worker categories, no detailed checklists of required documentation of the beneficiary's credentials are provided in INS regulations.

For experienced immigration lawyers this category is the least changed from pre-IMMACT 90 practice. Anyone who is familiar with the pre-1991 treatment of “old” Schedule A, Group IV Executives and Managers or the L-1 non-immigrant Transferred Executive or Manager categories will immediately recognize the similarity of eligibility criteria for all of these categories.

The novelty of this category since 1991 is primarily in the broadened definitions of who can qualify as a manager or executive. IMMACT 90 introduced the concept of “functional” managers into statute and regulation. Briefly, the new concept recognizes that a manager need not in every case prove that they directly “manage” specific numbers of sufficiently occupationally qualified subordinates in a strict hierarchical governmental-military style organization chart sense in order to qualify as a manager. The change from past practice may still be more apparent than real, however, as proving management of a function (e.g. corporate finance, marketing, etc.) can be difficult in practice.

Cases involving corporate mergers, acquisitions or material changes in business organization, control or share ownership present special problems and need to be analyzed very carefully before filing to chart a clear pathway to documenting the requisite continuing affiliation between the U.S. employer and the overseas employer.

In sum, particular attention needs to be paid to the type of “affiliation” that exists between the international employer and the U.S. employer, as many denied cases crash on the rocks of non-qualifying or insufficiently documented “affiliation”.

Note that the use of the L-1 “specialized knowledge” temporary worker category is generally not a stepping stone to Priority Worker status, absent additional evidence showing that the beneficiary is actually classifiable as an “executive or manager”.

Eligible beneficiaries are succinctly described in the statute as qualifying for Priority Worker treatment, if-

“the alien, in the 3 years preceding the time of the alien’s application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and the alien seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.” INA § 203 (b) (1) (c), 8 USC § 1153 (b) (1) (c).

For most candidates who squarely meet the “Multinational Executive/Manager” requirements’, petitioning in this category is usually the best permanent immigration option available.

V. Conclusion

In appropriately selected cases, the new priority worker categories can be a useful alternative to conventional labor certification for employment-based immigrants. In particular, the multinational executive/manager category, although of limited applicability because of its narrow qualifying prior employment requirement, should usually be the preferred permanent immigration option for transferred international executives and managers who can meet the category's eligibility criteria.

Use of the "Outstanding Professor or Researcher" or "Extraordinary Ability" categories also can confer the benefits of a faster permanent immigration pathway that does not require an employer to run the tortuous labor certification gauntlet. However, anyone planning to submit an "outstanding" or "extraordinary" case for INS consideration is well advised to be especially mindful of the benefits of-

1. Careful Pre-filing Case Evaluation, and
2. Thorough, persuasive Documentation.

Purpose Of This Form.

This form is used to petition for an immigrant based on employment.

Who May File.

Any person may file this petition in behalf of an alien who:

- has extraordinary ability in the sciences, arts, education, business, or athletics, demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field; or
- is claiming exceptional ability in the sciences, arts, or business, and is seeking an exemption of the requirement of a job offer in the national interest.

A U.S. employer may file this petition who wishes to employ:

- an outstanding professor or researcher, with at least 3 years of experience in teaching or research in the academic area, who is recognized internationally as outstanding,
 - in a tenured or tenure-track position at a university or institution of higher education to teach in the academic area,
 - in a comparable position at a university or institution of higher education to conduct research in the area, or
 - in a comparable position to conduct research for a private employer who employs at least 3 persons in full-time research activities and has achieved documented accomplishments in an academic field;
- an alien who, in the 3 years preceding the filing of this petition, has been employed for at least 1 year by a firm or corporation or other legal entity and who seeks to enter the U.S. to continue to render services to the same employer or to a subsidiary or affiliate in a capacity that is managerial or executive;
- a member of the professions holding an advanced degree or an alien with exceptional ability in the sciences, arts, or business who will substantially benefit the national economy, cultural or educational interests, or welfare of the U.S.;
- a skilled worker (requiring at least 2 years of specialized training or experience in the skill)- to perform labor for which qualified workers are not available in the U.S.;
- a member of the professions with a baccalaureate degree; or
- an unskilled worker to perform labor for which qualified workers are not available in the U.S.

