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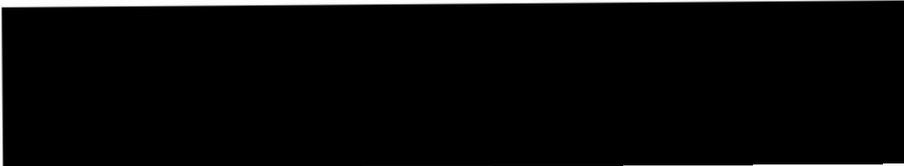


FILE: LIN 07 164 51735 Office: NEBRASKA SERVICE CENTER Date: **JAN 28 2008**

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

PETITION: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a university. 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 postdoctoral research fellow. The director determined that the petitioner had not established that it had offered the beneficiary a permanent job as of the date of filing. The director also determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher.

On appeal, counsel submits a brief. For the reasons discussed below, we uphold the director's decision.

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

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(B) Outstanding professors and researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons

full-time in research activities and has achieved documented accomplishments in an academic field.

Permanent Job Offer

The regulation at 8 C.F.R. § 204.5(i)(3)(iii) provides that a petition must be accompanied by:

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.

(Emphasis added.) Black's Law Dictionary 1111 (7th ed. 1999) defines "offer" as "the act or an instance of presenting something for acceptance" or "a display of willingness to enter into a contract on specified terms, made in a way that would lead a reasonable person to understand that an acceptance, having been sought, will result in a binding contract." Black's Law Dictionary does not define "offeror" or "offeree." The online law dictionary by American Lawyer Media (ALM), available at www.law.com, defines offer as "a specific proposal to enter into an agreement with another. An offer is essential to the formation of an enforceable contract. An offer and acceptance of the offer creates the contract." Significantly, the same dictionary defines offeree as "a person or entity *to whom an offer to enter into a contract is made* by another (the offeror)," and offeror as "a person or entity who makes a specific proposal *to another (the offeree)* to enter into a contract." (Emphasis added.)

In light of the above, we concur with the director that the ordinary meaning of an "offer" requires that it be made to the offeree, not a third party. As such, regulatory language requiring that the offer be made "to the beneficiary" would simply be redundant. Thus, a letter addressed to Citizenship and Immigration Services (CIS) *affirming* the beneficiary's employment is not a job *offer* within the ordinary meaning of that phrase.

The regulation at 8 C.F.R. § 204.5(i)(2), provides, in pertinent part:

Permanent, in reference to a research position, means either tenured, tenure track, or for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination.

On Part 6 of the petition, the petitioner indicated that the proposed employment was a permanent position. The petitioner submitted a July 29, 2004 letter on the petitioner's letterhead signed by the beneficiary's supervisor, [REDACTED], and addressed to the beneficiary offering him a postdoctoral associate position ending April 14, 2005 and an August 9, 2004 letter on University Auxiliary Services (UAS) letterhead confirming the July 29, 2004 offer. The petitioner also submitted a March 14, 2007 letter on the petitioner's letterhead jointly signed by [REDACTED], the Chair of [REDACTED] department, and the Dean of the petitioner's College of Natural and Social Sciences and addressed to CIS, asserting that the petitioner had extended the beneficiary's employment "for an indefinite period provided availability of the research funding." The 2007 letter does not constitute a job offer from the petitioner to the beneficiary.

On May 22, 2007, the director issued a notice of intent to deny questioning whether the petitioner had offered the beneficiary a permanent job as defined at 8 C.F.R. § 204.5(h)(i)(2). The director noted Internet research suggesting that postdoctoral appointments are typically temporary and concluded that the record did not contain evidence suggesting that the petitioner's policies were unique regarding postdoctoral positions.

In response, counsel asserted that the 2004 letters were submitted as evidence of the beneficiary's continued employment with the petitioner and that the 2007 letter was submitted as the most recent job offer. Counsel characterized the director's Internet search as "superficial" and asserted that postdoctoral positions are no longer always temporary, resulting in Congress including non-tenure track "permanent" positions in section 203(b)(1)(B) of the Act. The petitioner submitted evidence that other universities offer "permanent" postdoctoral positions. Counsel objected to the director's request for the petitioner's policy manual regarding postdoctoral positions, asserting that the regulations do not permit such a request, but the petitioner submitted the UAS policy manual to avoid a denial for failure to comply with the director's request. The evidence of record suggests that UAS administers postdoctoral positions with the petitioning university.

