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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
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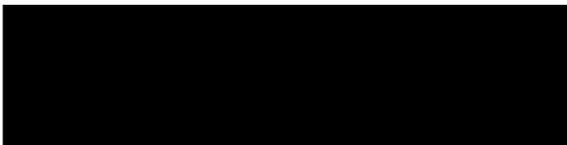
FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:

JAN 19 2011

IN RE: Petitioner: [redacted]
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:



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,

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 medical device research and development company focusing on novel therapies for obstructive sleep apnea. 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 “Manager, Advanced Materials Development Group.” 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, the petitioner submits a brief and additional evidence. We acknowledge that the standard of proof is preponderance of the evidence, as noted by counsel on appeal. The “preponderance of the evidence” standard, however, does not relieve the petitioner from satisfying the basic evidentiary requirements required by the statute and regulations. Therefore, if the statute and regulations require specific evidence, the applicant is required to submit that evidence. See sections 203(b)(1)(B)(i) – (iii) of the Act, 8 U.S.C. § 1153(b)(1)(B)(i) – (iii), and 8 C.F.R. §§ 204.5(i)(3)(i), (ii) and (iii). In this case, the documentation submitted by the petitioner failed to demonstrate by a preponderance of the evidence that the beneficiary is recognized internationally as outstanding. 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, the purpose of the regulatory criteria.¹ *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):

* * *

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

¹ The legal authority for this two-step analysis will be discussed at length below.

- (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 November 12, 2009 to classify the beneficiary as an outstanding researcher in material science and mechanical engineering. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field as of that date, and that the beneficiary's work has been recognized internationally within the field as outstanding.

The regulation at 8 C.F.R. § 204.5(i)(3)(i) states that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The regulation lists 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 U.S. Citizenship and Immigration Services (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.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

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)).

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

A. Evidentiary Criteria⁴

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

We withdraw the director’s finding that the beneficiary meets this regulatory criterion.

The petitioner initially submitted a July 24, 2009 letter from [REDACTED] stating:

This letter is to confirm that [the beneficiary] was the recipient of the prestigious [REDACTED] for his paper [REDACTED] published in . . . [REDACTED]

The *Journal of Engineering Manufacture* is an international learned journal that combines heritage and tradition tracing its origin back to 1847, with a modern outlook exemplified by its international readership and authorship.

With an Editorial Board that comprises leading experts from around the world, the *Journal of Engineering Manufacture* remains at the forefront of international efforts to

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.

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

disseminate scientific advances and new knowledge arising from high quality manufacturing engineering research.

from the previous year's volume. The awarded paper meets high criteria of technical excellence and is selected by the Editor and the Editorial Board of the Journal.

On December 21, 2009, the director requested further evidence regarding the beneficiary's The director's request stated: "Please also submit documentary evidence to establish the criteria for winning the award Please submit documentary evidence to establish the reputation of the organization granting the award and any other documentary evidence to establish the significance of the award"

In response, the petitioner resubmitted the July 24, 2009 letter from The petitioner also submitted a July 20, 2009 letter to the beneficiary from

stating: "I am pleased to confirm that your work has been published in Proceedings of the Institution of Mechanical Engineers, Part I, *Journal of Systems and Control Engineering*. If you cite this paper in another publication then the correct form of reference is"

The remainder of letter provides general information about *Journal of Systems and Control Engineering*, but there is no information in her letter regarding the beneficiary's

Accordingly, the petitioner did not respond to the director's request for further documentary evidence to establish the criteria for winning the award, the reputation of the organization granting the award, and the significance of the award.

The self-serving statements from the Managing Editor of *Journal of Engineering Manufacture* are not sufficient to demonstrate the reputation of the organization granting the and the significance of the award. In this instance, the record lacks supporting evidence from beyond the journal's publishing company showing the level of prestige accorded to the beneficiary's in the academic field.

With regard to the beneficiary's single documented award, 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).

In this case, there is no documentary evidence demonstrating that the [REDACTED] received by the beneficiary is widely recognized beyond the *Journal of Engineering Manufacture's* publishing company and therefore commensurate with a "major" award for outstanding achievement in the academic field. Thus, the petitioner has not submitted evidence that the beneficiary's [REDACTED] rises to the level of a major award as explained in the Federal Register commentary to the regulation at 8 C.F.R. § 204.5(i)(3)(i)(A). 56 Fed. Reg. at 60899. Moreover, even if the petitioner were to establish that the beneficiary's [REDACTED] meets the elements of this criterion, the regulation at 8 C.F.R. § 204.5(i)(3)(i)(A) specifically requires evidence of qualifying *prizes* or *awards* in the plural. The petitioner has only documented a single award received by the beneficiary.

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

In response to the director's request for evidence, the petitioner submitted a February 2, 2010 letter from counsel stating: "The beneficiary does not belong to any associations in his field of endeavor and therefore, no evidence can be provided." Accordingly, 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

The petitioner initially submitted copies of 22 research articles citing to the beneficiary's work.⁵ Six of the 22 citing articles were self-citations by [REDACTED]. Nevertheless, articles which cite to the beneficiary's work are primarily about the author's own work, not the beneficiary's work. As such, they cannot be considered published material about the beneficiary's work. We note that the submitted articles citing to the beneficiary's work similarly referenced numerous other authors. With regard to this criterion, a footnoted reference to the alien's work without evaluation is of minimal probative value.

The petitioner also submitted a letter from [REDACTED] stating that he cited to the beneficiary's master's thesis in two research papers. Both of [REDACTED] papers were submitted among the research articles discussed above.

