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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

B3

[redacted]

DEC 15 2010

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:

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:

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 $630. 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 a research and development entity. 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 controls 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 concluded that the petitioner had not established that it would employ the beneficiary in a research position.

On appeal, counsel submits a brief and copies of purported legal authority, none of which is binding. Counsel also resubmits documentation that is already a part of the record of proceeding. Counsel does not address the director's conclusion that the beneficiary's position is not a research position. 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.

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):
>
> * * *
>
> (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.

The petitioner filed this petition on February 19, 2009 to classify the beneficiary as an outstanding researcher in the field of software engineering. 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 field at the international level recognizes the beneficiary's work 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 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.

On appeal, counsel asserts that the director erred in evaluating the significance of the evidence submitted under certain criteria. Counsel relies on unpublished decisions by this office; a July 30, 1992 letter from [redacted] Acting Assistant Commissioner, to the then Director of the Nebraska Service Center, [redacted] and *Buletini v. INS,* 860 F. Supp. 1222 (E.D. Mich. 1994).

While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Regarding the document, Mr. [redacted] issued his letter in response to an inquiry from Mr. [redacted] and makes clear that he is discussing his personal inclinations. Moreover, in contrast to official policy memoranda issued to the field, correspondence issued to a single individual do not constitute official U.S. Citizenship and Immigration Services (USCIS) policy 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 USCIS officer as they merely indicate the writer's analysis of an issue. *See* Memorandum from [redacted] Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).[1]

Finally, *Buletini,* 860 F. Supp. at 1222, is also not binding. In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719.

While the authorities on which counsel relies are not binding, there does now exist a relevant legal authority. 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 U.S. Citizenship and Immigration Services (USCIS) may have raised legitimate

[1] Although this memorandum principally addresses letters from the Office of Adjudications to the public, the memorandum specifies that letters written by any USCIS employee do not constitute official USCIS policy.

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.[2] 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 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.[3] 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

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[2] 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)).

[3] 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.

A. Evidentiary Criteria[4]

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

Initially and in response to the director's request for additional evidence, the petitioner asserted that the beneficiary's membership in Sigma Xi serves as qualifying evidence under 8 C.F.R. § 204.5(i)(3)(i)(B). The director rejected this claim and counsel does not challenge the director's conclusion on appeal. We will review the evidence of record.

The petitioner submitted a letter from the president of the [redacted] advising the beneficiary of his election to Sigma Xi membership and a certificate confirming the beneficiary's election "by the Northwestern University Chapter." The petitioner also submitted materials from Sigma Xi's website stating that the noteworthy requirements for full membership "must be evidenced by publications, patents, written reports or a thesis or dissertation." The record contains a letter from the Executive Director of Sigma Xi advising that Sigma Xi has 65,000 members. In response to the director's request for additional evidence, the petitioner submitted a letter from Dr. [redacted] on the petitioner's letterhead. Dr. [redacted] is one of the beneficiary's coauthors. Dr. [redacted] describes his reasons for nominating the beneficiary for Sigma Xi membership. According to the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B), however, at issue are not Dr. [redacted] reasons for nominating the beneficiary but the requirements for membership in Sigma Xi.

The record does not establish that publications, patents, written reports or a thesis or dissertation are outstanding achievements. Significantly, a thesis or dissertation is a requirement for an advanced degree. While a degree can support a claim under the lesser classification of exceptional ability under section 203(b)(2) of the Act, 8 C.F.R. § 204.5(i)(3)(ii)(A), there is no similar provision for the classification sought it the matter before us.

Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B) requires evidence of qualifying memberships in the plural. Significantly, not all of the criteria at 8 C.F.R. § 204.5(i)(3)(i) 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 in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.[5] Thus, even if we accepted that Sigma Xi is a qualifying membership, and we do not, the petitioner would need to provide evidence of a second qualifying membership. The record contains no evidence of other qualifying memberships.

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

[5] *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).

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth 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 an August 31, 2007 letter from the editorial board of *Nuclear Electronics & Detection Technology* inviting the beneficiary to review a manuscript. The letter requests that if the beneficiary is unable to complete the review that he recommend another expert who might be able to do so. The petitioner did not submit evidence that the beneficiary actually performed this review. The petitioner further submitted an email from [redacted] Editor of the journal, asserting that the journal only selects "the most qualified scholars and scientists in this community to review the papers to be published in this journal."

