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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

[redacted]

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: AUG 04 2010
LIN 09 192 51229

IN RE: Petitioner:
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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Mari Johnson

Perry Rhew
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 an academic institution. It seeks to classify the beneficiary as an outstanding professor 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 an assistant professor. 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 additional evidence. In her appellate brief, counsel asserts that the beneficiary's research "serves a crucial national interest." The national interest, however, is not the statutory standard in this matter.[1] Counsel also suggests that the denial demonstrates a bias by the Service Center against the alien's ethnicity. As we concur with the director's ultimate finding that the record does not establish the beneficiary's eligibility, an assumption that the director was biased is not necessary to explain the director's decision.

For the reasons discussed below, we uphold the director's ultimate conclusion that the petitioner has not established the beneficiary's eligibility for the classification sought. Specifically, when we simply "count" the evidence submitted, the petitioner has submitted qualifying evidence under two of the regulatory criteria as required, judging the work of others and scholarly articles pursuant to 8 C.F.R. §§ 204.5(i)(3)(i)(D) and (F). As explained in our final merits determination, however, much of the evidence that technically qualifies under these criteria reflects routine duties or accomplishments in the field that do not, as of the date of filing, set the beneficiary apart in the academic community through eminence and distinction based on international recognition.[2] *Employment-Based Immigrants,* 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)).

I. Law

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):
>
> * * *

[1] The Act contains a provision allowing for a waiver of the alien employment certification process in the national interest for aliens of exceptional ability and advanced degree professionals pursuant to section 203(b)(2) of the Act, a lesser classification than the one sought in this matter.

[2] The legal authority for this two-step analysis will be discussed at length below.

(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 July 9, 2009 to classify the beneficiary as an outstanding researcher in the field of pharmacology. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching or research experience in the field as of that date, and that the beneficiary's work has been recognized internationally within the field as outstanding. As the beneficiary only received his Ph.D. in May 2007, the petitioner must demonstrate that the beneficiary's research performed while

pursuing that degree has been recognized within the academic field as outstanding if that experience is to count towards his three years of research and/or teaching experience.

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 the following six criteria, of which the beneficiary must submit evidence qualifying under at least two.

> (A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;
>
> (B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;
>
> (C) Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;
>
> (D) Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field;
>
> (E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or
>
> (F) Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under a similar classification set forth at section 203(b)(1)(A) of the Act. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion. With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations.[3] Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner

[3] Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) (comparable to 8 C.F.R. § 204.5(i)(3)(i)(D)) and 8 C.F.R. § 204.5(h)(3)(vi) (comparable to 8 C.F.R. § 204.5(i)(3)(i)(F)).

failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

> If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination.[4] While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court's reasoning persuasive to the classification sought in this matter. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See* 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (recognizing the AAO's *de novo* authority).

II. Analysis

A. Evidentiary Criteria[5]

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

Initially, counsel asserted that the qualifying evidence being submitted under 8 C.F.R. § 204.5(i)(3)(i)(A) included inclusion in large biographic directories such as *Who's Who in America*, a postdoctoral fellowship, postdoctoral fellow and graduate student oral and poster presentation and abstract awards, travel awards, recognition from the University of Illinois at Chicago (UIC) where the

[4] The classification at issue in *Kazarian,* section 203(b)(1)(A) of the Act, requires qualifying evidence under three criteria whereas the classification at issue in this matter, section 203(b)(1)(B) of the Act, requires qualifying evidence under only two criteria.

[5] The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

beneficiary obtained his Ph.D., a 2004 second place poster award that does not appear by its name to be limited to students and recognition from Jordan University where the beneficiary received his baccalaureate. 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). These awards also appear on the beneficiary's self-serving curriculum vitae. Going on record without supporting documentary evidence, however, is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

The petitioner submitted evidence of the beneficiary's receipt of the following awards: (1) Travel Award to attend a Midwest Platelet Conference, (2) a 2008 Young Investigator Award at the same conference, (3) a 2006 Overall Oral Award from the National Student Research Forum, the University of Texas [redacted] (4) a second place 2007 Poster Presentation – Graduate Student/Resident Award at the Midwest Student Biomedical Research Forum, (5) several recognition certificates from the University Illinois [redacted] (6) a 2007 Graduate Student Travel Award from the American Society for Pharmacology and Experimental Therapeutics, (7) a Graduate Student Best Abstract Award from the American Society for Pharmacology and Experimental Therapeutics (ASPET), (8) a 2006 second place Poster Presentation – Graduate Students Category from the Great [redacted] 9) a 2006 [redacted] for "Outstanding Research Accomplishments as a Graduate Student."