General Filing Instructions.

Please answer all questions by typing or clearly printing in black ink. Indicate that an item is not applicable with "N/A". If an answer to a question is "none," write "none". If you need extra space to answer any item, attach a sheet of paper with your name and your A#, if any, and indicate the number of the item to which the answer refers. You must file your petition with the required Initial Evidence. Your petition must be properly signed and filed with the correct fee.

Initial Evidence.

If you are filing for an alien of extraordinary ability in the sciences, arts, education, business, or athletics, you must file your petition with:

- evidence of a one-time achievement (i.e., a major, internationally-recognized award), or
- at least three of the following:
 - receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor,
 - membership in associations in the field which require outstanding achievements as judged by recognized national or international experts,
 - published material about the alien in professional or major trade publications or other major media,
 - participation on a panel or individually as a judge of the work of others in the field or an allied field,
 - original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field,
 - authorship of scholarly articles in the field, in professional or major trade publications or other major media,
 - display of the alien's work at artistic exhibitions or showcases,
 - evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation,
 - evidence that the alien has commanded a high salary or other high remuneration for services, or
 - evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.
- If the above standards do not readily apply to the alien's occupation, you may submit comparable evidence to establish the alien's eligibility.

A U.S. employer filing for an outstanding professor or researcher must file the petition with:

- evidence of at least 2 of the following:
 - receipt of major prizes or awards for outstanding achievement in the academic field,
 - membership in associations in the academic field, which require outstanding achievements of their members,
 - published material in professional publications written by others about the alien's work in the academic field,
 - participation on a panel, or individually, as the judge of the work of others in the same or an allied academic field,
 - original scientific or scholarly research contributions to the academic field, or
 - authorship of scholarly books or articles, in scholarly journals with international circulation, in the academic field;
- evidence the beneficiary has at least 3 years of experience in teaching and/or research in the academic field; and
- if you are a university or other institution of higher education, a letter indicating that you intend to employ the beneficiary in a tenured or tenure-track position as a teacher or in a permanent position as a researcher in the academic field, or
- if you are a private employer, a letter indicating that you intend to employ the beneficiary in a permanent research position in the academic field, and evidence that you employ at least 3 full-time researchers and have achieved documented accomplishments in the field.

A U.S. employer filing for a multinational executive or manager must file the petition with a statement which demonstrates that:

- if the alien is outside the U.S., he/she has been employed outside the U.S. for at least 1 year in the past 3 years in a managerial or executive capacity by a firm or corporation or other legal entity, or by its affiliate or subsidiary; or
- if the alien is already in the U.S. working for the same employer, or a subsidiary or affiliate of the firm or corporation or other legal entity, by which the alien was employed abroad, he/she was employed by the entity abroad in a managerial or executive capacity for at least one year in the 3 years preceding his/her entry as a nonimmigrant;
 - the prospective employer in the U.S. is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed abroad;
 - the prospective U.S. employer has been doing business for at least one year; and
 - the alien is to be employed in the U.S. in a managerial or executive capacity and describing the duties to be performed.

A U.S. employer filing for a member of the professions with an advanced degree or a person with exceptional ability in the sciences, arts, or business must file the petition with:

- a labor certification (see GENERAL EVIDENCE) and either:
 - an official academic record showing that the alien has a U.S. advanced degree or an equivalent foreign degree, or an official academic record showing that the alien has a U.S. baccalaureate degree or an equivalent foreign degree and letters from current or former employers showing that the alien has at least 5 years of progressive post-baccalaureate experience in the specialty; or
 - at least 3 of the following:
 - an official academic record showing that the alien has a degree, diploma, certificate, or similar award from an institution of learning relating to the area of exceptional ability,
 - letters from current or former employers showing that the alien has at least 10 years of full-time experience in the occupation for which he/she is being sought;
 - a license to practice the profession or certification for a particular profession or occupation;
 - evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
 - evidence of membership in professional associations; or
 - evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.
- If the above standards do not readily apply to the alien's occupation, you may submit comparable evidence to establish the alien's eligibility.

