U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAY 22 2009

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IN RE: Petitioner: [redacted]
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:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Mari Johnson

John F. Grissom
Acting 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[1] is a manufacturer of chemical instrumentation. 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 chemical engineer. 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. The director also determined that the petitioner had not demonstrated that it employed at least three full-time researchers in addition to the beneficiary.

On appeal, counsel submits a brief and additional evidence. We uphold the director's decision for the reasons discussed below.

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

[1] As will be discussed at the end of this decision, the record does not establish which company filed the instant petition.

> (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.

Qualifying Employer

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:

> (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 be determined in this matter is whether the petitioner has established that it employed at least three other persons full-time in research positions as of the petition's filing date of July 31, 2007, the date as of which the petitioner must establish eligibility. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

In response to the director's request for evidence that the petitioner employs at least three persons full-time in research positions, the petitioner submitted the business cards for [redacted], a senior scientist, and [redacted], an associate scientist. The petitioner also submitted an organizational chart for Rheodyne dated December 20, 2007. This chart lists [redacted] as the petitioner's engineering manager, reporting directly to [redacted] Rheodyne's Director of Engineering. Mr. [redacted] also oversees a Rheodyne engineering manager, a central supervisor and a lab manager. The employees under [redacted] are not listed.

The director found that the information presented was not adequate to demonstrate that the petitioner employed at least three full-time researchers in addition to the beneficiary.

On appeal, counsel asserts:

> There is in fact one additional full time researcher within the same business unit (Rheodyne) who is based at the Petitioner's sister facility in Rohnert Park, California: [redacted] – R&D. All four of these full time researchers were employed by the business unit at the time the Immigrant Petition was filed.

The petitioner submits a new organizational chart for the Rheodyne Engineering Department updated August 26, 2008. This chart lists the employees under [redacted] including [redacted] under product development and the beneficiary and [redacted] under advanced development. The new organizational chart, unlike the previous chart, lists [redacted] as a senior scientist, research and development under "Advanced Development," reporting directly to [redacted]. Neither this position nor [redacted] appears on the previous chart.

The petitioner is alleged to be a subsidiary of Rheodyne, which is a subsidiary of IDEX.[2] The record does not establish that [redacted] works for petitioning institute. Even if he does, the record does not establish that he works for the same department or division where the beneficiary works. Finally, 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). The record contains no evidence of [redacted] employment for the petitioner or Rheodyne as of the filing date. Thus, we cannot consider [redacted] as one of the three full-time researchers. As such, we must consider whether the beneficiary himself can be considered one of the three full-time researchers.

Section 203(b)(1)(B)(iii)(III) of the Act, 8 U.S.C. § 1153(b)(1)(B)(iii)(III), directs that an alien may qualify as a priority worker based on an offer of employment from a private research department, division, or institute, only "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 requirement of three full-time research employees is also set forth in 8 C.F.R. § 204.5(i)(3)(C)(iii). The alien beneficiary is currently employed in a nonimmigrant classification.

Neither the statute nor the legislative history clearly indicates whether the alien beneficiary can himself be the third full time research employee for purposes of a private entity's eligibility to file a visa petition under § 203(b)(1)(B). H.Rep. 101-723(I), 1990 USCCAN 6710, 6739 indicates that a private employer is eligible to file this petition "if there are at least three persons employed full-time in research." Like the statute itself, however, the legislative history neither endorses nor forecloses counting the beneficiary as one of the three full-time researchers. Nor does the issue appear to have arisen during the rulemaking process. *See Employment-Based Immigrants,* 56 Fed. Reg. 60,897 (Nov. 29, 1991) (final rule) and 56 Fed. Reg. 30,703 (July 5, 1991) (proposed rule).

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[2] If the actual petitioner is IDEX, the parent company of the U.S. employer, the petition is not being filed by the prospective U.S. employer. For purposes of whether the prospective U.S. employer has three full-time researchers, we will use "petitioner" to mean the U.S. employer.

That said, it is worth noting that section 203(b)(1)(B)(iii)(III) of the Act, 8 U.S.C. § 1153(b)(1)(B)(iii)(III), requires that "the alien seeks to enter the United States" to work for "a department, division, or institute of a private employer" that "employs at least 3 persons full-time in research activities." The phrases "seeks to enter" and "employs at least 3 persons" are both in the present tense. If an alien researcher is currently outside the United States, and intends to enter the United States with an immigrant visa, then the prospective employer must already employ at least three full-time researchers in the relevant department, division, or institute. In such a case, the three researchers obviously do not include the alien. Thus, the statutory construction demonstrates that the alien seeks to become the fourth researcher in a company that already employs three ***other*** researchers. In instances where the alien is already in the United States as a nonimmigrant, and the alien has joined ***two*** other researchers to become the ***third*** researcher, then the employer does not satisfy the statutory construction.