In response to the director's request for additional evidence, the petitioner submitted evidence that the beneficiary received a $20,000 intramural research grant through the petitioner's grant program. Dr. [redacted], Chair of the petitioner's research committee, asserts that the awards are competitive and that 70 percent of the applications are denied. In addition, the petitioner submitted evidence that the beneficiary received a postdoctoral fellow poster research award from the Great Lakes Chapter of ASPET.

The director concluded that awards limited to students or novices in the field could not serve as qualifying evidence under 8 C.F.R. § 204.5(i)(3)(i)(A). The director further concluded that research funding is not a prize or award. On appeal, counsel asserts that the ASPET Great Lakes Chapter award was not limited to students or novices and that the criteria for the beneficiary's research grant "elevate" it above other research grants. Counsel reiterates that 70 percent of these grant applications are denied.

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. *Compare* 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).

While not addressed by the director, we note that the petitioner did not submit evidence of the beneficiary's inclusion in the biographic directories or evidence that these directories are more significant than vanity press publications. We concur with the director that the beneficiary's student awards are simply not major prizes or awards in the field. Rather, they represent high academic achievements in comparison with his fellow students. Moreover, the petitioner has not demonstrated that travel grants are available to all members of the field rather than being offered as financial assistance to novices interested in presenting their work.

On appeal, the petitioner submits a letter from [redacted] of [redacted], asserting that "all scientists with a PhD, who were not independent investigators at the time of the meeting were eligible to compete in the Postdoctoral Fellow Category for the Poster Presentation competition." Even assuming that the exclusion of independent investigators and those presenting their work orally did not exclude the most experienced members of the field, we cannot ignore that the award was issued by a regional chapter of a larger society. Ultimately, the record is absent evidence that this chapter award is a major prize or award in the field. For example, the record contains no evidence that the field recognizes the award through trade media coverage of the award selections outside of the chapter's own promotional material.

Regarding the beneficiary's research grants, research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant, even a competitive, prestigious grant, is principally designed to fund future research, and not to honor or recognize past achievement.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(A).

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

While counsel lists several association memberships, as does the beneficiary on his self-serving curriculum vitae, the record includes evidence of the beneficiary's membership in only the following associations: (1) the American Society of Hematology (ASH), Sigma Xi, ASPET and the UIC Activities Honorary Society. In response to the director's request for additional evidence, the petitioner submitted evidence that Sigma Xi requires "noteworthy achievement as an original investigator in a

field of pure or applied science" for membership. Significantly, however, the Sigma Xi bylaws provided by the petitioner indicate that noteworthy achievements must be evidenced by "publications, patents, written reports or a thesis or dissertation, which must be available to the Committee on Admission if requested."

The petitioner also submitted evidence that ASPET is open to any "qualified investigator who has conducted and published a meritorious original investigation in pharmacology" and that ASH is open to any person with a doctoral degree or equivalent with a continuous interest in any discipline important to hematology "as evidence by work in the field, original contributions, and attendance at meetings concerning hepatology."

The director concluded that the record did not demonstrate that "noteworthy achievement" as defined by Sigma Xi rises to the level of an outstanding achievement and that [redacted] and ASH did not appear to limit their memberships to those with outstanding achievements. On appeal, counsel notes that the director relied on a definition of "noteworthy" not included in the materials submitted and asserts that "noteworthy" and "outstanding" are synonymous. Counsel concludes that even the information on which the director relies is the bare minimum to qualify for consideration for membership, whereas membership requires an evaluation of the publications.

We acknowledge that the director appears to have used information about Sigma Xi that does not appear in the bylaws submitted by the petitioner, although counsel does not challenge the director's assertion that Sigma Xi has over 60,000 members.[6] The dictionary definition of "noteworthy" is not determinative. Rather, we must consider how Sigma Xi defines the term. According to the bylaws provided by the petitioner, a publication or even an unpublished thesis or dissertation can serve as evidence of noteworthy achievement. While the material must be available to the Committee on Admission if requested, the record contains no evidence that the committee routinely evaluates the content of the publications of every prospective member.

The Department of Labor's Occupational Outlook Handbook, (OOH), available at http://www.bls.gov/oco/ocos047.htm#training (accessed July 22, 2010 and incorporated into the record of proceeding), provides that a solid record of published research is essential in obtained a permanent position in basic biological research. Significantly, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* Thus, we are not satisfied that authorship or even primary authorship of publications or a thesis or dissertation is an outstanding achievement.