A U.S. employer filing for a skilled worker must file the petition with:

- a labor certification (see GENERAL EVIDENCE); and requirement is 2 years of training or experience).
- evidence that the alien meets the educational, training, or experience and any other requirements of the labor certification (the minimum requirement is 2 years of training or experience).

A U.S. employer filing for a professional must file the petition with:

- a labor certification (see GENERAL EVIDENCE);
- evidence that the alien holds a U.S. baccalaureate degree or equivalent foreign degree; and
- evidence that a baccalaureate degree is required for entry into the occupation.

A U.S. employer filing for its employee in Hong Kong must file its petition with a statement that demonstrates that:

- the company is owned and organized in the United States
- the employee is a resident of Hong Kong;
- the company, or its subsidiary or affiliate, is employing the person in Hong Kong, and has been employing him or her there for the past 12 months, or the company, or its subsidiary or affiliate, is employing him or her outside of Hong Kong during a temporary absence (i.e., of limited duration) and he or she had been employed in Hong Kong for 12 consecutive months prior to such absence(s), and that such employment is, and for that period has been, as an officer or supervisor, or in a capacity that is executive, managerial or involves specialized knowledge;
- the company employs at least 100 employees in the U.S. and at least 50 employees outside the U.S. and has a gross annual income of at least \$50,000,000; and
- the company intends to employ the person in the United States as an officer or supervisor, or in a capacity that is executive, managerial or involves specialized knowledge, with salary and benefits comparable to others with similar responsibilities and experience within the company. A specific job description is required for immediate immigration; a commitment to a qualifying job is required for deferred immigration.

A U.S. employer filing for an unskilled worker must file the petition with:

- a labor certification (see GENERAL EVIDENCE); and
- evidence that the beneficiary meets any education, training, or experience requirements required in the labor certification.

General Evidence.

Labor certification. Petitions for certain classifications must be filed with a certification from the Department of Labor or with documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program or for an occupation in Group I or II of the Department of Labor's Schedule A. A certification establishes that there are not sufficient workers who are able, willing, qualified, and available at the time and place where the alien is to be employed and that employment of the alien if qualified, will not adversely affect the wages and working conditions of similarly employed U.S. workers. Application for certification is made on Form ETA-750 and is filed at the local office of the State Employment Service. If the alien is in a shortage occupation, or for a Schedule A/Group I or II occupation, you may file a fully completed, uncertified Form ETA-750 in duplicate with your petition for determination by INS that the alien belongs to the shortage occupation.

Translations. Any foreign language document must be accompanied by a full English translation which the translator has certified as complete and correct, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Copies. If these instructions state that a copy of a document may be filed with this petition, and you choose to send us the original, we may keep that original for our records.

Where To File.

File this petition at the INS Service Center with jurisdiction over the place where the alien will be employed.

If the employment will be in Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, the Virgin Islands, Virginia, or West Virginia, mail your petition to: USINS Eastern Service Center, 75 Lower Welden Street, St. Albans, VT 05479-0001.

If the employment will be in Arizona, California, Guam, Hawaii, or Nevada, mail your petition to: USINS Western Service Center, P.O. Box 30040, Laguna Niguel, CA 92607-0040.

If the employment will be elsewhere in the U.S., mail your petition to: USINS Northern Service Center, 100 Centennial Mall North, Room, B-26, Lincoln, NE 68508.

Fee.

The fee for this petition is \$70.00. The fee must be submitted in the exact amount. It cannot be refunded. **DO NOT MAIL CASH.** All checks and money orders must be drawn on a bank or other institution located in the United States and must be payable in United States currency. The check or money order should be made payable to the Immigration and Naturalization Service, except that:

- If you live in Guam, and are filing this application in Guam, make your check or money order payable to the "Treasurer, Guam."
- If you live in the Virgin Islands, and are filing this application in the Virgin Islands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

Checks are accepted subject to collection. An uncollected check will render the application and any document issued invalid. A charge of \$5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

Processing Information.

