

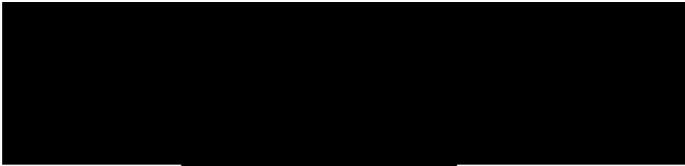
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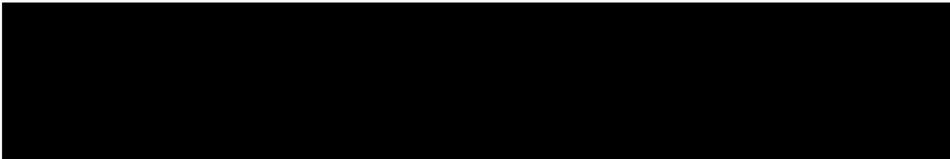
Petitioner:

Beneficiary:



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 manufacturer of information storage 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 permanently in the United States as a principal engineer – process development. The director 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 and resubmits previously submitted evidence. For the reasons discussed below, the petitioner has not overcome the director's basis of denial.

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.

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 January 5, 2007 to classify the beneficiary as an outstanding researcher in the field of magnetic data storage technology. 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. On appeal, counsel cites a June 15, 1995 letter from \_\_\_\_\_ Chief of the Immigrant Branch at the legacy Immigration and Naturalization Service (INS) Office of Adjudications that states:

The listed types of evidence serve as guidelines for the adjudicator and the petitioner. The ultimate determination, however, is whether, through the evidence submitted, the petitioner establishes that the beneficiary is a researcher or professor who is recognized internationally as outstanding. The beneficiary may well be stronger in one evidentiary area than in another.

Significantly, while not quoted by counsel, \_\_\_\_\_ continued:

Nevertheless, the overall impression should be that the alien fits the classification. Mere presentation of evidence which relates to two of the listed criteria does not guarantee an approval. The evidence must be weighed and evaluated.

Regardless, the letter was written as part of correspondence between \_\_\_\_\_ and an attorney. Letters written by the Office of Adjudications do not constitute official Citizenship and Immigration Services (CIS) policy and will not be considered as such in the adjudication of petitions or applications.

Although the letter may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer's analysis of an issue. *See* Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (Dec. 7, 2000).

Rather, the AAO is bound by the Act, agency regulations, precedent decisions of the agency and published decisions from the circuit court of appeals from whatever circuit that the action arose. *See N.L.R.B. v. Ashkenazy Property Management Corp.*, 817 F.2d 74, 75 (9<sup>th</sup> Cir. 1987)(administrative agencies are not free to refuse to follow precedent in cases originating within the circuit); *R.L. Inv. Ltd. Partners v. INS*, 86 F. Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd* 273 F.3d 874 (9<sup>th</sup> Cir. 2001)(unpublished agency decisions and agency legal memoranda are not binding under the APA, even when they are published in private publications or widely circulated). Even CIS internal memoranda do not establish judicially enforceable rights. *See Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5<sup>th</sup> Cir. 2000)(An agency's internal guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely.")

It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet the regulatory 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. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991)(enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)). The petitioner claims to have satisfied the following criteria.<sup>1</sup>

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

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 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).

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<sup>1</sup> 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.

Counsel initially asserted that the beneficiary's award from his employer, his scholarship and his patent serve to meet this criterion. The petitioner submitted the beneficiary's December 22, 2003 Third Place Technology Research Center Award for the invention of an evaluation method for damaged GMR-device from Hitachi. The translation of the award is not certified as required under 8 C.F.R. § 103.2(b)(3). The beneficiary was employed by Hitachi from April 2003 through September 2005. The petitioner also submitted certification that the beneficiary obtained his Masters and Doctorate degrees from the University of Tokyo and received a scholarship from the Japanese Ministry of Education, Culture, Sports, Science and Technology during the full period of his study there totaling 15,396,500 Yen. Finally, the petitioner submitted a Japanese patent listing the beneficiary as one of three inventors.

In his request for additional evidence, the director stated that scholarships, available only to students, and a patent, an intellectual property right, cannot serve to meet this criterion. The director requested additional evidence as to the significance of the beneficiary's awards. In response, counsel asserts that each year, Hitachi awards the Technology Research Center Award to six of its 400,000 employees. Counsel then discusses the distinguished reputation of Hitachi. The petitioner submitted materials about Hitachi, none of which discuss the company's Technology Research Center Award. Counsel continued to assert that the beneficiary's scholarship meets this criterion but provides no additional information about the scholarship.