Finally, the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B) requires evidence of membership in associations in the plural. As such, one qualifying membership is insufficient. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulation at 8 C.F.R. §§ 204.5(i)(3)(i)(D) only requires service on a single judging panel. Thus, we can infer that the plural

[6] The website for the organization, www.sigmaxi.org as indicated on the membership letter provided by the petitioner, does reflect that the organization has more than 60,000 members.

in the remaining regulatory criteria has meaning. *See also* 8 C.F.R. § 204.5(h)(3)(ix) (requiring evidence of only a single high salary). In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.[7] As such, the petitioner must demonstrate that the beneficiary is a member of more than one qualifying association. Without evidence as to how ASPET defines "a meritorious original investigation" or how ASH defines "original contributions" we cannot conclude that either association requires outstanding achievements of its members.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B).

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 a certificate of appreciation from the California State Science Fair recognizing the beneficiary as a judge for judging projects in senior biochemistry and molecular biology. In response to the director's request for additional evidence, the petitioner submitted a letter confirming that the beneficiary served as an expert reviewer for [redacted], a technology based publishing services company that seeks expert reviewers on behalf of its clients. The beneficiary reviewed the textbook *Principles of Pharmacology: The Pathophysiologic Basis of Drug Therapy."* The petitioner also submitted a letter confirming that the beneficiary has reviewed manuscripts submitted for publication to the *Biochemical Journal.* This evidence qualifies under the plain language of the criterion set forth at 8 C.F.R. § 204.5(i)(3)(D).

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

The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(E) does not require that the beneficiary's contributions themselves be internationally recognized as outstanding. That said, the plain language of the regulation does not simply require original research, but an original "research contribution." Had the regulation contemplated merely the submission of original research, it would have said so, and not have included the extra word "contribution." Moreover, the plain language of the regulation requires that the contribution be "to the academic field" rather than an individual laboratory or institution. We simply note that the regulations include a separate criterion for judging the work of others and publication of scholarly articles at 8 C.F.R. §§ 204.5(i)(3)(i)(D) and (F). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from judging the work of others and scholarly articles.

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[7] See *Maramjaya v. USCIS,* Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff,* 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

[redacted], the petitioner's Assistant Dean of Enrollment Management and an associate professor of pharmaceutical sciences, purports to summarize the citations of the beneficiary's articles as provided in the MEDLINE and Science Citation Index databases. The petitioner does not provide the actual results from these databases. Regardless, [redacted] indicates that only two of the beneficiary's articles have been cited and neither article has been cited more than seven times. [redacted] oes not indicate how many of these citations are independent. The petitioner also submits the results of a "Google Scholar" search. These results reflect no more than four independent citations for the two articles for which the petitioner submitted results. The petitioner also submitted two articles that cite the beneficiary's work. The first article cites the beneficiary's work as one of four articles for the proposition that the F_2-isoprostane 8-epi-$PGF_{2\alpha}$ "has received the most attention because it has been shown to posses certain adverse biological activities." The second article cites the beneficiary's work as one of four studies that "have implicated TM3 and TM7 transmembrane domains as part of the ligand-binding mechanisms."

On appeal, counsel asserts that a "demand" for an "exorbitant number of citations in this particular instance is misguided." Counsel notes that the beneficiary's articles are research articles, which are cited less than review articles. The petitioner submits a report in support of this assertion. Ultimately, counsel urges that the AAO rely on the prestige of the journals in which the articles appear.

We concur that citations are not required evidence to demonstrate a contribution to the field as a whole. That said, it is the petitioner's burden to provide evidence of some type to demonstrate that the beneficiary's original research constitutes a contribution to the field. While the prestige of a journal may demonstrate the promising nature of the work published in that journal, we will not presume that every article published in a prestigious journal ultimately contributed to the field as a whole. The citation history of the beneficiary's articles does not, by itself, establish that the beneficiary's original research constitutes a contribution to the field as a whole. Thus, we must consider whether other evidence of record supports a conclusion that the beneficiary satisfies the evidentiary requirements of 8 C.F.R. § 204.5(i)(3)(i)(E).

The remaining evidence addressing the beneficiary's original research includes reference letters supporting the petition. [redacted], Head of the Department of Pharmacology at UIC, discusses the beneficiary's Ph.D. research at that institution. [redacted] explains that the beneficiary studies receptors in the body that play a role in blood platelet activation/aggregation (clotting), which can lead to fatal diseases such as a stroke or heart attack. [redacted] further explains that the beneficiary's research "is helping to determine why certain receptors cause excessive clotting – research which is critical in the design and creation of new drugs to treat these diseases which have resulted in the deaths of millions of people in the United States and around the world." The only support [redacted] offers for this conclusion, however, is the assertion that the beneficiary's work is funded by the American Heart Association, which "reserves funding for only outstanding scientists, and the final selection is based on a stringent peer-review process." The record contains no evidence that most research is funded by agencies that do not subject proposals to peer review such that peer review is indicative of a past contribution to the field as a whole. While peer-reviewed funding is indicative of the promising nature

of the proposed research, it is not indicative of past contributions to the field as a whole. Moreover, the record does not reflect that the beneficiary was the principal investigator for this grant. Rather, the only research grant in the record identifying the beneficiary as the principal investigator is the recent one from the petitioner.