Acceptance. Any petition that is not signed or is not accompanied by the correct fee will be rejected with a notice that it is deficient. You may correct the deficiency and resubmit the petition. However, a petition is not considered properly filed until accepted by the Service. A priority date will not be assigned until the petition is properly filed.

Initial processing. Once the petition has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form, or file it without required initial evidence, you will not establish a basis for eligibility, and we may deny your petition.

Requests for more information or interview. We may request more information or evidence or we may request that you appear at an INS office for an interview. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.

Decision. If you have established eligibility for the benefit requested, your petition will be approved. If you have not established eligibility, your petition will be denied. You will be notified in writing of the decision on your petition.

Meaning of petition approval.

Approval of a petition means you have established that the person you are filing for is eligible for the requested classification. This is the first step towards permanent residence. However, this does not in itself grant permanent residence or employment authorization. You will be given information about the requirements for the person to receive an immigrant visa, or to adjust status, after your petition is approved.

Penalties.

If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny the benefit you are filing for, and may deny any other immigration benefit. In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

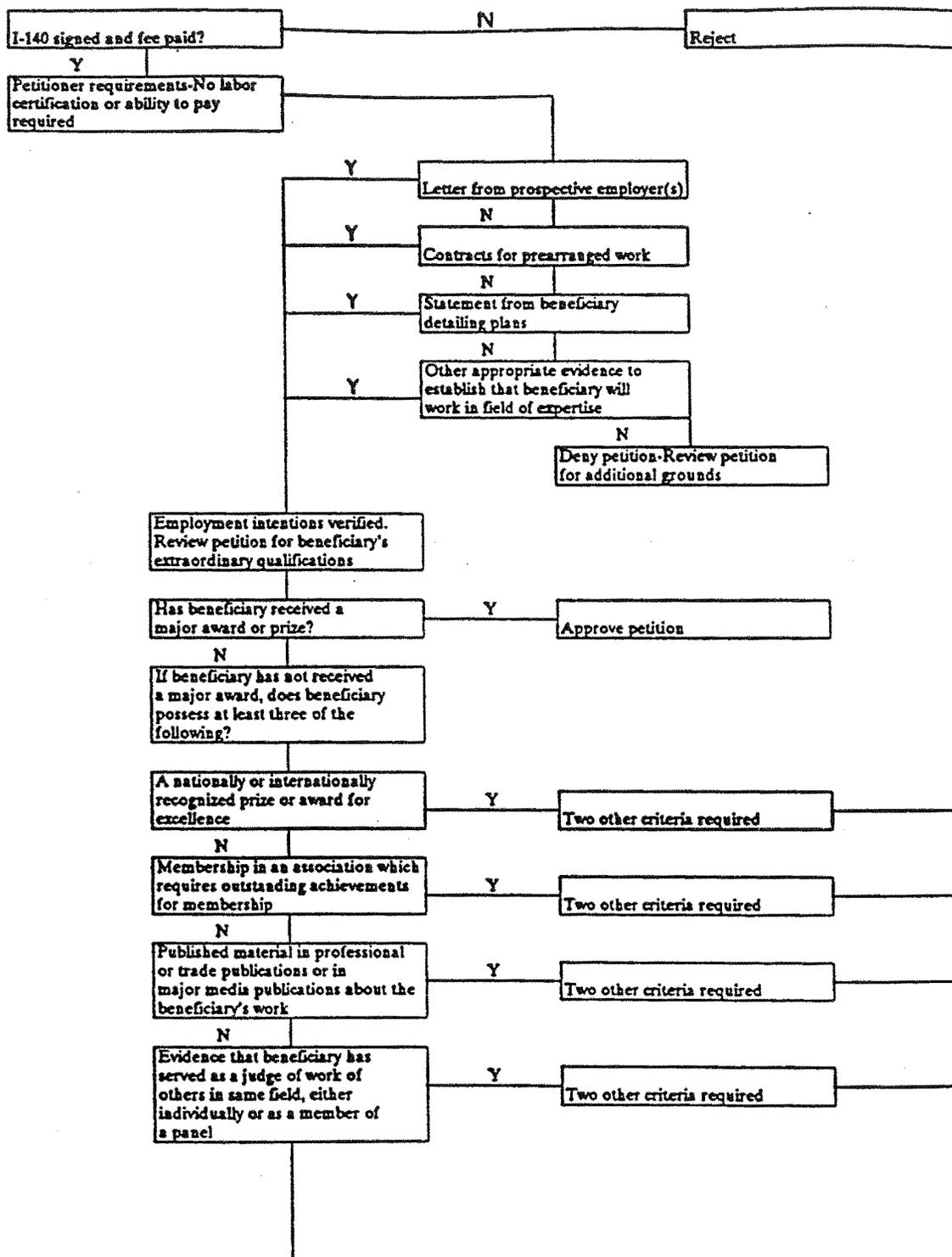
Privacy Act Notice.