The petitioner submitted a March 1, 2007 letter on the petitioner's letterhead offering the beneficiary a "permanent" position with a relationship that "may be terminated for cause." The letter is signed by Dr. [REDACTED] and [REDACTED]. This letter constitutes an offer to the beneficiary and purports to predate the filing of the petition. Information in the petitioner's policy manual, however, raises questions about the authority of [REDACTED] and [REDACTED] to offer the beneficiary a permanent postdoctoral position administered by UAS.

Before discussing the contents of the policy manual, we find that the director was justified in requesting the petitioner's policy manual. It is the petitioner's burden to demonstrate that the job offered meets the regulatory definition of permanent at 8 C.F.R. § 204.5(h)(i)(2). Where the initial required evidence, the job offer issued to the beneficiary, does not resolve whether the job is permanent as defined at 8 C.F.R. § 204.5(h)(i)(2), the director may request additional evidence relating to the terms and condition of the position.

While counsel refers us to page 19 of the UAS policy manual and asserts that the manual is "silent" as to the length of postdoctoral appointments, we find that page 9 contains information that calls into question the validity of the March 1, 2007 letter. Specifically, the manual states:

Employment at UAS is employment at will. Employment at-will may be terminated **with or without cause and with or without notice at any time** by the employee or by UAS. Nothing in this Handbook or in any document or statement shall limit the right to terminate or modify employment at-will. **No manager, supervisor or employee of UAS has any authority to enter into an agreement for employment for any specified period of time or to make an agreement for employment other than at-will. Only the Executive Director of UAS has the authority to make any such agreement and then only in writing.**

(Emphasis added.) Rather than requiring that specific words must appear in an offer of permanent employment, we will consider the totality of circumstances in appropriate cases. Here, however, the UAS policy manual is clear that employment may be terminated by UAS at any time without cause and without notice. There would appear to be no factors in these materials that would favor an interpretation that an employee in a position administered by UAS would ordinarily have an expectation of continued employment absent cause for termination.

While the Executive Director of UAS signed the August 9, 2004 letter, he did not sign the March 1, 2007 letter. Page 9 of the UAS policy manual reveals that neither [REDACTED], without the approval of the Executive Director of UAS, has the authority to offer employees in positions administered by UAS "permanent" employment as defined at 8 C.F.R. § 204.5(i)(2). Thus, the petitioner has not established that the March 1, 2007 letter is an authorized offer of permanent employment.

We acknowledge the submission of electronic-mail correspondence between [REDACTED], a chemistry professor at the petitioning university, and [REDACTED]. [REDACTED] suggests changing the postdoctoral title for researchers who have held that position for several years in order to facilitate their eligibility for immigration benefits. At issue is not how long the position has been held but whether the most recent offer is for a permanent position as defined at 8 C.F.R. § 204.5(h)(i)(2). Regardless, even assuming this electronic-mail correspondence evidences the petitioner's consideration of adding a more permanent tier for postdoctoral researchers who have held that title for several years, [REDACTED] acknowledges that those in these higher tier positions earn more than a typical postdoctoral

researcher, at issue is the job offered to the beneficiary as of the priority date in this matter. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

The petitioner did not initially submit the primary required initial evidence, the original job offer predating the filing date of the petition. Confirmations after the fact are not evidence of eligibility as of the date of filing. *See generally* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. We acknowledge the submission of what purports to be a valid job offer predating the filing of the petition in response to the director's notice of intent to deny. The March 1, 2007 letter, however, appears to violate page 9 of UAS' policy manual, quoted above. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* Page 9 of the UAS policy manual provides that UAS administered positions are terminable without cause and without notice. Only the Executive Director can enter into agreements offering different terms and conditions. The petitioner has not resolved the inconsistency between this information and the March 1, 2007 letter, not signed by the Executive Director, which purports to offer employment terminable only for cause. Thus, we are not persuaded that the petitioner has established that it had offered the beneficiary a permanent position, as defined at 8 C.F.R. § 204.5(i)(2), as of the date of filing.

International Recognition

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

- (ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from current or former employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

This petition was filed on May 17, 2007 to classify the beneficiary as an outstanding researcher in the field of biochemistry. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field as of that date, and that the beneficiary's work has been recognized internationally within the field as outstanding.