In addition, Dr. [redacted] an engineering physicist at the Stanford Linear Accelerator Center, asserts that the petitioner selected the beneficiary to "sit on the final design review committee" for the Linac Coherent Light Source (LCLS) Undulator Control System, of which Dr. [redacted] was the chair. Dr. [redacted] describes the LCLS system and asserts that the beneficiary's experience made him "a natural candidate for inclusion on this committee." Dr. [redacted] further asserts that the beneficiary's "advice and comments, from the final design review, have been of great value to the success of this project." Dr. [redacted] does not, however, provide the beneficiary's specific duties on the committee or even the committee duties as a whole. In response to the director's request for additional evidence, the petitioner submitted a letter from Dr. [redacted] an electrical engineer at the petitioning laboratory, confirming that the beneficiary participated in the final design review for the LCLS. Dr. [redacted] also asserts that the beneficiary's experience made him "an ideal candidate to review this project" and that his experience and knowledge "were invaluable to the committee."

The regulation at 8 C.F.R. § 204.5(i)(3)(i)(D) requires evidence that the beneficiary actually participated as a judge, not merely that he was invited to do so. As stated above, the record does not establish that the beneficiary actually reviewed a manuscript for *Nuclear Electronics & Detection Technology.* Moreover, the letters from Dr. [redacted] and Dr. [redacted] fail to provide sufficient details regarding the duties of the final design review committee members. We will not presume that the use of the word "review" in the name of the committee reflects that the committee was a panel designed to judge the work of others. Neither Dr. [redacted] nor Dr. [redacted] identifies the individual(s) whose work the beneficiary was judging.

In light of the above, the petitioner has not submitted qualifying evidence that meets the requirements set forth in the plain language at 8 C.F.R. § 204.5(i)(3)(i)(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 original "research contributions." Had the regulation contemplated merely the submission of original research, it would have said so, and not have included the extra word "contributions." Moreover, the plain language of the regulation requires that the contributions be "to the academic field" rather than an individual laboratory or institution.

The petitioner submitted evidence that the beneficiary has authored scholarly articles. The regulations, however, include a separate criterion for scholarly articles at 8 C.F.R. § 204.5(i)(3)(i)(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 scholarly articles.

Dr. [redacted], a research engineer at the University of Illinois at Urbana-Champaign, asserts that he helped organize an AdvancedTCA (ATCA) workshop at Fermilab in April 2007. The University of Chicago manages the petitioning laboratory for the Department of Energy (DOE). Dr. [redacted] asserts that both he and his co-organizer, Dr. [redacted] of Fermilab, knew of the beneficiary's work and considered him "a must-have speaker." Dr. [redacted] further asserts that no one in the High Energy Physics (HEP) community "was anywhere near [the beneficiary] in his understanding of virtualization and high availability!" Dr. [redacted] asserts that he and Dr. [redacted] invited the beneficiary as one of seven "users" to describe their work at the workshop. The petitioner submitted material from the website of the European Organization for Nuclear Research (CERN) listing the agenda for the ATCA workshop. The agenda does not list the beneficiary as a speaker or panelist. The petitioner submitted presentations published in the proceedings of various conferences. The petitioner did not submit the beneficiary's presentation at the ATCA workshop at Fermilab.

The record contains a manuscript bearing the heading for the 2005 International Conference on Accelerator and Large Experimental Physics Control Systems (ICALEPCS). The petitioner and Dr. [redacted] authored this manuscript. The manuscript bears no indicia of publication in the proceedings of a conference, such as pagination, and the petitioner did not submit the program for the conference listing this presentation. We acknowledge, however, that the petitioner did submit another presentation that cites the 2005 ICALEPCS presentation. The petitioner submitted the promotional materials for ICALEPCS 2005 stating that the conference "offers a unique opportunity to all those involved in the challenging field of controls for experimental physics worldwide to hear about the latest developments, new projects, the latest technologies being applied, and to discuss problems and solutions with peers from the world's major laboratories, to identify new issues, and to shape future directions for research." The materials do not explain how this goal differentiates ICALEPCS from other scientific conferences.

The petitioner submitted a manuscript with a heading for ICALEPCS 2005 that cites the presentation for which the beneficiary is listed as one of two authors. The citation, however, is not indicative of any influence of the beneficiary's presentation. Specifically, the citing article cites the beneficiary's work for the following proposition: "The soft [Input Output Controllers (IOCs)] are not running on a real-time operating system, so we cannot rely on them for time-critical/deterministic applications." Nothing in this sentence suggests that the authors of the citing article applied or otherwise relied on the beneficiary's work.