We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit you are filing for. Our legal right to ask for this information is in 8 USC 11854. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your request.

Paperwork Reduction Act Notice.

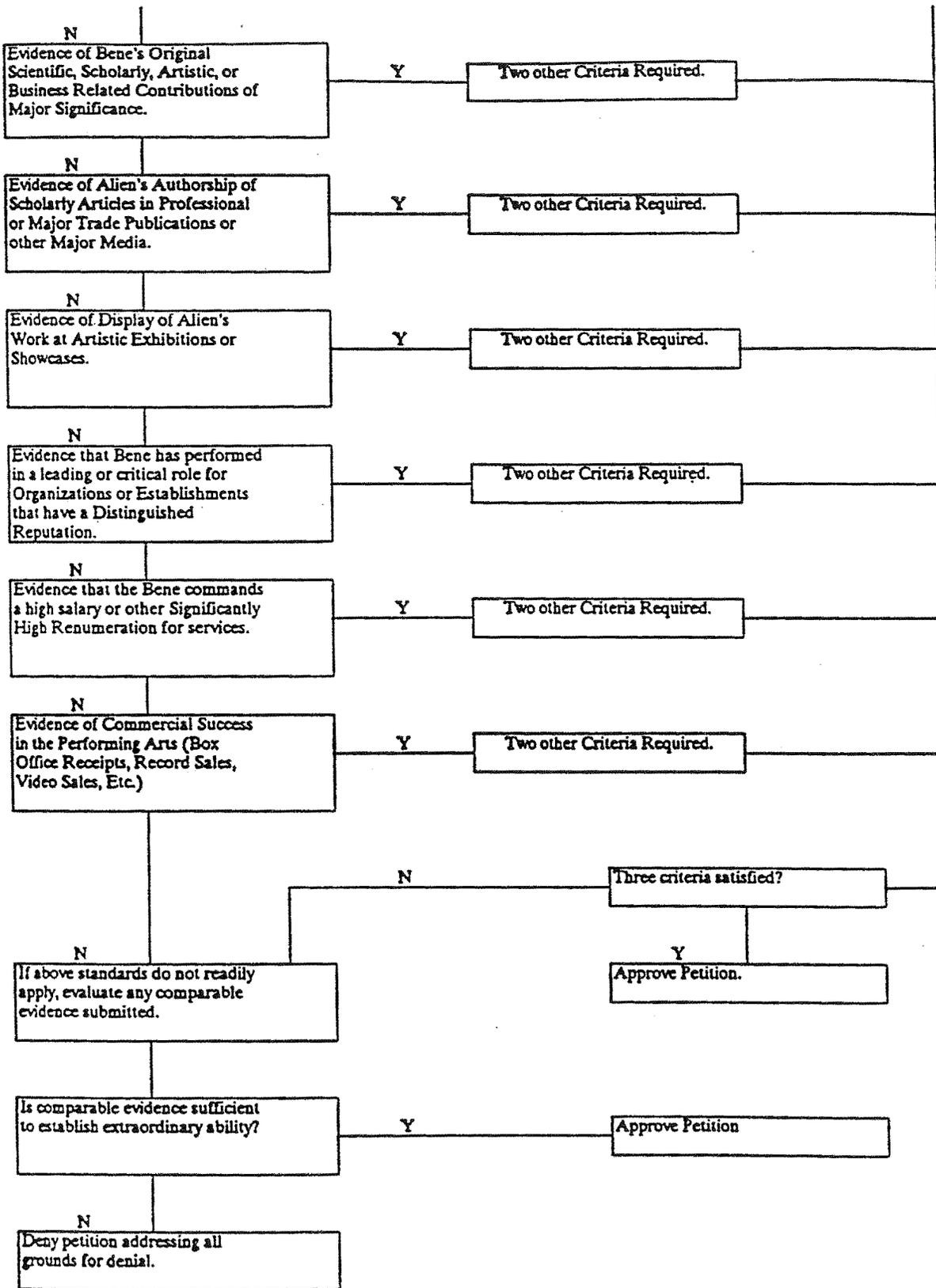
We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. The estimated average time to complete and file this application is as follows: (1) 20 minutes to learn about the law and form; (2) 15 minutes to complete the form; and (3) 45 minutes to assemble and file the petition; for a total estimated average of 1 hour and 20 minutes per petition. If you have comments regarding the accuracy of this estimate, or suggestion for making this form simpler, you can write to both the Immigration and Naturalization Service, 425 I Street, N.W., Room 5304, Washington, D.C. 20536; and the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-0061, Washington, D.C. 20503.