The regulation at 8 C.F.R. § 204.5(i)(3)(i) states that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The regulation lists six

criteria, of which the beneficiary must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. More specifically, outstanding professors and researchers should stand apart in the academic community through eminence and distinction based on international recognition. *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991)(enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)). The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. *Id.* The petitioner claims to have satisfied the following criteria.¹

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

The petitioner relies on the beneficiary's receipt of the Leadership Development Award by the Younger Chemist Committee (YCC) of the American Chemical Society (ACS). The "award" is actually an invitation to attend a Leadership Development Workshop (LDW) and also covers the expenses for attending the workshop. ACS members under the age of 35 may apply for the "award." In 2007, invitations were issued to 15 of the 90 applicants. In response to the director's notice of intent to deny, [REDACTED] a and [REDACTED] opined that "there can be no greater award to a young chemist than from the principal international governing body in the field honoring past achievement and notoriety as an *emerging* leader in the profession." (Emphasis added.)

The director noted that the "award" was limited to those under the age of 35, acknowledged that the YCC award is based on "outstanding leadership involvement," and concluded that the award was not "commensurate with a major prize or award for excellence in the field."

On appeal, counsel suggests that the director found the YCC award insufficient because it was based on "outstanding leadership involvement" rather than "excellence." Counsel asserts that the words "outstanding" and "excellence" are "interchangeable." Extrapolating the number of ACS members under the age of 35, counsel then concludes that the award is issued to the top .3 percent "of the pool of applicants."

It is significant that the *proposed* regulation relating to this classification would have required evidence of a major *international* award. The final rule removed the requirement that the award be "international," but left the word "major." The commentary states: "The word "international" has been removed in order to accommodate the *possibility* that an alien might be recognized internationally as outstanding for having received a major award that is not international." (Emphasis added.) 56 Fed. Reg. 60897-01, 60899 (Nov. 29, 1991.)

Thus, the standard for this criterion is very high. The rule recognizes only the "possibility" that a *major* award that is not international would qualify. Significantly, even lesser international awards cannot

¹ The petitioner does not claim that the beneficiary meets any criteria not discussed in this decision and the record contains no evidence relating to the omitted criteria.

serve to meet this criterion given the continued use of the word “major” in the final rule. *Cf.* 8 C.F.R. § 204.5(h)(3)(i) (allowing for “lesser” nationally or internationally recognized awards for a separate classification than the one sought in this matter).

Reading the director’s discussion in its entirety, it is clear that the director’s concern is the award’s limitation to those 35 years or younger rather than the use of the word “outstanding” instead of “excellence.”

It is significant that the most experienced and renowned experts in the field are precluded from applying for an LDW invitation. Thus, an invitation to attend this workshop, designed to encourage potential future leaders rather than recognize past achievement, does not suggest that the beneficiary is internationally recognized as an outstanding researcher. The workshop invitation is clearly not a major prize or award.

In light of the above, the petitioner has not established that he meets this criterion.

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

On appeal, counsel concedes that the director correctly found that the associations of which the beneficiary is a member do not require outstanding achievements of their members. We concur that the beneficiary does not meet this criterion.

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.

While the petitioner initially submitted evidence that the beneficiary’s articles have been minimally cited, counsel did not initially present such evidence as relating to this criterion. In his notice of intent to deny, the director stated that footnote references could not serve to meet this criterion. In their joint response, [REDACTED] and [REDACTED] rejected that position with little explanation and asserted that the beneficiary’s work is sufficiently discussed in the citing articles to meet this criterion. For example, they assert that the citation of the beneficiary’s work in a review article by [REDACTED] et al. “is neither a footnote nor a mere reference.” We acknowledge that the article is formatted with endnotes instead of footnotes. As the difference is merely one of formatting, we do not find endnotes any more persuasive than footnotes. We acknowledge that the review article devotes a paragraph to the beneficiary’s work on extracting oil from walnuts. The review article, however, is 41 pages long and cites the beneficiary’s article in endnote 138 of at least 152.

The director noted that the published material must be about the alien and that the citations submitted were not in articles that are about the beneficiary’s work. On appeal, counsel asserts that a qualitative

evaluation rather than a quantitative analysis is appropriate and that the record contained sufficient evidence of the importance of the publications that cited the beneficiary's work.