The director concluded that the record contained no information about the significance of the in-house awards issued by Hitachi. The director then reiterated that scholarships are limited to students and designed to fund education, not recognize past achievements, and that patents merely demonstrate the originality of the innovation patented.

On appeal, counsel asserts that thousands of candidates in Asia competed for the petitioner's scholarship and that he is the one researcher from Korea to receive the scholarship. Counsel also reiterates that only six of Hitachi's 400,000 employees receive the Hitachi Technology Research Center Award. We uphold the director's conclusion that the beneficiary's award, scholarship and patent cannot meet this criterion for the reasons stated by the director.

An in-house award, even from a prestigious employer, cannot serve to meet this criterion. While counsel has asserted that Hitachi employs 400,000 workers and issues the award annually to just six employees, there is no evidence to support this assertion in the record. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Regardless, an award for which the most experienced and renowned members of the field, regardless of employer, cannot complete cannot be considered a major award indicative of international recognition.

Similarly, counsel's assertion that the beneficiary was the only Korean researcher to receive a scholarship from the Japanese Ministry of Education, Culture, Sports, Science and Technology is not supported by the record. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Regardless, scholarships are generally based on past *academic* achievement, not for accomplishments in a field of endeavor. While 8 C.F.R. § 204.5(i)(3)(i)(A) references outstanding achievements in one's academic field, 8 C.F.R. § 204.5(i)(2) defines "academic field" as "a body of specialized knowledge offered for study." The definition does not include typical bases for scholarships, such as grade point average and class standing. It remains, academic study is not a field of endeavor, academic or otherwise. Rather, academic study is training for a future career in an academic field. As such, scholarships in recognition of academic achievement, such as grade point average, are insufficient. Scholarships are simply not evidence of international recognition in the field. Rather, they represent high academic achievements in comparison with his fellow students.

As stated by the director, patents are issued to the inventors of original processes or devices that are useful. 35 USC § 101; *see also* [www.uspto.gov/web/office/pac/doc/general/index.html](http://www.uspto.gov/web/office/pac/doc/general/index.html) (accessed March 27, 2007). No evaluation as to the significance of the invention is made.<sup>2</sup> It is a property right, not an award for excellence.

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

Counsel initially asserted that the articles citing the beneficiary's work serve to meet this criterion. In his request for additional evidence, the director stated that the articles were not primarily "about" the beneficiary's work. In response, counsel quotes from several of the citations and references a "memorandum" from Lawrence Weinig, Acting Assistant Commissioner of legacy INS. The "memorandum" referenced by counsel is actually a July 30, 1992 *correspondence* memorandum from Mr. Weinig to the then Director of the Nebraska Service Center, James M. Bailey. Mr. Weinig issued his correspondence memorandum in response to an inquiry from [REDACTED] and makes clear that he is discussing his personal inclinations. Moreover, in contrast to official policy memoranda issued to the field, correspondence memoranda issued to a single individual do not constitute official CIS policy

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The U.S. Patent and Trade Office (USPTO) interprets "useful" as requiring that the innovation have "a useful purpose" and be operative. *See* [www.uspto.gov/web/office/pac/doc/general/index.html](http://www.uspto.gov/web/office/pac/doc/general/index.html). While the United States requires that the invention be "useful," the Merriam-Webster Dictionary New Edition 795 (2004) defines "useful" as "capable of being put to use: advantageous." The same dictionary defines "excellence" as "the quality of being excellent," defined as "very good of its kind: first-class." *Id.* at 249. Thus, recognition of the development of a novel and useful process is not a competitive award for excellence in the field.

and will not be considered as such in the adjudication of petitions or applications. Although the correspondence may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer's analysis of an issue. *See* Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).<sup>3</sup> Finally, while Mr. Weinig states that "entries (particularly a goodly number) in a field . . . would more than likely be solid pieces of evidence," he does not identify the criterion to which this evidence would relate.

The director concluded that the petitioner has not submitted evidence of a "goodly number" of citations and that, regardless of the significance of citations, they cannot serve to meet *this* criterion as they do not constitute published material primarily about the beneficiary.

On appeal, counsel reiterates that the beneficiary has been cited but does not address the director's specific concerns.

We do not contest that a "goodly number" of citations is solid evidence worth consideration. Like the director, however, we find that this evidence is of significance to one of the other criteria for which Mr. [REDACTED] expressed concern; namely, authorship of scholarly articles. Citations are also relevant to claims of original contributions.