SECTION 203(b)(1)(A) FLOWCHART ALIENS WITH EXTRAORDINARY ABILITY

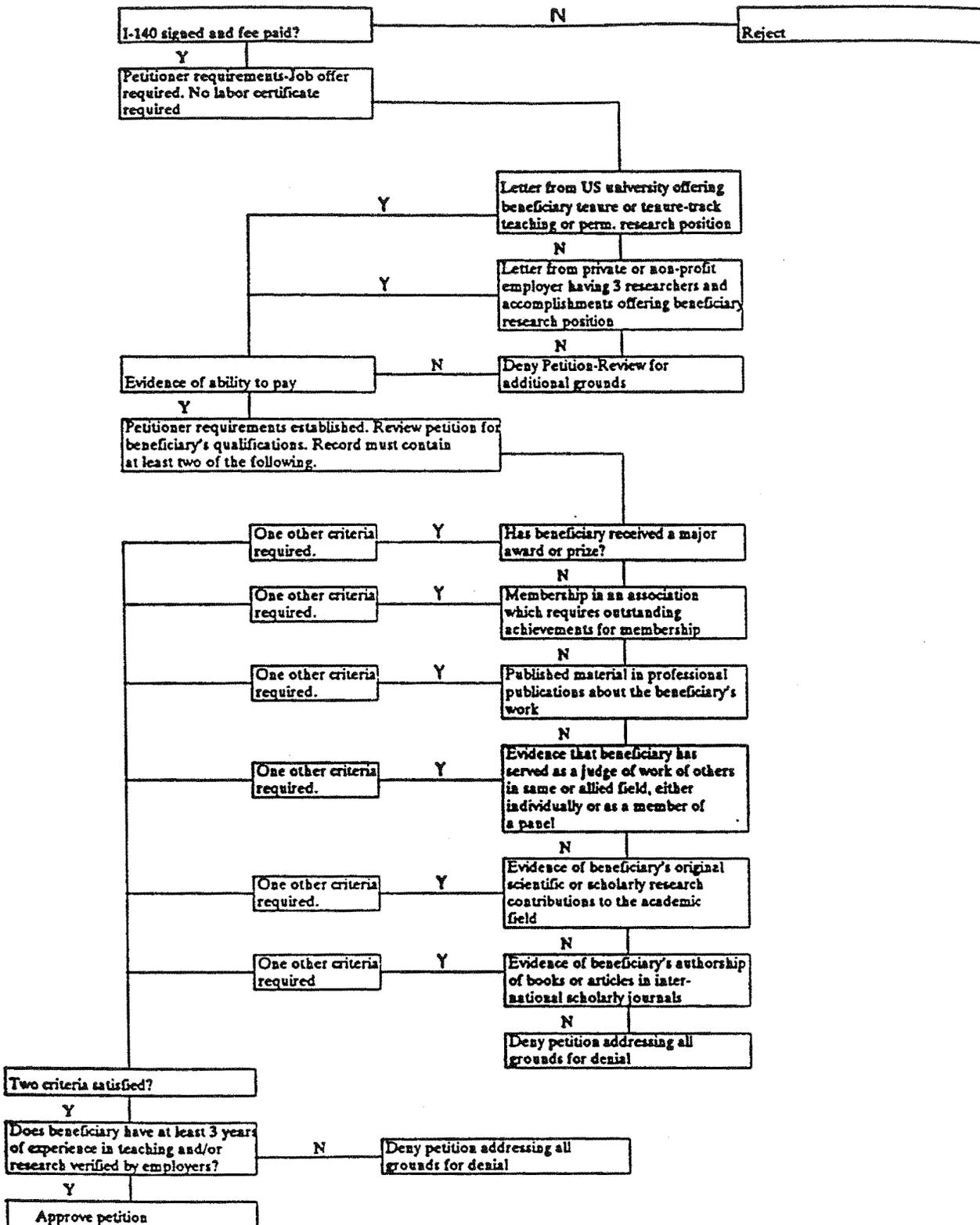


Revised 11/29/51

**SECTION 203(b)(1)(A) FLOW CHART
ALIENS WITH EXTRAORDINARY ABILITY**

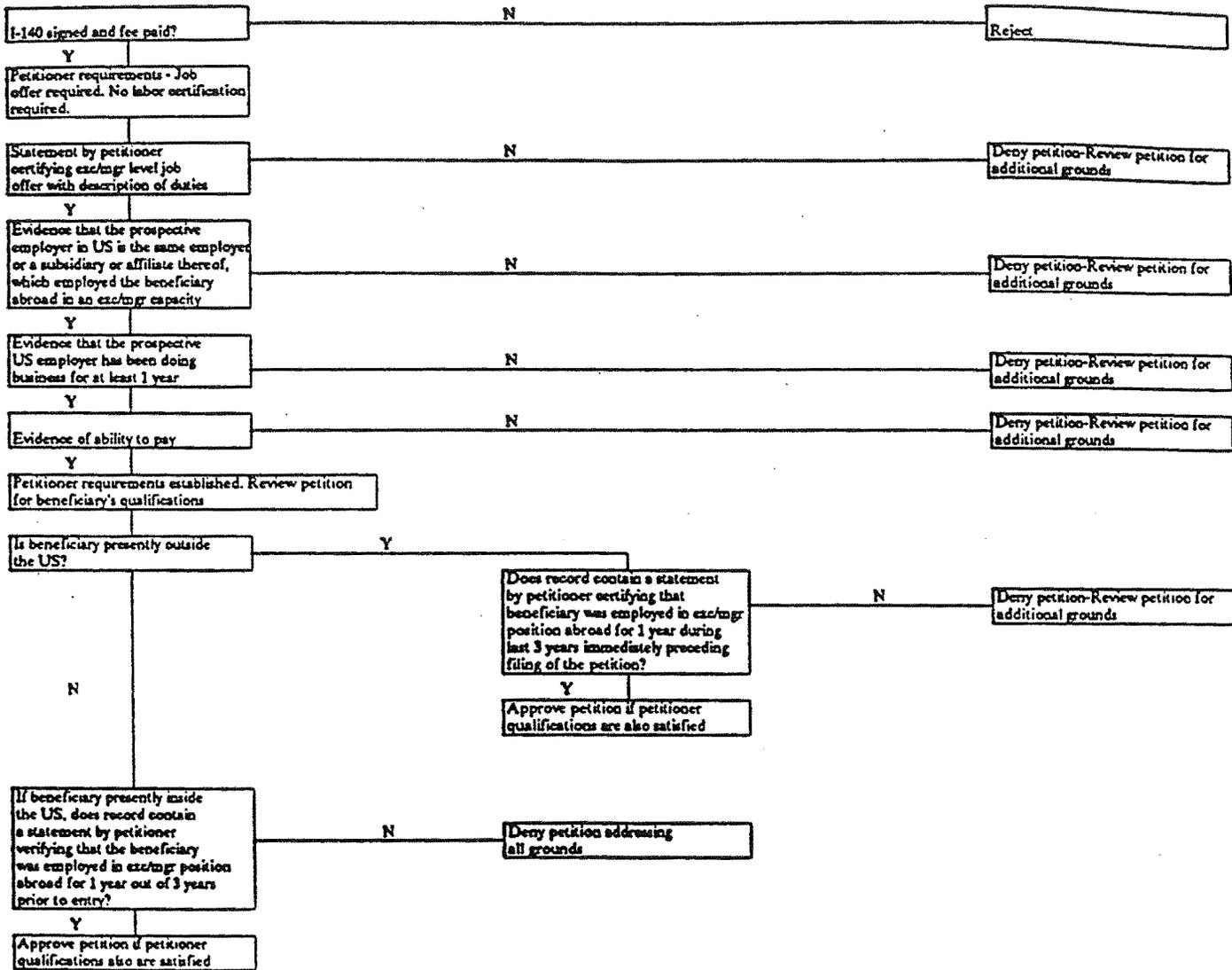


SECTION 203(b)(1)(B) FLOWCHART OUTSTANDING PROFESSORS AND RESEARCHERS



Revised 01/24/92

SECTION 203(b)(1)(C) FLOWCHART MULTINATIONAL EXECUTIVES AND MANAGERS



Revised 1/27/92

CO 204.23-C

203(b)(1) Aliens of Extraordinary
Ability and Outstanding Professors
and Researchers

30 JUL 1992

James M. Bailey
Director
Northern Service Center

Adjudications
(HQADN)

Your memorandum of June 18 asks for guidance on evaluating evidence presented in support of petitions for section 203(b)(1) aliens of extraordinary ability and outstanding professors and researchers. You note that the regulations for each classification contain evidentiary lists a set portion of which should be met in order to document qualification for the classification sought.

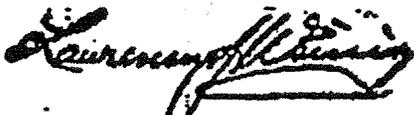