There is no regulatory or statutory justification for the arbitrary assumption that a company too small to petition for a worker who is still overseas can, nevertheless, petition for that same worker if the worker is already in the United States as a nonimmigrant. Therefore, we concur with the director's finding that the position held by the alien beneficiary shall not be counted as one of the three persons involved full-time in research activities. The AAO concludes that, even if the alien beneficiary is lawfully employed in a nonimmigrant classification, the petitioner may not count the alien beneficiary toward the requirement of "3 persons [employed] full-time in research activities." The apparent purpose of 203(b)(1)(B)(iii)(III) is to limit this immigrant visa classification to well-established research institutes. If the – by definition temporary – employment of a nonimmigrant alien can be counted toward this requirement then it would appear that hiring three nonimmigrant aliens could make all three of them eligible. This result would, with little effort, render the three employees requirement meaningless.[3]

In light of the above, the petitioner has not overcome the director's conclusion that the petitioner has not established that, as of the date of filing, it employed the necessary three full-time researchers. On this basis alone, the petition cannot be approved.

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

[3] Granted, for at least some nonimmigrant classifications, the position itself need not be temporary, but the alien must be coming temporarily to the United States.

> 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 July 31, 2007 to classify the beneficiary as an outstanding researcher in the field of chemical engineering. 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. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. 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.[4]

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

Initially, the petitioner asserted that the beneficiary meets this criterion because his "outstanding research and scholarship were recognized throughout his academic career at Sichuan University." The petitioner submits evidence of the beneficiary's Colby Scholarship, recognition as a Superior Graduate Student based on his grades and "outstanding ability," Bao Steel Fellowship identified as a "Student Award" and First Prize in the Superior Master's Degree. With the exception of the Bao Steel Fellowship, all of the above recognition was issued by Sichuan University.

The director requested evidence of the significance of the awards and the criteria used to select awardees. The response does not address this criterion. The director concluded that the petitioner had not submitted evidence of a major prize or award. Counsel does not contest this conclusion on appeal.

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

[4] 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.

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).

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)(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. In addition, it remains that the beneficiary only competed against other current students at the university, or possibly a larger pool of students for the Bao Steel student award. Similarly, student awards merely represent high academic achievements in comparison with the beneficiary's fellow students.

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

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

The petitioner initially submitted evidence that the beneficiary is a member of the American Institute of Chemical Engineers (AIChE). The director noted that AIChE appeared to be a professional association that is not exclusive and requested evidence of the institute's membership's criteria.

In response, the petitioner no longer asserted that AIChE can serve to meet this criterion. Rather, the petitioner asserts that the beneficiary meets this criterion because his application to attend the Gordon Research Conference was accepted. The petitioner submitted evidence of this acceptance which postdates the filing of the petition. The admission requirements are provided as follows:

> Each Conference operates relatively autonomously with each Conference Chair being completely responsible for the content and conduct of the meeting as well as the selection of discussion leaders and attendees. The primary criteria for attendance at a Conference are scientific accomplishment and, implicitly, the commitment to participate actively and meaningfully in the discussions. Gordon Research Conferences admits scientifically-qualified conferees of any sex, age, race, color and national origin.

The director concluded that the petitioner had not established that the beneficiary was a member of an association that limits its membership to those with outstanding achievements.

On appeal, counsel does not challenge the director's conclusion. The petitioner, however, submits a letter from [redacted] Chair of the Gordon Conference on Membranes: Materials and Processes, asserting that the Gordon Research Conferences limit attendance to individuals with outstanding achievements as part of a formal application process. While [redacted] asserts that he chose the 125 strongest applicants, he does not indicate how many applicants applied. Finally, [redacted] asserts that the "primary criteria for selection are past scientific accomplishments and future potential."

It has never been asserted that AIChE restricts membership to those with outstanding achievements and the record does not contain the institute's membership criteria. Thus, the beneficiary's membership in AIChE cannot serve to meet this criterion.

