

U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

PUBLIC COPY

JAN 22 2004

File: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

[REDACTED]

Petition: Immigrant Petition for Alien Worker as an 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]

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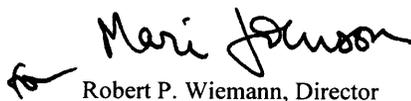
INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


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 develops, manufactures and markets recombinant DNA products. 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 in the United States as a biostatistician II. The director determined that the petitioner had not established that the beneficiary's work qualifies as research, or that the beneficiary is recognized internationally as outstanding in her academic field, as required for classification as an outstanding researcher.

Section 203(b) of the Act states, in pertinent part:

(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.

Service regulations at 8 C.F.R. § 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:



(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. Such evidence shall consist of at least two of the following:

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

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

(C) Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;

(D) 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;

(E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or

(F) Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field;

(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; and

(iii) 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.

The first issue to consider is whether the beneficiary's duties for the petitioner constitute research. 8 C.F.R. § 204.5(i)(3)(iii)(C) requires the petitioner to submit an offer of employment offering the alien a permanent research position in the alien's academic field. Veronica Smith, relocation and immigration specialist for the petitioning company, describes the duties of a biostatistician II:

[The beneficiary] is directly responsible for the statistical integrity, adequacy, and accuracy of our clinical research studies and projects. [The beneficiary] is relied upon to plan, coordinate, and provide statistical analyses, summaries, and reports of our research studies in support of product development and US Product License Applications (PLA) and New Drug Applications (NDA). In addition, she provides appropriate statistical advice; supports the clinical directors, and advises other team members of the prevailing standards of good statistical methodology, regulatory guidelines, and departmental guidelines. Her responsibilities include, but are not limited to, designing study protocol, case report forms and statistical analysis plans; performing data analysis; writing clinical study reports; communicating with regulatory agencies . . . regarding critical statistical issues in clinical study design and conduct for Biological License Application (BLA) submissions; peer-reviewing clinical documents including protocol, study analysis plan, study reports and Standard Operation Procedures (SOPs) of medical affairs; assisting in corporate strategy planning and decision making, and coordinating with clinical scientists, clinical research associates, and outside CRO (Clinical Research Organization) vendors. [The beneficiary's] statistical expertise is an essential component of [the petitioner's] clinical research process as it ensures the greatest possible integrity in research plans, results, and reports.

The director determined that "the [beneficiary's] tasks appear to be scientific (quantitative analysis) tasks carried out by workers in virtually all major biotechnology companies. As such, the Service is not convinced that the work in which the beneficiary will engage is indicative of a research position which is comparable to research positions in universities or institutions of higher learning." The director found that the beneficiary applies the science of biostatistics to data gathered by others at the petitioning company, but that the beneficiary's work does not add "new information to the global body of basic knowledge in the field of Biostatistics."

The petitioner has established that a biostatistician plays a crucial role in the design of clinical trials, in addition to the interpretation of data gathered during those trials. While the biostatistician is not personally involved in the actual collection of that data, it does not follow that the biostatistician's indispensable role in the process is not research. The beneficiary's work consists of a great deal more than the automatic application of mathematical formulas and statistical constructs to the work of others. We therefore withdraw the finding that the beneficiary does not qualify as a researcher.

The second issue concerns the claim that the beneficiary is internationally recognized as an outstanding researcher. CIS regulations at 8 C.F.R. § 204.5(i)(3)(i) require evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. The petitioner must submit evidence to fulfill at least two of six listed criteria. The petitioner claims to have fulfilled the following criteria:

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

The petitioner lists four claimed awards. Three of them, the University of California Regents Special Fellowship, the Ursula Mandel Scholarship, and the University of California Nonresident Tuition Fellowship, amount to financial aid. These fellowships and scholarships are available only to graduate students at the University of California. The petitioner has not shown that international recognition attaches to any of these student awards.

The fourth award is a "Recognition Award" presented to the beneficiary by the petitioning company itself. As with the above student awards, this award is available not throughout the field, but only to a very limited pool of potential recipients, in this case the petitioner's employees. The petitioner has not shown that this award is internationally recognized outside of the company.

Ms. Smith asserts "although [the beneficiary's] awards were restricted to employees, or students of an academic institution, it is relevant that the employer and academic institution in her situation are internationally prominent institutions with documented achievements in the academic field." This reasoning is not persuasive. The record must show that the beneficiary, individually, has attained international recognition. It cannot suffice to show that the beneficiary has earned internal honors or awards from prestigious institutions.