Professor [redacted] of the Institute of High Energy Physics (IHEP) in China, discusses the beneficiary's Ph.D. work under the direction of Professor [redacted] Professor [redacted] asserts that he was responsible for the development and operation of the control system of the Beijing Electron Positron Collider (BEPC) and its upgrade (BEPCII). According to Professor [redacted] BEPC is one of the largest particle accelerators in China. Professor [redacted] explains that the beneficiary "took part in the construction of the BEPCII control system, which is a new project at IHEP to upgrade" the collider. Professor [redacted] continues that the beneficiary "built an Experimental Physics and Industrial Control System (EPICS) system on Linux and developed several device drivers for this system." Professor [redacted] further asserts that the beneficiary built the BEPCII Linac power supply system to control 145 power supplies and developed all of the applications including graphic user interface, IOC database, control loops and drivers. Professor [redacted] concludes that IHEP put the control system, its first EPICS based system, into operation in October 2003. While the beneficiary's work may have contributed to the control system at IHEP, Professor Zhao does not explain how the beneficiary's work constitutes a contribution to the field as a whole.

[redacted] a computer scientist who retired from the petitioning laboratory in 2006, asserts that he met the beneficiary in 2001 while attending an EPICS collaboration meeting at IHEP. Mr. [redacted] praises the beneficiary's ability to install Linux and EPICS on the computers supplied at the meeting despite it being the beneficiary's first exposure to EPICS. Mr. [redacted] explains that he returned in 2002 and reviewed the beneficiary's device/driver support. Mr. [redacted] concludes that the beneficiary's support was well written, demonstrating a "very good knowledge of EPICS." According to Mr. [redacted] he inquired about positions for the beneficiary at the petitioning laboratory at the beneficiary's request. Mr. [redacted] continues:

> [The beneficiary's] first project was to develop an EPICS based test suite to measure real time performance on three different operating systems: vxWorks, RTEMS, and Linux. This project is important because [it] provides guidance for new projects when they choose a hardware/software platform. A VME PowerPC platform was chosen for the test because this is the platform being used for many new EPICS IOCs

Mr. [redacted] then explains why Linux presented a challenge for this project. Mr. [redacted] asserts that the beneficiary examined the code and explored the Internet for help in this project, developing "a very good test suite." Mr. [redacted] does not explain how the beneficiary's work on this project constitutes "research" or how it has influenced the field of software design for HEP.

[redacted], a computer scientist at the Bessy Accelerator Center in Berlin, asserts that the beneficiary is "internationally recognized as an expert for the EPICS software, a software toolset initially developed at DoE laboratories, and currently in use at hundreds of institutes worldwide, include the Bessy accelerator in Germany." Mr. [redacted] does not explain how expertise with a software toolset developed by someone else is "original." Mr. [redacted] goes on to assert that the beneficiary demonstrates "incredibly creative ability combining different ideas into new, very interesting and challenging designs and concepts." While this statement suggests that the beneficiary's designs are original, the petitioner must demonstrate that these original designs constitute a contribution to the field of software design for HEP. Mr. [redacted] continues:

> During the last years, [the beneficiary] has made numerous contributions to control system technology and the EPICS software, which he is highly recognized and acclaimed for worldwide.

USCIS need not accept primarily conclusory assertions.[6] Mr. [redacted] does not claim to have been influenced by the beneficiary's work and provides no examples of other engineers influenced by the beneficiary's work.

The petitioner provided a letter purportedly from [redacted], group leader of the beneficiary's group at the petitioning laboratory. No signature appears on the letter. Thus, the letter has no evidentiary value.

[redacted] an associate division director at the petitioning laboratory, asserts that the beneficiary's expertise with EPICS "cannot be replaced." Once again, however, expertise with a software toolset is not "original." Mr. [redacted] also asserts that the beneficiary worked with Mr. [redacted] on the International Linear Collider. Mr. [redacted] explains that the beneficiary had to familiarize himself with ATCA and then "began exploring live failover of EPICS IOCs to redundant backup systems, and has implemented a first-stage demonstration using a commercial product called Xen." Mr. [redacted] further asserts that the beneficiary "has subsequently begun evaluating the merits of a linux-HA (a high-availability implementation of linux) as a possible operating system for ILC controls running on ATCA." Mr. [redacted] does not explain the beneficiary's completed accomplishments for this project or how those accomplishments have influenced the field of software development for HEP.

