

Obtaining Approvals for Challenging NIW Cases
By Justin Fok, Esq.

Our office receives frequent inquiries from NIW applicants who are concerned that they do not meet the typical requirements of an ideal NIW candidate. These applicants may only have a few citations to their peer-reviewed work, and/or they may have no evidence of any practical applications from their research. While these cases present certain challenges, these applicants can still obtain NIW approvals by using the correct legal strategy for their cases.

Below is a survey of some of our most recent “difficult” NIW cases and what strategies our office used to overcome the weaknesses in these applicants’ backgrounds to obtain final approval for their NIW’s.

Software Engineer

In this case, our Client was a Software Engineer who helped develop an award-winning algorithm that was used by a leading Internet search engine. This case presented several challenges as the Client only had two publications with no citation history. Even more problematic - these two publications were in Mathematics, which was completely unrelated to his work as a Software Engineer.

Our office argued that it was this background in Mathematics that set him apart from other Software Engineers in the field. We devoted several pages in his petition letter demonstrating precisely how his research and theories in Mathematics laid the groundwork for the eventual development of the search algorithm that he won the award for.

Also, because he was working for a private company we requested recommendation letters from competing Internet search engines to clearly demonstrate the impact our Client had on the industry.

Medical Research

This Client focused on medical research for eye diseases. A medical researcher will typically have numerous publications and a strong citation record; however, the publications from this Client were relatively new so there were very few citations.

Instead of focusing on the publication and citation history for this case, our office concentrated on alternative forms of recognition that the Client had received. Our office evidenced her national interest ability by first showing that a slide from one of her published papers was featured on the cover of a leading peer-reviewed journal. Second, we presented evidence that one of her latest publications was selected as “Paper of the Week” by a leading peer-reviewed journal. Finally, our office devoted an entire section of the petition letter discussing the inordinate amount of funding this client received from national level agencies such as the National Institutes of Health.

Biochemist

This Client had just graduated with her Ph.D. and although she had several publications, they were too new to have a significant amount of citations. This Client was employed by a pharmaceutical company, which also contributed to her relative lack of publications and citations. Furthermore, because she had just started working, there was scant evidence of any practical applications from her research.

For this case, our office overcame the lack of citations by demonstrating the ranking of the journals that she had published in. The Impact factors of the two journals that she published in led the Impact Factor rankings. Our office also focused on a letter from the National Institutes of Health, which stated that the Client's work was very helpful in one of its projects. Finally, we also listed all the funding and all of the sponsors for the Client's publications, showing that her research attracted the attention from national level agencies.

Computer Programmer

This Client had also just graduated with her Ph.D. and then began working for a start-up technology firm. She only had one peer-reviewed publication and because she was working at a start-up there was no evidence of any practical applications or contributions to the field.

With only one publication and no other practical applications, our office focused on the numerous conference invitations that the Client received. We presented evidence demonstrating the selection process for the conferences and showed how our Client was selected as an invited speaker on numerous occasions. Even more persuasively, our office looked into the funding for the start-up company where she worked and discovered that the start-up funding was based on the software code that she had written. By demonstrating her authorship of the program and how much funding was acquired from national level institutions because of it, we were able to demonstrate the Client's national interest impact.

As these above cases demonstrate, even if a candidate does not have the typical qualifications for an NIW applicant, with a little creativity and the correct legal strategy, you can still obtain an NIW approval.

For questions or comments regarding this article please email Attorney Fok at:
jfok@jclawoffice.com

Law Offices of Jean D. Chen

www.jclawoffice.com

Tel: 408-437-1788

Tel: 408-437-9788