A Gordon Research Conference is not an association. Admission to attend such a conference is not a "membership." **The regulation at 8 C.F.R. § 204.5(i)(3)(i) does not permit the submission of** "comparable" evidence to meet a given criterion. Thus, the evidence submitted in response to the director's request for additional evidence does not sufficiently relate to this criterion. Finally, the beneficiary was admitted to the conference after the date of filing. The petitioner must establish his eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49. Thus, we cannot consider admission to this conference as evidence of the beneficiary's eligibility under this criterion, especially as of the date of filing.

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 submitted evidence that the beneficiary's Ph.D. advisor, [redacted], and the beneficiary's postdoctoral supervisor at the University of Minnesota, [redacted], passed on manuscript reviews that they had no time to complete to the beneficiary. In addition, the beneficiary was invited to review a manuscript for the *Journal of Applied Polymer Science.* In response to the director's request for additional evidence, the petitioner submitted evidence that, after the date of filing, the beneficiary was requested to review a manuscript for *Thin Solid Films*. [redacted] an associate editor for the journal, indicates that the journal receives 1,800 manuscripts per year. The Internet materials for the journal, provided by the petitioner, indicates that manuscripts are peer-reviewed by two reviewers. The editor makes the final decision whether to publish the manuscript. The Internet materials also encourage members of the field to participate as reviewers, promoting peer-review as a means to read the latest work in the field and contribute to the integrity of published research.

In addition to the above peer review, the petitioner also asserts that the correspondence between the beneficiary and a research team headed by [redacted] attempting to confirm his results meets this criterion. While the correspondence reflects that the research team forwarded several questions to the beneficiary in an attempt to duplicate his work, the record does not reflect that the beneficiary in any way judged their work.

The director concluded that the evidence submitted to meet this criterion was not indicative of the beneficiary's international recognition in the field. On appeal, counsel asserts that the beneficiary was asked to review one article every three months over a 15 month period that extends well beyond the filing date of the petition. Counsel continues to assert that the correspondence with [redacted] meets this criterion.

The record now contains five review requests that predate the filing of the petition. Two of the five requests were passed to the beneficiary from his Ph.D. advisor or postdoctoral supervisor. Being requested to review an article by one's own advisor or supervisor is not evidence of international recognition.

Regardless, 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 and, thus, is not indicative of or consistent with 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.

Finally, as stated above, the correspondence between the beneficiary and [redacted] does not suggest that the beneficiary judged the work of [redacted] Rather, this correspondence will be considered below in relation to the beneficiary's contributions to the field.

In light of the above, the petitioner has not established 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.

Furthermore, the regulations include a separate criterion for scholarly articles. 8 C.F.R. § 204.5(i)(3)(i)(F). Thus, the mere authorship of scholarly articles cannot serve as presumptive evidence to meet this criterion. To hold otherwise would render the regulatory requirement that a beneficiary meet at least two criteria meaningless.

The petitioner relies on several reference letters. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of international recognition. U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS 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; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS 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 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread 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 the most persuasive. 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.

The beneficiary received his Ph.D. from Tulane University in 2004. He then worked as a postdoctoral fellow at the University of Minnesota through 2006, when he joined the petitioner. Initially, the petitioner submitted a letter from a member of the beneficiary's dissertation review committee at Tulane University and a former colleague at Tulane University. In response to the director's request for additional evidence, the petitioner submitted letters from a recent coauthor, the beneficiary's Ph.D. advisor at Tulane University and a former Ph.D. student at the University of Minnesota who has coauthored articles with [redacted]. While we will consider the content of these

letters, they do not represent a widespread selection of references from beyond the beneficiary's close circle of colleagues.

the beneficiary's Ph.D. advisor, states that the beneficiary studied the effect of stress on diffusion through polymeric and nanocomposite membranes. [redacted] explains that this work is important for understanding the complicated process by which liquids penetrate polymers and resins. According to [redacted] the beneficiary's "out-of-equilibrium" approach was novel, published in distinguished journals, and encouraged other researchers to utilize the beneficiary's approach, which can explain and predict the permeation performance of a polymeric nanocomposite film.

[redacted] Chair of Tulane University's Department of Chemical and Biomolecular Engineering and a member of the beneficiary's dissertation review committee, explains that understanding mass transport and diffusion in nano-structured materials is important for drug delivery, gas separation, fuel cells and protective clothing. The complexity of the system, however, renders theoretic prediction difficult. [redacted] asserts that the beneficiary's original model successfully predicted the diffusion of chemicals through different polymer nano-composite materials.