Counsel is not persuasive. The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) requires that the published material be "about" the beneficiary's work. Articles which cite the beneficiary's work are primarily about the authors' own work or, in the case of review articles, numerous recent developments, not the beneficiary's work in particular. As such, they cannot be considered published material about the beneficiary's work. Moreover, the petitioner seeks to classify the beneficiary as an outstanding researcher in medical science and cancer drug delivery systems. The citations are not about the beneficiary's work in this field. The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) requires that the published material be about the beneficiary's work "in the academic field." We interpret this phrase to include only the academic field in which the petitioner proposes to employ the beneficiary.

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field.

The petitioner initially submitted electronic-mail correspondence from [REDACTED] Workshop Organizer for the Second Workshop on Computational Chemistry and its Applications in China, requesting that the beneficiary review a manuscript or, if unable to do so, suggest alternative reviewers. In response to the director's notice of intent to deny, [REDACTED] confirms that the beneficiary reviewed the paper for the workshop and that reviewers "have been considered on the basis of expertise in computational chemistry in the international arena." In their joint response to the notice of intent to deny, [REDACTED] and [REDACTED] note that the reviewed article originates from Egypt, was presented in China and is included on the Lecture Notes in Computer Science website.

The director concluded that the beneficiary's minimal participation in the widespread peer-review process was insufficient to meet this criterion. On appeal, counsel states:

The Petitioner concedes that an article review – albeit for an international conference and at the request of an [sic] professor in an international school – satisfy this classification.

Counsel's point is unclear and, at best, counsel is simply expressing disagreement with the director without explaining how the director erred in fact or law. We cannot ignore that scientific journals and conferences are peer reviewed and rely on many scientists to review submitted manuscripts. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed an unusually large number of manuscripts, received independent requests from a substantial number

of journals or conference organizers, or served in an editorial position for a distinguished journal, we cannot conclude that the beneficiary meets this criterion.

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

The director acknowledged that the beneficiary's patents demonstrate that his work is "original" but concluded that merely demonstrating that the beneficiary's research does not duplicate the efforts of others is insufficient to meet this criterion. The director further concluded that the record lacked evidence of the impact the beneficiary's work has already had.

On appeal, counsel appears to concede that the beneficiary's work is not even original, which the director did not allege, but asserts that requiring original work in the beneficiary's field is unrealistic. Counsel further asserts that the beneficiary's references adequately establish the influence of the beneficiary's work in the field "at the international level."

The regulation at 8 C.F.R. § 204.5(i)(3)(i)(E) unambiguously requires that the beneficiary's contributions be original. We are not persuaded that there are fields where the research need not be original to meet this criterion. That said, we concur with the director that the filing of patent applications, granting of patents and publication of articles in peer-reviewed journals adequately establishes that the beneficiary's work is "original" in that he is not simply repeating the work of others.

We also concur with the director, however, that the petitioner cannot satisfy this criterion simply by listing the beneficiary's past projects and demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research. Research work that is unoriginal would be unlikely to secure any researcher a master's degree, let alone classification as an outstanding researcher. Because the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher, it stands to reason that the beneficiary's research contributions have won comparable recognition. To argue otherwise would be to imply that all original research is, by definition, "outstanding" weakening that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

As stated above, outstanding researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. 56 Fed. Reg. 30703, 30705 (July 5, 1991). Any Ph.D. thesis, postdoctoral or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. To conclude that every researcher who performs original research that adds to the general pool of knowledge meets this criterion would render this criterion meaningless.

In a similar vein, the evidence that the beneficiary is named on several patent applications establishes that he is a prolific inventor; but the very existence of the patents does not show that the beneficiary's

inventions are more significant than those of others in his field. Significantly, this office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Commr. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* To establish the significance of the beneficiary's work, we turn to experts in his field, whose letters we discuss below.

At the outset, we note that the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of international recognition. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

The submission of letters from references in more than one country is not presumptive evidence of international recognition as an outstanding researcher. We must evaluate the content of the letters themselves. In evaluating the reference letters, we note that letters containing mere assertions of international recognition and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with international recognition should be able to produce unsolicited materials reflecting that recognition.