We concur with the director that citations of the beneficiary's work cannot serve to meet this criterion because the articles citing the beneficiary as one of numerous references are not "about" the beneficiary's work. We will consider the citations in more detail below.

*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.*

Counsel did not initially claim that the beneficiary meets this criterion and the petitioner initially submitted no evidence relating to it. In response to the director's request for additional evidence, counsel asserted that the beneficiary has "on a number of occasions" served as a judge of the work of others. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The petitioner submitted a letter from [REDACTED], American Institute of Physics Coordinator, confirming that the beneficiary completed a peer review of a manuscript for the *Journal of Applied Physics*.

The director noted that scientific journals are peer-reviewed and concluded that a single review did not set the beneficiary apart from other researchers. On appeal, counsel reiterates that the beneficiary reviewed the above manuscript without addressing the director's specific concerns.

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<sup>3</sup> Although this memorandum principally addresses letters from the Office of Adjudications to the public, the memorandum specifies that letters written by any CIS employee do not constitute official CIS policy.

We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. 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 articles, received independent requests from a substantial number of journals, 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.*

Obviously, 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 the beneficiary 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 that all original research is, by definition, "outstanding" is to weaken 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 holds a patent for his invention establishes that he is an inventor of an original innovation, but the very existence of the patent does not show that the beneficiary's invention is more significant than those of others in his field. 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.

While we will consider the letters in detail below, we note at the outset 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)).

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.

Moreover, we interpret international recognition as requiring recognition beyond one's immediate circle of colleagues even if those colleagues happen to reside in different countries. The mere act of having studied and performed research in more than one country is not presumptive evidence of international recognition.

The beneficiary obtained his undergraduate degree from Kookmin University in Korea and his Master's Degree and Ph.D. from the University of Tokyo under the direction of [REDACTED]. While studying for his Ph.D., the beneficiary spent nearly two years as a visiting scholar at the University of Illinois at Urbana-Champaign (UIUC) under the direction of [REDACTED]. After receiving his Ph.D. in 2003, the beneficiary began working at Hitachi. In October 2005, the beneficiary joined the petitioning company.

The petitioner's research has focused on giant magnetic resistance (GMR) and tunneling magnetoresistive (TMR) sensor for high density recording technology. [REDACTED], a professor at Kookmin University, explains that hard disk drives rely on magnetic heads comprised of thin film multilayers, which consist of tens of magnetic/non-magnetic layers and can be as thin as only a few atomic layers. Therefore, explains [REDACTED] the fabrication of TMR sensors requires an understanding of monolayer thickness control, which in turn requires an understanding of crystal growth mechanisms. [REDACTED] while Director of the Center for Inter-University Research Facility at Kookmin University while the beneficiary was an undergraduate student there, asserts that he first met the beneficiary years later at a conference while the beneficiary was working for Hitachi.

[REDACTED] asserts that the beneficiary's research at the University of Tokyo involved the fabrication of GMR with surfactant epitaxy and that this work led to improved magnetic sensors with high sensitivity.

provides some specifics of this work and concludes that the beneficiary “is a knowledgeable and talented researcher with excellent *potential* benefits to the magnetism research industry.” (Emphasis added.) , another professor at the University of Tokyo and one of the beneficiary’s coauthors, provides similar information.

discusses the beneficiary’s surface studies at UIUC. Specifically, the beneficiary “carried out the first studies demonstrating the existence of long jumps of atoms diffusing over a two-dimensional surface, in his case, the (110) plane of tungsten.” explains that the experience and skills the beneficiary gained at UIUC “will contribute significantly to the benefit of his employer.”

Senior Director of the San Jose Research Center for Hitachi Global Storage Technologies, asserts that he interviewed the beneficiary for the job at Hitachi and hired him to work in magnetic sensors. The beneficiary worked on understanding the failure mechanisms of GMR sensors and introduced several magnetic energy constants and classified each case based on high magnetic field transfer curve results. notes that this work was published. praises the beneficiary’s capabilities in the field and concludes that he is “a great asset to the international magnetic data storage community.”

The beneficiary’s potential, experience and skill are not sufficient in and of themselves to establish that the beneficiary has already made contributions that are internationally recognized as outstanding. The Department of Labor’s Occupational Outlook Handbook 134-35 (2006-2007 ed.) provides that computer hardware engineers research, design, develop, test, and oversee the installation of computer hardware and supervise the manufacture and installation of such hardware. The handbook notes that “the rapid advances in computer technology are largely a result of the research, development, and design efforts of computer hardware engineers.” *Id.* at 135. None of the above authors explain how the beneficiary has impacted the field beyond the constant improvements to existing technology expected of a competent research and development engineer.