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

Ms. Smith states that the petitioner "is an active member of the following professional associations, some of which either require outstanding achievements of their members or which have otherwise restrictive criteria, thus indicating limitation of membership to those who have made outstanding achievements in the field." Ms. Smith lists four associations: the American Statistical Association (ASA), the Drug Information Association (DIA), the International Biometric Society (IBS) and the American Association for the Advancement of Science (AAAS). By indicating that "some of" these associations have "restrictive criteria," she indicates that not all of them do, but she does not specify which associations purportedly have "restrictive criteria." Ms. Smith says nothing about any of the groups' membership requirements, except to note that IBS' "criteria for membership include approval by a Regional or National Secretary." Approval by an official is not an outstanding achievement; to be approved by an official is an entirely passive act. This requirement, by itself, says nothing about the standard one must meet to warrant such approval.



The petitioner submits an excerpt from the ASA's membership guide, which indicates that individual membership in the ASA is "[f]or professionals and students working or studying in the field of statistics." Working or studying in statistics is not an outstanding achievement.

The petitioner submits a partial printout from the DIA's web site, <http://www.diahome.org>, which discusses "Benefits of Membership" but not the requirements to become a member. Elsewhere on the same website is a link to download the DIA's bylaws. The preamble of Article V, "Membership," states "[m]embership is open to those interested in upholding and contributing to the mission, goal and vision of the DIA." Article V, section A1, states "[e]ligibility for active membership in the DIA shall extend to any individual." Plainly, DIA membership does not require outstanding achievement. Article V, section B, states that some individuals can qualify for life membership "[b]ased upon past significant contributions to the success of the DIA," but there is no evidence that the beneficiary is a life member of the DIA.

The petitioner submits information from the IBS' web site, <http://www.tibs.org>, corroborating the petitioner's claim by stating "[a]pplicants for all classes of membership must be approved by the appropriate Regional or National Secretary," but this information does not indicate what standard applicants must meet to be approved. The same printout submitted by the petitioner also states "[t]he Society welcomes as members biologists, mathematicians, statisticians, and others interested in applying similar techniques." This passage implies that employment in one of those fields is sufficient to qualify an individual for membership; otherwise, it would be misleading to say "[t]he Society welcomes [them] as members." Furthermore, "[t]he Society also operates a Student membership," indicating that membership is available even to those who have yet to complete their professional training.

The record does not establish that the beneficiary is a member of the AAAS, only that the beneficiary received an invitation to join. The invitation expired two years before the petition was filed, and the photocopy submitted shows an intact and unused reply coupon, suggesting that the beneficiary did not, in fact, reply. The letter identifies the AAAS' web site as <http://www.aaas.org>. A page on that site, <http://www.aaas.org/membership/m-cat.shtml>, states "[m]embership in AAAS is open to all individuals who support the goals and objectives of the Association and are willing to contribute to the achievement of those goals and objectives."

Based on the above, there is no evidence that any of the above associations require outstanding achievements of their members, and there is considerable reason to believe that none of them do so. Those organizations that specify their membership requirements indicate that membership is open to everyone working in the field, everyone interested in the field, or simply everyone.

Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation.

The petitioner submits an article about a new antibiotic drug, Tequin, introduced in the United States by Bristol-Myers Squibb. The beneficiary has some connection to the drug because she worked at Bristol-Myers Squibb and conducted some of the statistical studies leading up to the drug's approval,

but she did not develop the drug and the article never mentions her. The drug was “licensed by Bristol-Myers Squibb from Kyorin Pharmaceutical Company Ltd.” An article about a drug developed overseas and marketed in the United States by the beneficiary’s then employer is not, by any reasonable standard, published material about the beneficiary.

The petitioner indicates that other researchers have cited the beneficiary’s published articles. These citations are more properly considered in the context of weighing the impact of the beneficiary’s own articles, and will be discussed further below under the appropriate regulatory 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.

Ms. Smith states that the beneficiary “is heavily involved in judging other people’s work on a routine basis, as part of her research and analysis as a Biostatistician II.” Routine duties inherent to the occupation do not reflect international recognition. We note that counsel did not list this criterion among the criteria that the petitioner claims to have satisfied.

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

Ms. Smith asserts “[t]hrough her publications and presentations, [the beneficiary’s] contributions and accomplishments are world-recognized.” The petitioner lists the beneficiary’s published articles and conference presentations, but these materials are not self-evident proof of international recognition as an outstanding researcher. It would be absurd to interpret the regulation to mean that original contributions are *prima facie* evidence of international recognition as an outstanding researcher, unless one presumes that most research is unoriginal and therefore redundant.