discusses the beneficiary's work at the petitioning university designing more effective self-assembly drug-delivery systems for use as hydrophobic drug delivery agents. The beneficiary "intellectually contributed to the synthesis of an electron spin labeled anticancer drug, chlorambucil-tempol adduct." According to ██████████ this work was accepted without revision and published in 2006. ██████████ further asserts that the petitioner has filed a patent application relating to this work, which is contained in the record ██████████ explains that the beneficiary used nuclear magnetic resonance (NMR) techniques to prove that certain polymers were excellent carriers of hydrophobic drugs. The beneficiary had presented this work as of the date of filing and was preparing a manuscript. ██████████ concludes that this work is a major achievement and "will have a considerable and revolutionary impact on new commercial anticancer drugs." ██████████ does not, however, assert that any

pharmaceutical company has expressed any interest in licensing or otherwise utilizing the beneficiary's patent-pending innovation.

then discusses the beneficiary's work with the study of the retention mechanism of High Performance Liquid Chromatography (HPLC). The beneficiary "used gas phase Xenon NMR to prove that non-polar solvents interact more than polar solvents with the surface of the column material." Dr. characterizes the article reporting these results as a "milestone publication" in chromatography, the most important instrumental technique in the pharmaceutical industry. explains that the chromatography community appreciated the beneficiary's results because this area of research is "underdeveloped." While the beneficiary was continuing in this area as of the date of filing, he had yet to publish any additional results.

Finally discusses the beneficiary's "discovery of antifreeze mechanisms including the function, structure, molecular recognition, interaction and dynamics involved in the antifreeze process." explains that this research will eventually result in the discovery of more efficient antifreeze materials for biomedical research. While speculates as to the future benefits of this work, it does not appear that the beneficiary had published or presented the results of this work as of the date of filing.

Director of the petitioner's materials research partnership with Caltech, discusses his collaboration with the beneficiary. This work, however, had yet to be published as of the date of filing.

, Chair of the Department of Pharmaceutical Chemistry at the Bombay College of Pharmacy, asserts that the beneficiary collaborate oratory while in India and lists the publications that resulted from this collaboration. does not, however, explain how the beneficiary's research in India influenced pharmaceutical chemistry. Rather discusses the significance of the beneficiary's work at the petitioning university, discussed above. For example, he asserts that the beneficiary's use of spin labeling to achieve a chemically bonded spin labeled anticancer drug produced a new drug that "has already shown greater anticancer activity than the parent drug." The record, however, lacks evidence that the pharmaceutical industry has expressed an interest in the beneficiary's new drug.

, Head of Core Competence Coloration at Ciba Specialty Chemicals, discusses the beneficiary's work in the Analytical Development Laboratory of that company. asserts that the beneficiary was working towards his Ph.D. at the time and that Ciba "benefited from his progress in gaining an expertise in NMR (Nuclear Magnetic Resonance) spectroscopy, and other analytical instruments, which ultimately led to quality output from the analytical development laboratory in terms of structure elucidation and characterization of our novel molecules." While this letter establishes that the beneficiary advanced the research goals of his employer, it does not establish that the beneficiary's contributions at Ciba garnered him international recognition as an outstanding researcher.

██████████ of Nagaoka University in Japan asserts that he has “known of the [the beneficiary’s] scientific prowess since 2000 when I came across his work at the Analytical Development Laboratory at Ciba Specialty Chemicals.” ██████████ subsequently asserts that he collaborated with the beneficiary at Ciba on UV absorbents and fasteners. ██████████ confirms that he continues to communicate about their field with the beneficiary. This letter does not establish that the beneficiary’s work at Ciba has had an influence in the field beyond his colleagues at that company.

██████████, Vice Dean of the School of Chemistry and Materials Science at Shaanxi Normal University, asserts that he has “known of” the beneficiary’s work since early 2006 but fails to explain how he became aware of the beneficiary’s work other than to reference his “personal observations of [the beneficiary’s] work.” ██████████ asserts that the beneficiary “has developed a novel method” to estimate the number of drug molecules in a single micelle by using relaxation NMR diffusion and NMR techniques. ██████████ further asserts that the beneficiary’s “original synthesis of spin labeling to achieve a chemically bonded spin labeled anticancer drug is a major achievement in the search of finding more potent anti-cancer drugs.” While ██████████ asserts that his own work in a similar area is the “major reason” why he is interested in the beneficiary’s work, ██████████ does not assert that he has adopted any of the beneficiary’s techniques in his own laboratory.