The evidentiary lists were designed to provide for easier compliance by the petitioner and easier adjudication by the examiner. The documentation presented must establish that the alien is either an alien of extraordinary ability or an outstanding professor or researcher. If this is established by the meeting three of the criteria for extraordinary aliens or two of the criteria for outstanding professors or researchers, this is sufficient to establish the caliber of the alien. There is no need for further documentation on the question of the caliber of the alien. However, please note that the examiner must evaluate the evidence presented. This is not simply a case of counting pieces of paper.

As well as your memorandum, we have also received a memorandum from the Director of the Western Service Center and a letter from attorney George Newman, Co-Chair of AILA's Committee on Employment Based Preferences on this subject and on the validity of specific pieces of evidence presented in these cases. These pieces of evidence pertain primarily to published work by others about the alien's work, evidence of the alien's participation as a judge of the work of others, and evidence of either the alien's original research contributions or authorship of scholarly books and articles.

Appendix C Letter from INS Acting Assistant Commissioner Lawrence J. Weinig

Generally, we maintain that a book by the alien published by a "vanity" press, a footnoted reference to the alien's work without evaluation, as unevaluated listing in a subject matter index, or a negative or neutral review of the alien's work would of little or no value. On the other hand, peer-reviewed presentations at academic symposia or peer-reviewed articles in scholarly journals, testimony from other scholars on how the aline has contributed to the academic field, entries (particularly a goodly number) in a citation index which cite the alien's work as authoritative in the field, or participation by the alien as a review for a peer-reviewed scholarly journal would more than likely be solid pieces of evidence. We are also inclined to believe that thesis direction (particularly of a Ph.D. thesis) would demonstrate an alien's outstanding ability as a judge of the work of others.

To repeat, we expect the examiner to evaluate evidence, not simply count it.



Lawrence J. Weinig
Acting Assistant Commissioner

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