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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

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FILE:

[Redacted]  
LIN 08 119 50727

Office: NEBRASKA SERVICE CENTER

Date: FEB 25 2010

IN RE:

Petitioner:  
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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).

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 process equipment provider for the semiconductor industry. 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 process development 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.

On appeal, counsel submits a brief and additional evidence, including a patent application dated after the petition was filed. As will be discussed in more detail below, however, the petitioner must establish the beneficiary's eligibility as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Counsel also relies on a non-precedent decision by this office. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all U.S. Citizenship and Immigration Services (USCIS) employees in the administration of the Act, unpublished decisions are not similarly binding. Finally, counsel notes that the standard of proof in this matter is preponderance of the evidence. While mindful of that standard, we do not find that the record demonstrates the beneficiary's eligibility for the benefit sought by a preponderance of the evidence. Counsel's specific assertions will be addressed below. For the reasons discussed below, we uphold the director's decision.

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

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

\* \* \*

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

- (i) the alien is recognized internationally as outstanding in a specific academic area,
- (ii) the alien has at least 3 years of experience in teaching or research in the academic area, and
- (iii) the alien seeks to enter the United States --

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

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

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

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 March 12, 2008 to classify the beneficiary as an outstanding researcher in the field of plasma 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 beneficiary's work has been recognized internationally within the field as outstanding.

After citing the statute but before citing the regulation at 8 C.F.R. § 204.5(i)(3)(ii), the director stated:

It must be noted that the evidence submitted establishes that the beneficiary has the required three years of research experience in the academic area. The evidence also establishes the petitioner's research accomplishments in the field. Therefore, the remaining issue for consideration pertains to whether the beneficiary qualifies as an outstanding professor or researcher as prescribed by the regulation.

As much of the beneficiary's three years of experience was completed while pursuing his Ph.D., counsel concludes that the above language in the director's decision reflects a conclusion that the beneficiary's student research has been recognized internationally as outstanding. After quoting 8 C.F.R. § 204.5(i)(3)(ii), however, the director stated: "upon review, the initial and additional evidence

does not establish that the beneficiary is recognized internationally as outstanding in the academic field.” Thus, the director’s initial statement that the beneficiary has three years of experience appears to relate solely to the length of the beneficiary’s research experience rather than any international recognition garnered from that research. As such, we do not find the director’s decision internally inconsistent as urged by counsel. For the reasons discussed below, we concur with the director that the petitioner has not established that the beneficiary enjoys international recognition as outstanding and we withdraw any inference, intentional or not, that the beneficiary’s Ph.D. research has been recognized internationally 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. *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)). The petitioner claims to have satisfied the following criteria.<sup>1</sup>

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

Initially, the petitioner submitted the beneficiary’s 1996, 1997, 1998, 1999, 2000 and 2002 Certificates of Honor recognizing the beneficiary as an Outstanding Student or Graduate from the Dalian University of Technology, provincial authorities, local communist and education committees in Dalian City and the Baosteel Education Foundation. In addition, the petitioner submitted evidence that the beneficiary received scholarships in 1997 and 1999 from the Dalian University of Technology and the Gao Xin Technology Company. Further, the record establishes that the beneficiary received the 1998 “Bochuan Qu Education Foundation Second Prize from the Dalian University of Technology and the Outstanding Student medal from Shanghai Baosteel Group Corporation. Finally, the beneficiary was recognized in 1998 as “Top 100 in Science in Technology” by the Dalian University of Technology.

On January 23, 2009, the director advised the petitioner that academic awards cannot serve to meet this criterion. In response, the petitioner continued to maintain that the beneficiary’s academic awards meet this criterion, asserting that the beneficiary was selected as one of 600 students out of 22 million to receive the Baosteel Scholarship. The petitioner notes that it provided statistical information about some of the other awards with the initial filing but that the age of the awards makes it impossible to

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

obtain official information about the awards. The initial filing included only the petitioner's attestations about the award criteria. Going on record without supporting documentary evidence 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 director concluded that the beneficiary's academic honors were limited to students and could not serve to meet this criterion. On appeal, counsel asserts that the petitioner confirmed that the award from Liaoning Province placed the beneficiary within the top .1 percent of over 1 million students among 75 universities and colleges in that province and that these awards are "indicative that [the beneficiary] was nationally recognized for his outstanding research work in the field of plasma engineering while he was a student in China."