The petitioner submits letters from various witnesses, attesting to the significance of the beneficiary’s original contributions. The witnesses discuss the beneficiary’s statistical work on various pharmaceutical clinical trials, and stress the importance of the participation of a statistician to ensure the integrity and accuracy of the subsequent findings. We do not dispute that statisticians play such roles in pharmaceutical research, but it follows that every properly conducted clinical trial will have the input of a statistician. We cannot conclude, however, that every statistician employed in this way inevitably becomes internationally recognized as outstanding. Therefore, the petitioner must show not only that statisticians are important to pharmaceutical research, but also that the beneficiary somehow stands out (hence the term “outstanding”) from others performing similar work. The record does not persuasively show that biostatisticians earn significant recognition for their part in designing research protocols. Arguments about the importance of various new drugs are of tangential significance because the beneficiary had no role in the discovery or formulation of the drugs themselves.

These letters do not establish world recognition as the petitioner claims, because the witnesses who provided these letters all have demonstrable ties to the beneficiary, either through her studies at the University of California, Los Angeles (UCLA) or through her employment at Bristol-Myers Squibb. Because the statutory and regulatory standard is international recognition, it cannot suffice to show that the beneficiary’s former professors, employers, and collaborators view her work as especially

significant. Even if these individuals attest that the beneficiary has earned international recognition for her work, these statements are not and cannot be first-hand evidence of such recognition. We note also that several of the witnesses repeat the petitioner's claim that the beneficiary is a member of associations that require outstanding achievements of their members. Because evidence from the associations themselves contradicts this claim, we cannot conclude that the petitioner's witness letters are indisputably accurate and credible.

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

Ms. Smith states "[e]ven at this early stage in her career, [the beneficiary's] publication record is worthy of note. . . . The following is a list of [the beneficiary's] internationally circulated published work." Ms. Smith then lists four articles. The beneficiary's own *curriculum vitae* identifies only two published articles, which appeared, respectively, in February and August of 2002, with a third article under review. Some witnesses assert that the beneficiary's publication record is impressive, but they themselves have published substantially greater quantities of work.

Ms. Smith notes "many prominent research scientists both inside and outside the Biostatistics research field have cited these scholarly papers." The petitioner does not state how many total citations the beneficiary's work has amassed. Ms. Smith mentions three articles that are said to "prominently cite" the beneficiary's work. These three articles are the only citations documented in the record. The earliest of these three articles is "Neighborhood and Family Contexts of Adolescent Sexual Activity," by Dawn Upchurch, Carol Aneshensel, and two other authors, which appeared in the *Journal of Marriage and the Family*, November 1999. This article includes a one-sentence comment and credits, as its source, "Upchurch, Lillard, & Aneshensel, 1999," clearly a self-citation by two of the authors of the citing article. The bibliography identifies the article as "Inconsistencies in the reporting occurrence and timing of sexual initiation in the Add Health Survey," by D.M. Upchurch, L.A. Lillard and C.S. Aneshensel, a paper that was "presented at the Annual Meeting of the Population Association of America, New York." The citation, by two of the paper's own co-authors, does not identify the beneficiary as a co-author of the cited work. Other citations in the bibliography list up to seven authors, indicating that the list of authors was not arbitrarily cut off after the third name.

The second article, "Adolescent Sexual Behavior: Estimates and Trends From Four Nationally Representative Surveys" by John S. Santelli *et al.*, appeared in the July/August 2000 issue of *Family Planning Perspectives*. This article contains a one-sentence reference to "[o]ther research," followed by an endnote which refers to two articles, the second of which is "Inconsistencies in reporting dates of first sex in the Add Health Survey," identified as a "paper presented at the annual meeting of the Population Association of America, New York, March 25-27, 1999, by Upchurch, Lillard and Aneshensel. Again, the beneficiary is not identified as a co-author. Other citations include the term "*et al.*" when referring to abbreviated author credits; this term does not appear in the Upchurch/Lillard/Aneshensel citation.

The third article, "The Quality of Retrospective Data: An Examination of Long-Term Recall in a Developing Country," by Megan Beckett *et al.*, appeared in *The Journal of Human Resources*. The partial copy in the record is undated, but the bibliography lists source articles dated as late as 2000.

This article, like the previous two discussed above, contains a one-sentence reference, this time to “Upchurch et al.” The bibliography provides the title of the cited article: “Inconsistencies in Reporting the Occurrence and Timing of Sexual Initiation among Adolescents.” This is similar to the titles cited in the other articles, but this article shows the beneficiary’s name after those of Upchurch, Lillard and Aneshensel. This version of the piece is not the paper presented at a conference in New York in March 1999; rather, it is identified as a “working paper” at the UCLA School of Public Health, dated 2000. A paper under the same title was eventually published in 2002.