**In response to the director’s request for additional evidence, the petitioner submitted additional letters.** , the petitioner’s Vice President of Device Design and Technology, asserts that the beneficiary has contributed to the production of several volume high-capacity hard drives. It is not clear from ’s letter whether the beneficiary had contributed to these drives prior to the date of filing. **The petitioner must establish the beneficiary’s eligibility as of that date.** See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Regardless, as stated above, it is expected of a research and development engineer to contribute to the development of new products for his employer. Without evidence of how these new products constitute a significant improvement in the field, we cannot conclude that these contributions can serve to meet this criterion. The record contains no evidence that the petitioner has been recognized in the trade or general media for the significance of these new products and that the beneficiary is primarily responsible for their development.

The remaining letters are from more independent references. [REDACTED], a professor at Tohoku University in Japan, asserts that he met the beneficiary while the beneficiary was at the University of Tokyo. [REDACTED] explains that he has been following the beneficiary's research since that time and reiterates much of the information discussed above. [REDACTED] asserts that in developing a new model, the beneficiary "suggested optimal design condition[s] for each magnetic layer, realizing stable magnetic sensor head[s] under various stress condition[s]." [REDACTED] concludes that there are "very few experts that understand the design and fabrication of magnetic readers and their integration into [hard drive] products as [the beneficiary] does." [REDACTED] does not assert, however, that the beneficiary's model has been widely adopted or provide other examples of how the beneficiary has impacted the field.

[REDACTED] a staff engineer with Seagate Technology, asserts that he is familiar with the beneficiary's work based on their common research interests. [REDACTED] asserts that the beneficiary discovered that the surface of Fe/Cr(100) multilayers with Pb is flatter and the interfaces are sharper than Fe/Cr(100) without Pb, establishing Pb's effectiveness as a surfactant. [REDACTED] explains that this discovery is applicable to magnetic tunneling junction based systems as well as any other magnetic storage device, but does not provide examples of how this discovery has already impacted the field.

[REDACTED] further asserts that the beneficiary's study of the influence of Ti and Co seed layers on the structural and magnetic properties of Co/Cu(100) multilayers demonstrated that by depositing Ti and Co seed layers, the crystal orientation of Cu buffers and Co/Cu multilayers were dramatically changed. This study suggested that the adhesion energy between seed layer and substrate was important. As noted by [REDACTED], the beneficiary presented and published these results. [REDACTED] does not, however, discuss the impact of this work.

In addition, [REDACTED] explains that the beneficiary discovered the failure mechanism of GMR sensors when mechanical stress is applied to the sensors, explaining amplitude degradation and amplitude reversion from the view point of pin layer canting and pin layer rotation. To get his results, the beneficiary introduced several magnetic energy constants. [REDACTED] does not assert that other researchers have now adopted these constants.

While [REDACTED] concludes that the beneficiary produces high quality work, has a deep understanding of physics and materials and is a great asset to the international engineering community, he does not claim to have been personally influenced by the beneficiary's work.

[REDACTED] a researcher with IBM, asserts that the beneficiary developed surface epitaxy, which controls the interfacial structure from island growth mode to layer-by-layer growth mode, producing sharp interface. [REDACTED] explains that this method improves the uniformity of magnetic layers. [REDACTED] continues: "As a result of that, [REDACTED] which occupies [the] number one share in equipments for manufacturing storage devices, introduced this method and embedded surfactant-function in its equipment." [REDACTED], however, does not work for [REDACTED] and does not list this company as a past employer on his curriculum vitae. He provides no explanation as to how he has first

hand knowledge of Canon-Anelva's use of the beneficiary's method. The record contains no letters from officials at Canon-Anelva confirming their use of the beneficiary's method and explaining the impact of adopting this method.

██████████ a professor at the University of York and the President of the Institute of Electrical and Electronic Engineers (IEEE), acknowledges that the petitioning company has funded his work. He praises the beneficiary's education and employment with the petitioner. We are not persuaded that the beneficiary's education and place of employment are sufficient bases to conclude that he has international recognition. We note that private employers seeking to classify an alien as an outstanding researcher must demonstrate that it has achieved documented accomplishments in the beneficiary's field. 8 C.F.R. § 204.5(i)(3)(iii)(C). This requirement is separate from the evidentiary requirements for demonstrating that the beneficiary is internationally recognized, set forth at 8 C.F.R. § 204.5(i)(3)(i). Thus, the petitioner's reputation is not presumptive evidence of the beneficiary's eligibility under 8 C.F.R. § 204.5(i)(3)(i).