As stated above, the information about the awards is from the petitioner, a U.S. corporation. The petitioner's representatives do not explain how they have any first hand knowledge of the statistical information about the awards. They also fail to explain how they calculated the statistics provided. For example, if the Baosteel scholarship is limited to engineering students, the petitioner cannot assert that the scholarship places the beneficiary above every student in the region regardless of field of study. Moreover, counsel does not explain how local and provincial honors demonstrate *international* recognition. Ultimately, we cannot ignore that the beneficiary's awards were limited to a pool of students and do not compare the beneficiary with more experienced members of the field internationally or even nationally.

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).

We concur with the director that competition for scholarships and student honors is limited to other students. Experienced experts in the field are not seeking scholarships or student honors. Thus, they do not suggest that a beneficiary is internationally recognized as outstanding.

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 did not address this criterion in the initial submission. In response to the director's request for additional evidence, the petitioner submitted evidence that the beneficiary is a member of the Society of Photographic Instrumentation Engineers (SPIE). The membership certificate provided is dated February 9, 2009, after the date of filing. Moreover, while the petitioner provided materials about SPIE, none of those materials address the society's membership requirements, an essential element of the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(B).

The director concluded that the petitioner had not established that SPIE requires outstanding achievements of its members. Counsel does not challenge this conclusion on appeal and we concur with the director that the record contains no evidence that the petitioner was a member of SPIE as of the date of filing or that SPIE requires outstanding achievements of its members.

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

*Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation.*

Initially, counsel asserted that articles and book chapters citing the beneficiary's work serve to meet this criterion. In the request for additional evidence, the director stated that mere reference to the beneficiary's work or inclusion of his publications in bibliographies or footnotes is insufficient. In response, the petitioner asserted that citations are "de facto evidence that [the beneficiary's] work is original and significant." The director concluded that citations cannot serve to meet this criterion.

On appeal, counsel asserts that the director incorrectly applied the standard for the similar criterion set forth at 8 C.F.R. § 204.5(h)(3)(iii), which relates to aliens of extraordinary ability pursuant to section 203(b)(1)(A) of the Act. Specifically, counsel asserts that while the Adjudicators' Field Manual states that citations alone cannot serve to meet the criterion at 8 C.F.R. § 204.5(h)(3)(iii), this interpretation "is not the standard that should be applied to Outstanding Researcher cases." Counsel concludes: "Citations to published work by independent (non-collaborative) scholars indicate that the Researcher has achieved international recognition in that their work is acknowledged as relevant and recognized in the field."

Significantly, the AFM states, with respect to Outstanding Professors and Researchers:

The same general guidelines discussed in the preceding section relating to the adjudication of a petition for an alien of extraordinary ability apply to the adjudication of a petition for an outstanding professor or researcher. However, unlike the requirement for the E11, alien of extraordinary ability petition, that the alien must have

garnered sustained national or international acclaim in the field of endeavor, the evidence that must be provided in support of E12, outstanding professor or researcher petitions must demonstrate that the alien is recognized internationally as outstanding in the academic field specified in the petition.

Thus, while the standard is international recognition rather than sustained national or international acclaim, the same general guidelines apply.

Regardless, while citations are not insignificant and will be considered below insofar as they relate to the beneficiary's contributions and scholarly articles, with respect to this criterion, we are bound by the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C), which requires published material "about" the alien's work. We are not persuaded that citations of an article authored by the beneficiary constitute published material "about" the alien's work any more than they constitute published material "about" the alien relating to his work as required under 8 C.F.R. § 204.5(h)(3)(iii). Rather, they are articles about the author's own research or, in the case of review articles, about many recent advances in an area of research.