The above evidence indicates that Upchurch, Lillard and Aneshensel presented an early version of their paper at the 1999 New York conference, and that the beneficiary subsequently contributed to the revised 2000 “working paper” and ultimately the 2002 published version. The *curriculum vitae* of Dawn M. Upchurch, also in the record, lists only three authors for the 1999 New York paper. The beneficiary’s *curriculum vitae* identifies her as one of four authors of the version presented at the 1999 New York conference, but this claim conflicts with every other source in the initial submission, including the *curriculum vitae* of the paper’s first author, as well as a citation by Upchurch and Aneshensel.

The director issued a notice of intent to deny, listing several shortcomings in the evidence presented, and allowed the petitioner 30 days to respond. In response, counsel protests that a notice of intent to deny, with a 30-day response period, is appropriate only in instances where the director has discovered derogatory evidence, as discussed at 8 C.F.R. § 103.2(b)(16). Counsel maintains that, instead, the director should have issued a request for evidence, with a 12-week response period, as provided by 8 C.F.R. § 103.2(b)(8) for circumstances in which the issue is simply an insufficiency of evidence. Counsel also contends that there is no specific regulatory provision for the issuance of notices of intent to deny with regard to immigrant petitions for outstanding professors or researchers. It appears that counsel is correct in that the notice should have taken the form of a request for evidence, although this error by the director does not detract from the observations contained in the notice.

In response, the petitioner submits arguments from counsel, copies of new and old documents, and several further witness letters.

Lee Kaiser, the petitioner’s director of Clinical Biostatistics and Epidemiology, states that the beneficiary’s work “has . . . met with international recognition as outstanding. Her significant accomplishments include the design of clinical protocols as well as clinical assessment of efficacy and safety of several biological therapies for treating immunological disorders.” Lee Kaiser does not explain how the beneficiary’s design of clinical protocols has earned greater recognition than similar protocols designed by other biostatisticians.

The petitioner submits letters from witnesses at a variety of institutions. These letters mostly focus on the question of whether the beneficiary’s work qualifies as research in an academic field. To the extent that the witnesses comment on the beneficiary, they call her “highly gifted” and well qualified for the position offered by the petitioner, but the letters do not establish specific contributions to warrant international recognition. Many of the witnesses are, themselves, considerably more accomplished, established, and recognized than the beneficiary herself. They

comment on various pharmaceutical projects in which the beneficiary has participated, but they have not shown that the significance lies in the beneficiary's statistical work rather than in the new drugs themselves. All of the witnesses are in the United States, and thus their statements cannot be *prima facie* evidence of international recognition, which is the standard required by law.

The director had instructed the petitioner to submit "the minimum requirements and criteria used to apply for membership in the associations . . . in which the beneficiary claims membership." In response, counsel maintains that the beneficiary is a member of "esteemed associations in her field which either require outstanding achievements of their members or have similarly restrictive criteria for membership." The "outstanding achievements" clause appears directly in the regulations, with no provision for the substitution of "similarly restrictive criteria" at the petitioner's discretion.

Instead of any new evidence from the associations themselves, the petitioner submits a statement from the beneficiary, who provides background information about the ASA, DIA, and IBS. She does not address the minimum requirements for membership, even though the membership requirements are the central point at issue. Neither counsel nor the beneficiary explains the failure to submit documentary evidence of the associations' membership requirements. Pursuant to 8 C.F.R. § 103.2(b)(2)(i), the unavailability of required evidence creates a presumption of ineligibility, absent secondary evidence, sworn affidavits, and a persuasive explanation for the failure to submit such evidence. In this instance, the membership requirements are readily available over the Internet, and the petitioner is demonstrably aware of the existence of the relevant web sites because the petitioner has submitted other materials from those sites. Simply ignoring the director's proper request for membership information does not resolve or diminish the issue. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

Regarding the beneficiary's published work, the director noted that the initial submission reflected only two published articles. The director requested further evidence to establish the significance and recognition afforded to those articles. In response, the petitioner submits a citation report which, while some portions are difficult to decipher, appears to indicate a total of six citations of articles listed in the beneficiary's bibliography. Two of these six citations, as discussed above in detail, relate to the 1999 New York paper that does not show the beneficiary as a co-author.