[redacted] also notes that the beneficiary's work has appeared in prominent journals including the prestigious *Blood,* a journal with an impact factor over 10 according to evidence of record. As stated above, however, the authorship of published articles is a separate regulatory category of evidence set forth at 8 C.F.R. § 204.5(i)(3)(i)(F). Moreover, the petitioner did not author a full article appearing in *Blood.* Rather, the journal reproduced the abstracts of poster presentations at the ASH Annual Meeting in 2005. The beneficiary's poster presentation is abstract number 3571. Finally, [redacted] asserts that the beneficiary "co-authored two high-impact, *late-breaking* abstracts that were presented at the 2009 Experimental Biology meeting." These abstracts, however, were presented as poster presentations shortly before the petition was filed. The record contains no evidence they had already contributed to the field as a whole as of that date, the date as of which the petitioner must establish the beneficiary's 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).

[redacted] an associate professor at UIC who served as a member of the beneficiary's Ph.D. research committee and coauthored articles and presentations with the beneficiary, asserts that the beneficiary's "reputation as an exceptional pharmacologist in the international scientific community began" with his article in the *Journal of Biological Chemistry.* [redacted] explains that in this work, the beneficiary performed an analysis of candidate amino acid residues for their role in regulating ligand binding to thromboxan receptor, revealing that different ligands coordinate with different sites based on their structure. [redacted] asserts that these results contribute to the field's understanding of the structural biology of not only the thromboxan receptor but also other G-protein coupled receptors. [redacted] concludes, however, only that it "is expected" that the beneficiary's publication on this subject "may serve as a basis for designing remedies for thrombotic diseases, such as myocardial infarctions." While [redacted] asserts that the American Hear Association provided the beneficiary with a two-year grant, [redacted] does not provide any examples of independent research groups utilizing the beneficiary's findings. As of the date of filing, this article had only been cited by two independent research teams.

[redacted] further asserts that the beneficiary subsequently pursued repurposing an existing drug, glybenclamide, for inhibiting platelet function as a first-line therapy for managing thrombotic disease in place of aspirin, which is associated with side affects and increasing resistance. [redacted] does not explain how the beneficiary's results on glybenclamide are being utilized. Rather, [redacted] merely speculates that the beneficiary's research "is likely to touch the lives of many, if not most American families." [redacted] ultimately concludes that the beneficiary "has demonstrated that he can generate results that lead to therapeutic avenues in cardiovascular diseases" but provides no examples of hospitals or clinics prescribing therapies based on the beneficiary's work or guidelines for treatment based on the beneficiary's work.

[redacted] whose own Ph.D. studies at UIC overlapped with the beneficiary's studies there, provides similar information to that discussed above. [redacted] further asserts that the beneficiary "generated nineteen stable cell lines expressing the wild type and mutant [thromboxane] receptor." Dr. [redacted] does not, however, assert that any independent research group is utilizing any of these cell lines. The two citations provided do not single out the beneficiary's work for having generated stable cell lines.

____ a Visiting [redacted] also provides similar information to that discussed above, speculating that the beneficiary's research "will be relied upon by drug designers to create new medications which will save lives!" [redacted] does not identify any drug designer that has expressed an interest in pursuing a drug based on the beneficiary's research and the record does not contain any letters from officials at pharmaceutical companies or other drug designers confirming their interest in the beneficiary's work.

[redacted] also notes that the beneficiary is a listed co-inventor on a patent application. The record contains the application. 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, (Comm'r. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* The record does not indicate that UIC has licensed or marketed the beneficiary's patent-pending innovation. Thus, the record does not establish that the patent application represents a contribution to the beneficiary's field as a whole.

a former Ph.D. candidate and postdoctoral researcher at [redacted] in Chicago, asserts that he interacted with the beneficiary while in Chicago. [redacted] asserts that the beneficiary "elegantly identified several key amino acids which play different roles in the coordination process" between thromboxane receptors and their ligands. [redacted] however, concludes only that this work "should prove helpful in developing drugs that will aid in the treatment of many cardiovascular diseases." [redacted] speculation as to how the beneficiary's work will be used in the future is not useful in explaining how the beneficiary's work has already been recognized as a contribution to the field as a whole.