Counsel further asserts that the book chapter discusses the beneficiary's work beyond a simple reference. The book chapter is authored by the beneficiary's Ph.D. advisor, [REDACTED]. The acknowledgement for the chapter states:

This work represents the efforts of many talented and creative persons in the [Plasma Material Interaction] PMI research group. [REDACTED] deserves special mention for his exceptional energy and devotion to this project. The work was funded under a research grant from INTEL Corp., SRA 03-159, under the capable and supportive supervision of [REDACTED].

The beneficiary's work cited in this chapter is coauthored with [REDACTED]. In his appellate brief, counsel acknowledges that citations by independent references carry more weight than citations by collaborators. As the book chapter is authored by the beneficiary's own Ph.D. advisor and cites an article coauthored with that advisor, it cannot demonstrate the beneficiary's recognition beyond his immediate circle of collaborators.

In response to the director's request for additional evidence, the petitioner submitted press releases issued by the petitioner and reproduced in the media and two articles that appear to derive from these press releases posted on Internet sites of unknown significance. These press releases and articles relate to products on which the beneficiary has worked at the petitioning company. That said, all of the press releases and articles postdate the filing of the petition and cannot be considered. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Moreover, independent journalistic coverage in professional publications carries more weight than necessarily subjective press releases.

As the citations of the beneficiary's work do not meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) and the press releases and articles postdate the filing of the petition, 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 record reflects that the beneficiary has refereed one article for the *Journal of Nuclear Materials*. [REDACTED] of this issue of the journal, asserts that the beneficiary was selected as a reviewer based on his "achievements and contributions in the field of nuclear, plasma, and radiological engineering." [REDACTED] further asserts that in general the journal selects reviewers "based on their field of expertise."

The director advised that serving as a peer reviewer for a peer reviewed journal was routine. In response, the petitioner disagreed, noting the statements in [REDACTED] letter. The director reiterated that peer review cannot serve to meet this criterion.

On appeal, counsel asserts that the petitioner provided relevant, probative and credible evidence explaining the significance of the beneficiary's service as a reviewer, the letter from [REDACTED], as required in the AFM.

While we do not question [REDACTED] expertise and sincerity, his letter does not demonstrate that the beneficiary's review of a single article is indicative of or consistent with international recognition. We do not doubt that reviewers are selected based on their field of expertise. It would make little sense for a biochemist to review an article on astrophysics. [REDACTED] does indicate that the beneficiary was selected based on his achievements and contributions but does not explain how these are evaluated. For example, if publication in the field on the topic that needs to be reviewed is a sufficient achievement, it does not set the beneficiary apart from other researchers in his field. [REDACTED] does not state, and the record does not demonstrate, that the *Journal of Nuclear Materials* boasts a relatively small, exclusive list of credited reviewers.

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 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 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.

In a similar vein, the evidence that the beneficiary is listed on one patent application as of the date of filing for his inventions establishes that he is an inventor, but the very existence of the patent application does not show that the beneficiary's invention is more significant than those of others in his field. The subsequent evidence that the beneficiary is listed as an inventor on additional patent applications filed by the petitioning company postdates the filing of the petition<sup>2</sup> and cannot be considered. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. To establish the significance of the beneficiary's work, we turn to experts in his field, whose letters we discuss below.

The petitioner relies on several reference letters. ██████ asserts that the beneficiary contributed to three projects during his doctoral research at the University of Illinois at Urbana-Champaign (UIC). First, the beneficiary developed and demonstrated a molecular dynamics model (MolDyn) to study and predict the impact of hydrogen/deuterium on liquid lithium plasma facing components (PFCs). This research was performed under the Advanced Limiter-divertor Plasma-facing Systems (ALPS) program. A Department of Energy (DOE) committee established this program to investigate advanced systems.

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<sup>2</sup> The beneficiary did file an invention disclosure with the petitioner in 2007 for a CF4 Resistant Diffuser, but it does not appear that the petitioner sought a patent for this innovation either before or after the petition was filed.