██████████ an assistant professor at the University of Debrecen in Hungary, asserts that he has “followed and reviewed [the beneficiary’s] research since he became a postdoctoral fellow” at the petitioning university. ██████████ also asserts, however, that he was “very much interested” in the beneficiary’s previous work with walnut shell oil. ██████████ does not explain how he first learned of the beneficiary’s work. ██████████ explains that the beneficiary’s work with chromatography provides “a better understanding on the role of polarity and salvation behavior of solvents in separation science.” ██████████ speculates that the beneficiary’s work estimating the number of drug molecules in a micelle “will hold the key to the future development of drug delivery mechanisms using polymeric micelles.” Finally, ██████████ asserts that his own work involves capillary gel electrophoresis, a process similar to chromatography, and that the beneficiary’s work provides “a new avenue to study the gel (a cross-linked agarose polymer) used in electrophoresis.” ██████████ further explains that his laboratory “can use similar NMR techniques” proposed by the beneficiary. ██████████ does not assert that he has already applied or otherwise utilized the beneficiary’s results in his own work and there is no evidence that he has authored published journal articles citing the beneficiary’s work.

The petitioner did submit letters from representatives of pharmaceutical companies. ██████████ a general manager of chemistry research and design at ██████████ speculates that the beneficiary’s new theories and technologies “will have a considerable and revolutionary impact on new commercial cancer drugs.” ██████████ does not, however, assert that ██████████ is pursuing the beneficiary’s theories and technologies. Similarly, ██████████ Vice President of Business Planning and Administration for ██████████ discusses the importance of the beneficiary’s area of research but fails to explain how the beneficiary’s findings have already impacted pharmaceutical research. ██████████ does not assert that ██████████ is pursuing the beneficiary’s theories and technologies. Finally, ██████████ an executive, does not explain his scientific

credentials and it is unclear whether he is an expert in the beneficiary's field or whether his expertise is more limited to management.

While the beneficiary's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. The record does not establish that the beneficiary's contributions are consistent with a researcher who has attained international recognition as outstanding. Thus, the petitioner has not established that the beneficiary meets this criterion.

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

The petitioner submitted evidence that the beneficiary has authored six articles published as of the date of filing. The petitioner also submitted evidence of several conference presentations. The director concluded that the beneficiary's publication record and minimal citation was insufficient to meet this criterion.

On appeal, counsel asserts that the director improperly required evidence that the beneficiary's publication record established his international recognition as outstanding, whereas the regulations provide that it is meeting two criteria that establishes eligibility. Counsel further asserts that the number of citations, given the recent publication of the articles, and the "international importance" of the beneficiary's publications overcome the director's "disingenuous" position that authorship of published articles is inherent to the field of research.

As stated above, the regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. 56 Fed. Reg. at 30705. Thus, the evidence submitted to meet an individual criterion must be in some way indicative of or consistent with international recognition. The implication of counsel's assertion on appeal is that two "accomplishments" inherent to the field are any more indicative of international recognition than one such accomplishment. We find such an implication untenable as it would not limit this classification to those researchers who truly stand apart in the academic community through eminence and distinction based on international recognition. *Id.*

As stated by the director, the Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization

considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career."

Moreover, for biological scientists, the Department of Labor's Occupational Outlook Handbook 151 (2006-2007 ed.) reflects that a "solid record of published research is essential in obtaining a permanent position involving basic research." The handbook also provides that university faculty spend a significant amount of their time doing research and often publish their findings. *Id.* at 224. In addition, the handbook acknowledges that faculty face "the pressure to do research and publish their findings." *Id.* at 225. This information reinforces our position that publication of scholarly articles is not automatically evidence indicative of international recognition; we must consider the research community's reaction to those articles.

We are not persuaded that the beneficiary's articles have been garnered a "large number of citations" as claimed by counsel on appeal. The record reflects that four articles have cited the beneficiary's article on walnut shell oil and a bibliography of current literature in mass spectrometry lists this article. Finally, the same article is listed as one of the top 25 articles in that journal during 2004. We find four citations to be minimal. Moreover, none of the beneficiary's articles on drug development have been cited at all. We will not presume that, given sufficient time, the beneficiary will become frequently or even moderately cited. The petitioner must establish the beneficiary's eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. Any future citations would have to support a future petition.

The petitioner has shown that the beneficiary is a talented and prolific researcher, who has won the respect of his collaborators, employers, and mentors, while securing some degree of international exposure for his work. The record, however, stops short of elevating the beneficiary to the level of an alien who is internationally recognized as an outstanding researcher or professor. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.