Finally, [redacted] a professor at the [redacted] asserts that he is qualified to judge the beneficiary's credentials and contributions but does not explain how he knows of the beneficiary's work. Specifically, he does not explain whether he was simply asked to review the beneficiary's curriculum vitae, whether he has a connection to the beneficiary or his collaborators or whether he is independent of the beneficiary and his collaborators and knows of the beneficiary's work primarily through the beneficiary's international reputation. Regardless, while [redacted] asserts that the beneficiary's findings "serve as a foundation to aid the rational design of antagonists for therapeutic purposes," he concludes only that the beneficiary's "findings are likely to lead to even more effective therapies in the future." [redacted] subsequently states that the beneficiary's findings "are being used by pharmacologists working on the next generation of antiplatelet medicines." [redacted] does not, however, claim to be utilizing the beneficiary's research or identify any independent pharmacologist

that is doing so in pursuit of antiplatelet medicines. The record does not contain any letters from independent pharmacologists pursuing antiplatelet medicines based on the beneficiary's findings.

The opinions of experts in the field are not without weight and have been considered above. 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, as we have done above, 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)).

The letters considered above primarily contain bare assertions of widespread recognition and vague claims of contributions without providing specific examples of how those contributions have influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[8] The petitioner submitted only a single independent letter and this letter does not suggest the author or any other identified independent research team has applied the beneficiary's work. On appeal, counsel asserts that the letters "simply reflected the plethora of evidence supplied to the government which demonstrated just how revered [the beneficiary] is in the field of pharmacology." As discussed above, however, the petitioner failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

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

As stated above, the petitioner submitted several articles authored by the beneficiary. Thus, the beneficiary has submitted evidence that qualifies under 8 C.F.R. § 204.5(i)(3)(F).

In light of the above, the petitioner has submitted evidence that meets two of the criteria that must be satisfied to establish the minimum eligibility requirements for this classification. Specifically the petitioner submitted evidence to meet the criteria set forth at 8 C.F.R. §§ 204.5(i)(3)(i)(D) and (F). The next step, however, is a final merits determination that considers whether the evidence is consistent with the statutory standard in this matter, international recognition as outstanding. Section 203(b)(1)(B)(i) of the Act.

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[8] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

B. Final Merits Determination

It is important to note at the outset 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. *Employment-Based Immigrants,* 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)).

The nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. The record does not establish that being requested to judge a local statewide high school science fair is indicative of or consistent with any recognition outside of California where the beneficiary works.

Regarding the beneficiary's manuscript review, 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. While Professor [redacted] Vice Chair, [redacted] asserts that the editors select reviewers "based on their expertise in the paper's area of focus," he does not provide the number of reviewers utilized by the journal annually or suggest that the journal utilizes an exclusive set of credited reviewers. We do not question that a journal would not utilize a scholar in one field to review a manuscript in an unrelated field. It does not follow, however, that participating in the widespread anonymous peer-review process is indicative of or consistent with international recognition in the field, the statutory standard in this matter.

According to the promotional material for *Principles of Pharmacology: The Pathophysiologic Basis of Drug Therapy*, provided by the petitioner, the beneficiary is not one of the three credited editors of the book and there is no evidence that he is otherwise credited. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed manuscripts for a journal that credits a small, elite group of referees, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal or book, we cannot conclude that the beneficiary's judging experience is indicative of or consistent with international recognition.

Regarding the beneficiary's original research, as stated above, it does not appear to rise to the level of a contribution to the academic field as a whole. Demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research is not useful in setting the beneficiary apart in the academic community through eminence and distinction based on international recognition. 56 Fed. Reg. at 30705. Research work that is unoriginal would be unlikely to secure the beneficiary a master's degree, let alone classification as an outstanding researcher. 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."

While the beneficiary has published articles, the Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at [redacted] on July 22, 2010 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.

The record contains no evidence that the beneficiary's articles have been cited at a significant level or other comparable evidence that demonstrates the beneficiary's publication record is consistent with international recognition.

In light of the above, our final merits determination reveals that the beneficiary's qualifying evidence, participating in the widespread peer review process and publishing articles and book chapters that have not garnered significant citations or other response in the academic field, does not set the beneficiary apart in the academic community through eminence and distinction based on international recognition. 56 Fed. Reg. at 30705. Indeed, the record lacks evidence that members of the academic field outside of the beneficiary's immediate circle of colleagues are even aware of his work.

III. Conclusion

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.