Second, the beneficiary characterized fundamental extreme ultraviolet (EUV) collector optics degradation mechanisms adapted to the EUV lithography (EUVL) as the next generation lithography technology used by the semiconductor industry. This research was part of the International Sematech EUVL Source Condenser Erosion Material Benchmarking project. Third, [REDACTED] explains that the beneficiary:

Designed and developed the Dual Magnetron Co-deposition System to fabricate nano-scale advanced films used for the EUV collector optics, the in-situ reflectivity measurement in the commercial level discharge produced plasma EUV source, the reflectivity degradation mechanisms, and the innovative Gibbsian segregating alloys as the solution to the critical issue of EUV collector optics erosion and its reflectivity degradation.

More specifically, [REDACTED] asserts that the beneficiary improved the performance of the nano-film fabrication system, including enabling the in-situ reflectivity performance to maintain at least 70 percent reflectivity in grazing incidence for collector longevity, better than commercially available products. In addition, according to [REDACTED], the beneficiary was “the first to hypothesize that the Mo-Au Gibbsian segregation alloy collector could also achieve a significant reduction in reflectivity degradation with the natural. [REDACTED] predicts that these results “will be” important to the industry. Finally, [REDACTED] explains that the beneficiary’s dual magnetron co-sputtering system is helpful in studying high quality nano-films. While [REDACTED] asserts that the above accomplishments establish the beneficiary’s international recognition, he provides no examples of how the beneficiary’s work has impacted independent research teams.

[REDACTED] notes that the above work has led to publications, patent applications and industrial collaborations. As stated above, publication is a separate criterion set forth at 8 C.F.R. § 204.5(i)(3)(F). We cannot conclude that publications are also prima facie evidence to meet this criterion as well. To hold otherwise would render meaningless the requirement that an alien meet at least two separate criteria. In addition, we must consider the impact of a given patent-pending innovation to determine whether it is indicative of or consistent with international recognition. The record contains no evidence that any company has expressed any interest in licensing the beneficiary’s innovation for which the patent application was filed prior to the date of filing. Finally, the beneficiary is an engineer. According to the Occupational Outlook Handbook prepared by the Department of Labor, available at <http://www.bls.gov/oco/ocos027.htm> (accessed February 12, 2010 and incorporated into the record of proceeding), it is the nature of engineering positions to develop and design new products. Thus, we are not persuaded that merely collaborating with industry demonstrates that the beneficiary stands apart with eminence and distinction through international recognition.

[REDACTED] further states that the beneficiary’s projects “are essential to advance the national and international wide semiconductor processing and advancing problems.” Statements as to the

importance of the area of the beneficiary's work do not necessarily establish the beneficiary's individual international recognition.

[REDACTED] an applied physicist at Intel who supervised [REDACTED] project according to [REDACTED]. [REDACTED]'s book chapter, asserts that he is basing his evaluation on the beneficiary's publications, presentations and impact in the field. [REDACTED], however, is one of the beneficiary's coauthors and, thus, is not an entirely independent reference. [REDACTED] states:

[The beneficiary] developed an innovative solution using Gibbsian segregating (GS) concept (with self-replenishing sacrificial element in the alloy to protect the optic element against and refresh the damage due to the intrinsic plasma debris in EUVL) to alloy an erosion-resistant and self-healing optic film. GS collector optics is a truly remarkable scientific discovery by itself and the associated in-situ self-healing technology that [the beneficiary] developed for this project has had a great impact on a number of scientific disciplines such as plasma engineering, plasma physics, nano-material, and thin film optics. It also has been adapted to study plasma based EUV lithography at industries, laboratories, and universities. The benefit of this research work to other scientists in our field is tremendous, and [the beneficiary] is recognized throughout our field as an outstanding researcher because of this work.

[The beneficiary] achieved another outstanding accomplishment in the field of in-situ non-contact cleaning technique in the advanced semiconductor processing fields by co-designing and demonstrating a novel submicron particle removal technique. This particle cleaning technique is able to effectively remove particles down to at least 30nm size, which are unavoidably present in the process chamber of the whole semiconductor industry and become a leading candidate of the in-situ non-contact and non-destructive particle cleaning method. Due to substantial technical challenges, non particle processing proves extremely important but difficult for practical applications, in particular with the processing towards at feature sizes at or below 32nm. [The beneficiary] successfully solved this problem by demonstrating that the electrostatic method, which can be integrated to the existing processing equipment, is able to supply the desired electrostatic force to the particles on the processing wafers and afterwards remove them precisely with a designed bias.