In a new letter, Dr. Dawn Upchurch states that the beneficiary was a co-author of the 1999 New York paper, but "[h]er name was inadvertently left out of the program of the meeting's proceedings." While this error would explain the omission of the beneficiary's name from one of the bibliographic citations, Dr. Upchurch does not explain why she herself did not correct the error when she cited her own paper in the *Journal of Marriage and the Family*, nor why her own *curriculum vitae* contains exactly the same omission. Because Dr. Upchurch herself co-wrote the paper, her knowledge of the paper's co-authors would not in any way have been contingent on program credits. The record contains no documentation from the program's organizers to corroborate Dr. Upchurch's statement, nor does the record contain contemporaneous documentation

from 1999 to establish that materials submitted to the organizers did, in fact, credit the beneficiary as a co-author.

Complicating the issue of Dr. Upchurch's credibility is her assertion, in her initial letter on the beneficiary's behalf, that the beneficiary "is an active member of both the American Statistical Association and the Drug Information Association; memberships in these associations are limited to those who have made exceptional achievements in the field." This assertion contradicts the DIA's and ASA's own materials, as discussed further above. Even if Dr. Upchurch was simply mistaken about those organizations' membership requirements, it remains that her representation of those requirements is not accurate. We also note that Dr. Upchurch's initial letter listed several of the beneficiary's conference presentations, but not the 1999 presentation at the annual meeting of the Population Association of America.

Even if we accept that the beneficiary's name was inadvertently omitted not only from the program, but also from Dr. Upchurch's own *curriculum vitae*, citations that do not mention the beneficiary cannot reasonably be said to enhance the beneficiary's recognition. There is no indication of any effort on the part of the program's organizers to disseminate a corrected version of the program. Thus, opportunities for recognition arising from this paper are severely limited, and recognition is a crucial standard, specified in both the statute and the regulations. Whether or not the beneficiary co-wrote it, the 1999 paper has not been heavily cited internationally, and the paper has nothing to do with the pharmaceutical industry, where witnesses claim the beneficiary's greatest contributions lie. Rather, the citations pertain to the interpretation of sociological survey data.

Because several of the citations were not claimed initially, there is no evidence that these citations existed as of the petition's filing date. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). The new citations make brief mention of clinical trials for various drugs, but they focus on the effect of the drugs themselves rather than on the research protocols. Even then, the beneficiary's verified citation rate remains minimal.

The director denied the petition, discussing the various evidentiary criteria at 8 C.F.R. § 204.5(i)(3)(i) and explaining why the petitioner has failed to meet them. On appeal, counsel observes that the director's decision contains erroneous references to inapplicable regulatory criteria pertaining to aliens of extraordinary ability. The director did err insofar as referring to those regulations, but the director also discussed, in detail, the correct criteria pertinent to the classification sought.

Counsel offers no response to the director's finding that the petitioner has not satisfied the criterion pertaining to major prizes and awards. Regarding memberships in associations, counsel once again asserts that the petitioner has "provided information regarding the minimum requirements and criteria used to apply for membership in" the ASA and DIA. We have already discussed these criteria. Counsel, on appeal, does not rebut the director's finding that neither association requires outstanding achievements of its members. Counsel merely observes that the petitioner responded to the notice of intent to deny.

With regard to the low citation of the petitioner's articles, counsel lists five such citations and states that this evidence "clearly shows that [the beneficiary's] research contributions . . . have met with widespread recognition of their significance and originality." The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). None of the citations singles out the beneficiary's contribution to the articles, and the brief references preceding the bibliographical citations do not show that the "significance and originality" of those findings significantly exceed the significance or originality of any other cited findings. The articles in the record contain dozens of citations, identifying hundreds of researchers, and the one- or two-sentence descriptions of the cited findings do nothing to show that the beneficiary's findings have been widely acknowledged as being especially important.

Counsel asserts that the director should have given greater weight to the witness letters submitted by the petitioner. As noted previously, the initial witness letters are all, without exception, from individuals with demonstrable ties to the beneficiary. The subsequent witnesses were primarily concerned with the question of whether the beneficiary's work constitutes qualifying research. The letters, all from witnesses in the United States, do not establish that the beneficiary has earned international recognition as an outstanding researcher. At best, they establish the beneficiary's involvement with important pharmaceutical projects, with no indication that these projects attracted substantial attention not because of the drugs themselves, but because of the design of the trial protocols.

The record consistently establishes that the beneficiary, who completed her education in 1999, is at the beginning of a productive and promising career in her field. It does not, however, show that the beneficiary has earned international recognition as an outstanding researcher. Many of the petitioner's witnesses are, themselves, demonstrably far more prominent and recognized than the beneficiary herself, which makes it difficult to state that the beneficiary, in comparison, is outstanding. The petitioner's and counsel's continued reliance on the beneficiary's membership in associations with demonstrably open membership requirements necessarily raises questions about the credibility and reliability of other assertions in the record.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in the field of statistics. 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.