Dr. [redacted] a controls engineer at the [redacted] who received his Ph.D. in 2008, reiterates that the beneficiary is an expert with EPICS, a widely used software toolset. Once again, such expertise is not "original." Dr. [redacted] then asserts that the beneficiary's 2005 ICALEPCS presentation "introduces a set of software benchmarks to measure EPICS IOCcore runtime performance on diverse platforms." Dr. [redacted] however, provides no examples of how this paper is

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[6] *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

being used in the field. Dr. [redacted] discusses subsequent presentations by the beneficiary but fails to explain how they have influenced the field. Finally, Dr. [redacted] asserts that the beneficiary "implemented a new EPICS Channel Access based on the Internet Communications Engine (ICE). The implementation provides the EPICS community a new way for channel Access, which is based on modern communication technology. Dr. [redacted] however, provides no examples of independent researchers utilizing the beneficiary's EPICS Channel Access.

Dr. [redacted] a scientific associate at DESY in Germany, provides a similar letter. In addressing the beneficiary's EPICS Channel Access, Dr. [redacted] concludes that the access "is a good try in order to break the limitation of the current EPICS Channel Access." Dr. [redacted] language does not suggest that the beneficiary's work is widely accepted as a viable method. Dr. [redacted] further states that as far as he knows, the beneficiary "fixed some problems that have been [*sic*] existed for years." More specifically, Dr. [redacted] asserts that the beneficiary "recently fixed booster ramping power supply waveform corruption problem at APS, ANL, which has been [*sic*] existed for more than ten years." [redacted] provides no examples of independent laboratories relying on this "fix."

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

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; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). 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 specifically identifying contributions and 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.[7] The independent authors do not suggest they have applied the beneficiary's work. The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

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)(E).

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

In light of the above, the petitioner has submitted evidence that meets only one of the criteria, two of which 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)(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.

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)).

Even if we accepted that the beneficiary actually reviewed a manuscript for publication or that the final design review committee involved judging the work of others, 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. 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 manuscripts for a journal that credits a small, elite group of

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[7] *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.*, 745 F. Supp. at 15.

referees, 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's judging experience is indicative of or consistent with international recognition.

Moreover, the petitioner selected the beneficiary to serve on the final design review committee. Internal judging responsibilities are not indicative of international recognition. *Id.* Thus, the beneficiary's judging experience is not persuasive evidence of international recognition.

As discussed above, mere expertise with an existing software toolset is not original research. Regarding the beneficiary's original designs, as stated above, they do not appear to rise to the level of contributions 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. Design 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 design is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

Regarding the beneficiary's publication record, the petitioner and counsel have both asserted that engineering is not a field in which publication is routine. While the beneficiary has published articles, the Department of Labor's Occupational Outlook Handbook (OOH) 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 (accessed November 18, 2010 and incorporated into the record of proceedings). 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.

Moreover, the beneficiary's citation history 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 contains no evidence that the beneficiary's articles have been cited more than once 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 more than a single citation 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, the purpose of the regulatory criteria. 56 Fed. Reg. at 30705.

III. Research Position

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

> An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:
>
> (A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;
>
> (B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or
>
> (C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

As quoted above, the regulation at 8 C.F.R. § 204.5(i)(3)(ii) requires evidence that the beneficiary has at least three years of research experience.

[redacted] the petitioner's Senior Human Resources Specialist, provides the following job description:

> [The beneficiary] designs, documents, implements, and supports control and data acquisition systems for accelerators and equipment per the requirements of physicists, engineers, and other staff. He conceives and implements upgrades to existing control systems to improve performance, maintainability, and reliability and contributes to the advancement of control system tools and techniques for current and future accelerators by applying emerging technology to control system challenges.

The director concluded that the above duties were not research duties. Counsel does not address this concern on appeal. It is noted that the Merriam Webster online dictionary defines research as follows:

> 1. Careful or diligent search;
>
> 2. Studious inquiry or examination; *especially* : investigation or experimentation aimed at the discovery and interpretation of facts, revision of accepted theories or laws in the light of new facts, or practical application of such new or revised theories or laws; and

3. The collecting of information about a particular subject.

See http://www.merriam-webster.com/dictionary/research?show=0&t=1291900409, accessed December 2, 2010 and incorporated into the record of proceeding.

Simply having design responsibilities does not mean that an employee is necessarily a researcher. Software engineers, architects, and even artists design products, but they are not researchers. The beneficiary's job duties appear to be primarily engineering rather than research oriented.

IV. 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. Moreover, we concur with the director that the petitioner has not offered the beneficiary a research position. 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.