While [REDACTED] asserts that the beneficiary's work has contributed greatly towards solving two of the most recognized obstacles faced by scientists and engineers in EUV for years, he does not identify independent research teams that are now utilizing the beneficiary's results or indicate that Intel has done so.

[REDACTED] and project leader for two SEMATECH projects, asserts that his opinion is based on the beneficiary's "documented research contributions." [REDACTED] discusses the work described above and notes that the beneficiary's work was published and

that the beneficiary was the first to propose his solutions. 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. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently enjoys international recognition as outstanding. [REDACTED] provides no specific examples of the beneficiary's work being applied by independent research teams and does not suggest that [REDACTED] has benefited from the beneficiary's work.

[REDACTED] a professor at University College Dublin, asserts that he is an independent reference whose knowledge of the beneficiary's work derives from the beneficiary's publications. [REDACTED] discusses the beneficiary's work as enumerated above and concludes that this work "will become the heart of many technological advancements in the coming years," "provided guidance for the future nano-film fabrication application in the semiconductor industry," "can be of great benefit to many applications in the semiconductor industry" and "minimizes the customer's system down time and critical element replacement cycle." [REDACTED] does not support these generalizations with specific examples of the beneficiary's work impacting the field and does not suggest that his own laboratory has been influenced by the beneficiary's work.

We will consider the beneficiary's work for the petitioning company below. The beneficiary, however, had only worked for the petitioner for eight months as of the date of filing. As acknowledged by counsel, in order to consider the beneficiary's Ph.D. research as part of his three years of experience, he must demonstrate that this work was internationally recognized as outstanding. While the beneficiary may have published his work in prestigious journals and presented his work at significant conferences, such evidence only demonstrates international exposure. We will not presume the impact of the beneficiary's published and presented work from the prestige of the publications in which it appeared or the conferences where it was presented. It is the petitioner's burden to demonstrate the impact of a given article or presentation. The beneficiary's citation record is moderate. The actual articles by independent researchers citing the beneficiary's work do not single it out as any more significant than the dozens of other articles cited. After considering the letters above and the beneficiary's moderate citation record, we are not persuaded that the petitioner has demonstrated that the contributions represented by the beneficiary's Ph.D. research have been recognized internationally as outstanding.

[REDACTED] of the petitioning company, asserts that the beneficiary works in the petitioner's [REDACTED]. The beneficiary conducted the research and development of the petitioner's new advanced plasma source, which is the critical core component targeting for the petitioner's next generation product (Gamma product line). Within his first six months, the beneficiary developed a plasma source with 20-50 percent improved extendibility. According to [REDACTED], the beneficiary's plasma source and the corresponding processes are being implemented into the petitioner's next generation product, expedited to enter the market in March 2008. The fact that the beneficiary, an engineer in the research and development section of a private company, has developed an improved product for his employer does not necessarily set the beneficiary apart from other engineers working on product development. While the press releases suggest that the new

technology is noteworthy beyond the routine technological improvements that characterize industry today, these press releases derive from the petitioner. The record contains little independent coverage of the new products in the trade media.

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. While the letters discuss the beneficiary's work in detail and affirm its importance, they do not provide specific examples of how those contributions have influenced the field. 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.

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.

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

The record establishes that the beneficiary has published and presented his work. The Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at [www.bls.gov/oco](http://www.bls.gov/oco) on February 12, 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](http://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.

Given the citations submitted, we are satisfied that the beneficiary meets this criterion. This finding is not inconsistent with the finding above that the beneficiary's contributions do not meet the criterion at 8 C.F.R. § 204.5(i)(3)(iii)(E), a related but entirely separate criterion for which we must assume that there are different considerations. Any other interpretation would render meaningless the requirement that an alien meet at least two criteria.

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.