██████████ further asserts that the beneficiary's published work is "at the forefront of nanotechnology" and, as it concerns the atomic level, requires a higher level of expertise than is expected from a Ph.D. recipient. ██████████ does not, however, explain how the beneficiary's presented and published work has impacted the field.

The final letter from ██████████, Senior Director of Hard Disk Drive Core Technology at Samsung Information System America, provides similar general praise without explaining specifically how the field has been impacted by the beneficiary's work.

Several of the references note that the beneficiary has presented his work at prestigious conferences and has published his work in prestigious journals. The petitioner submitted the following citation evidence:

1. The beneficiary's article on Pb as a surfactant in the growth of giant magnetoresistance in the *Journal of Magnetism and Magnetic Materials* had been cited once by a coauthor.
2. The beneficiary's article on atomic jumps in surface self-diffusion in *Physical Review B* has been cited three times, twice by a coauthor and the third time by another researcher at UIUC who was also a coauthor of ██████████. Counsel notes that one of these cites references the beneficiary's work as "a good start in looking at the diffusion of iridium." We note that this citation appears in an article by ██████████ citing his own collaboration with the beneficiary. Thus, this citation is not an independent evaluation of the usefulness of the beneficiary's work.
3. The beneficiary's article on lattice steps in *Physical Review B* was cited three times, at least twice by independent research teams. Neither independent article singles out the beneficiary's work as significant among the other work cited.

4. The beneficiary's article on non-nearest-neighbor jumps in 2D diffusion in *Physical Review Letters* was cited 17 times. The petitioner provided a list of 11 of those citations, three of which are by a coauthor or the beneficiary himself. None of the citations single out the beneficiary's work as particularly significant in comparison with other research in the area. For example, in his extensive review of the field, [REDACTED] cites the beneficiary along with five other articles for the proposition that the diffusion of adparticles has been directly observed on the atomic scale in a large number of cases by STM for various adsorbates.

In summary, three of the beneficiary's articles have been minimally cited, mostly by his coauthors. While self-citation is a normal and expected process, it cannot establish the beneficiary's recognition beyond his immediate circle of colleagues. The beneficiary has authored one article that has garnered 17 citations, at least three of which are self-citations by the beneficiary or a coauthor. We are not persuaded that this citation record is indicative of contributions recognized internationally as outstanding.

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 or is pursued by private industry. Any research, in order to be accepted for graduation, publication or funding (including by a private company in its own laboratory), must offer new and useful information to the pool of knowledge or practical advancements in existing technology. The record does not establish that the beneficiary's contributions are internationally recognized as outstanding.

*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 11 published articles and additional abstracts. He presented his work at conferences. The director considered the beneficiary's publication record and citations and concluded that he did not meet this criterion.

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." This report reinforces our position that publication of scholarly articles is not automatically evidence of international recognition; we must consider the research community's reaction to those articles.

We acknowledge the assertion that the beneficiary's publication record is significant for "a man of his age and given his background of working in industry." The issue is whether the evidence is indicative of international recognition as outstanding, not how the beneficiary compares with other researchers "his age." The fact that the beneficiary is working in industry is a valid consideration. That said, the beneficiary has only authored one article during his time working in industry. The remainder of his publication record dates to his time as a student. Moreover, we concur with the director that the beneficiary's citation record is not consistent with international recognition as outstanding. Thus, we uphold the director's finding that the beneficiary does not meet this criterion.

Finally, we acknowledge that counsel has stressed the petitioner's reputation and the role the beneficiary performs for the petitioner. As noted by the director, the regulation at 8 C.F.R. § 204.5(i)(3)(i) does not include a criterion relating to the role the beneficiary performs for the petitioner. *Cf.* 8 C.F.R. § 204.5(h)(3)(viii)(allowing evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation for classification as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act). As also noted by the director, the same regulation does not expressly allow for the submission of "comparable" evidence. *Cf.* 8 C.F.R. § 204.5(h)(4)(allowing for the submission of "comparable evidence" for aliens of extraordinary ability pursuant to section 203(b)(1)(A) of the Act.). The director nevertheless concluded that the beneficiary's role as a principal engineer was not leading or critical for the petitioner as a whole. We have already considered the beneficiary's alleged contributions to his employer above. As the nature of the beneficiary's position with the petitioner is not an evidentiary criterion for the classification sought, we need not consider the nature of this position.

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.