[redacted], an assistant professor at Cornell University, asserts that he is providing an "independent evaluation," but acknowledges that he has known the beneficiary "since 2001 when we both worked at [the] Tulane Institute for Macromolecular Engineering and Science at Tulane University." [redacted] provides general praise, asserting that the beneficiary's work is interdisciplinary and important to several fields.

[redacted] a professor at West Virginia University, asserts that he became familiar with the beneficiary's work through the beneficiary's publications and is providing an assessment based on "a thorough review of [the beneficiary's] resume and a number of his publications in national or international journals as well as several personal conversations." [redacted]a subsequently acknowledges, however, that he has coauthored an article with the beneficiary.

[redacted] asserts, as do the references discussed above, that the beneficia successfully modeled the influence of deformations on the barrier properties of membranes. [redacted] further asserts that the beneficiary is one of the few in the world who has "mastered the state of the art formulism for nonequilibrium systems (Generic: General Equation for the NonEquilibrium Reversible-Irreversible Coupling)." According to [redacted], the beneficiary successfully applied Generic formulism to develop a set of models for the diffusion through nanocomposite polymeric membranes, improvements over existing simplified models. [redacted] asserts that the beneficiary's "theory provides insights into what likely happens in the system and the interaction between the polymer, the nanofillers and the penetrant," which is "essential to fully understand the application of nanocomposites."

Finally, [redacted] asserts that the beneficiary was the first to propose using lithography to study barrier membranes with impermeable flakes, which "became the model for follow-up research work done by [redacted] and [redacted]."

[redacted], an assistant professor at Harvey Mudd College, received her Ph.D. from the University of Minnesota and is a coauthor with [redacted] the beneficiary's supervisor there. Dr. also asserts that the beneficiary's work inspired the work by and Professor Bunge. She further asserts that she is "very interested to apply his research to my investigations" but does not indicate that she has successfully applied his models to her work with the permeability of skin.

As stated above, the record contains considerable correspondence between the beneficiary and [redacted] research team. [redacted] and her coauthor published an article on their work attempting to confirm or duplicate the beneficiary's predictions after the date of filing. Much of the correspondence relates to difficulties [redacted] team encountered in duplicating the beneficiary's work. Moreover, the abstract for [redacted] article indicates that they did not apply the beneficiary's predictive models as suggested by the beneficiary's references, but rather used their own numerical simulation software (their endnote 16) to mathematically model the experimental results reported by the beneficiary. On page 204, [redacted] team, noting that the beneficiary's results fall well below the lower estimate predicted by the resistance-in-series model, "raise questions about how much confidence should be placed in the results derived from this elegant, but difficult to prepare experimental system." A review of the entire correspondence and article does not support the claims that the beneficiary's nonequilibrium models are influential as this evidence does not address those models and ultimately questions reliance on the beneficiary's experimental results.

In response to the director's request for additional evidence, the petitioner also submitted evidence that the beneficiary's work has been cited by other research teams. Specifically, as of the date of filing in 2007, the beneficiary's 2005 article in the *Journal of Non-Newtonian Fluid Mechanics* had been cited five times and one other article had been cited twice. This citation evidence is not evidence that the beneficiary's models are widely influential as claimed.

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 work has been recognized internationally 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 has submitted copies of 11 articles published as of the date of filing, a book chapter and three poster presentations. The Department of Labor's Occupational Outlook Handbook, 2008-2009

(accessed at www.bls.gov/oco on May 21, 2009 and incorporated into the record of proceedings), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See* www.bls.gov/oco/ocos066.htm. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field.

For the reasons discussed above, we are not persuaded that the article by [redacted]'s team and the beneficiary's very minimal citation record suggests that the beneficiary's publication record sets him apart from other chemical engineering researchers.

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.

Beyond the decision of the director, the identity of the petitioning company is not entirely clear from the record. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petitioner is listed on the Form I-140 petition as "Systec LLC, A Unit of IDEX Corporation." The beneficiary works for Systec, LLC, located in Minnesota. The individual who signed the petition and the Form G-28 Notice of Entry of Appearance as Attorney or Representative, however, appears to be an employee of IDEX in California. If the petition was not filed by the U.S. employer seeking the beneficiary's services, the petition may be denied on that ground alone. 8 C.F.R. § 204.5(i)(1).

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.