In response to the director's request for evidence, the petitioner submitted a February 2, 2010 letter from counsel stating: "As of now, the beneficiary does not have evidence of published material of professional publications, which primarily focuses on the beneficiary's work." Accordingly, the director found that this criterion had not been met.

⁵ One of the articles, entitled "[REDACTED]" was submitted twice.

On appeal, counsel argues that the director failed to consider the research articles citing to the beneficiary's work and the letter from [REDACTED]. Counsel states that "the Director's allegation that this criterion was not met nor was evidence submitted is patently false." The director, however, appears to have relied upon the February 2, 2010 letter from counsel stating that "the beneficiary does not have evidence of published material" as it relates to 8 C.F.R. § 204.5(i)(3)(i)(C). Nevertheless, none of the 22 research articles submitted for this criterion include more than one to three sentences mentioning the beneficiary's work. It cannot be credibly asserted that the preceding multi-page articles that similarly reference numerous other researchers' work are "about" the beneficiary's work in the academic field.

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

Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field

The petitioner initially submitted a California Polytechnic State University (CPSU) "Master's Thesis/Project Approval Form" for student [REDACTED]. The CPSU form states: "This form is required to initiate thesis review and approval by the University." Part II of the CPSU form states: "The final thesis/project report has been reviewed and accepted by the Committee Chairperson and Advisory Committee." The CPSU form identifies [REDACTED] "Advisor/Committee Chairperson" as [REDACTED] and the beneficiary as one of two advisory committee members.

The petitioner also submitted a July 14, 2009 letter from [REDACTED] stating that the beneficiary "acted as an expert referee twice since September 2008" for the journal. In response to the director's request for evidence, the petitioner submitted a letter to the beneficiary from [REDACTED] discussing the reputation of the journal. The petitioner also submitted an interview of [REDACTED] posted on the website ScienceWatch.com discussing the citation record and impact factor of [REDACTED]. The petitioner's response also included a document discussing IOP Publishing's "Peer review policy." The document states:

This policy describes the general principles operated by IOP Publishing for its own journals and the majority of journals published on behalf of its partner organizations.

* * *

We would be interested to hear from you if you wish to volunteer as a referee or if you wish to recommend a colleague who would be a suitable referee. In these cases nominations are approved by the Publisher, who carefully monitors our pool of referees.

* * *

Papers submitted for publication in the majority of IOP journals are generally sent to two independent referees who are asked to report on the scientific quality and originality of the work as well as its presentation.

IOP is committed to publishing only high-quality material in its journals. Papers which referees deem to be technically sound, but of little interest, are referred to the Editorial Board of the journal for further consideration.

If there is sufficient agreement between the referees,

1. the Paper may be accepted;
2. the referees' reports may be sent to the authors for amendment or revision of the Paper;
3. the Paper may be rejected; or
4. if the Paper contains too many errors for the referees to comment fully on the scientific content, the authors will be asked to make major revisions and then resubmit the article.

In the case of rejection, any appeal that the authors submit in response to the referees' reports will be considered by the Editorial Board of the journal and a revised version will be considered only if the Board thinks it appropriate.

* * *

Use of an adjudicator

For the cases when referees' reports are not in agreement, the paper and the referees' reports are sent to an adjudicator who is asked first to form his or her own opinion of the paper and then to read the referees' reports and adjudicate between them. If you, as a referee, are overruled by an adjudicator, we will let you know before the article appears in print.

According to IOP Publishing's "Peer review policy," an individual referee such as the beneficiary makes a recommendation regarding a paper's suitability for publication. The final decision regarding acceptance or rejection of a paper, however, rests with the journal's Editorial Board. We note that referees may be overruled by the both the adjudicator and members of the Editorial Board.

On appeal, the petitioner submits an April 12, 2010 letter from [REDACTED]

[REDACTED] stating:

This letter is to confirm that since 2004, [the beneficiary] has acted as an expert referee reviewing technical papers submitted to the following two international conferences

1. American Controls Conference (ACC);
2. Conference on Decisions and Controls (CDC)

█ does not specify the exact dates of the beneficiary's participation as a referee for the ACC and the CDC or the number of technical papers he actually reviewed for those two conferences.

Nevertheless, the beneficiary's review of a student's master's thesis for CPSU and his service as a referee for █ the ACC, and the CDC qualify under the plain language of the criterion set forth 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 a single research institution or employer such as the petitioner. According to the Department of Labor's Occupational Outlook Handbook (OOH), 2010-11 Edition (accessed at www.bls.gov/oco on January 10, 2011 and incorporated into the record of proceedings), it is inherent to the position of mechanical engineer to "research, design, develop, manufacture, and test tools, engines, machines, and other mechanical devices." See <http://www.bls.gov/oco/pdf/ocos027.pdf>. The OOH further states: "Many . . . materials scientists work in research and development (R&D). In basic research, they investigate the properties, composition, and structure of matter In applied R&D, these scientists create new products and processes or improve existing ones, often using knowledge gained from basic research." See <http://www.bls.gov/oco/pdf/ocos049.pdf>. If the regulation at 8 C.F.R. § 204.5(i)(3)(i)(F) is to have any meaning, it must be presumed that merely performing duties inherent to the academic field is not a contribution to the academic field as a whole.

The petitioner submitted several reference letters supporting the petition.

█, states:

█ advanced materials development group is leading the development of two kinds of electroactive polymers: 1) ionic polymer metal composite (IPMC), and 2) conducting polymer (CP).

* * *

[The beneficiary] and his team's research are pioneering in the area of using IPMC actuators in medical devices. He developed a method for improving the biocompatibility of the IPMC actuators without compromising the performance and our pre-clinical studies demonstrated biocompatibility of the IPMC actuators. His research on decreasing the back relaxation was outstanding. He came up with a method of slowing down the

IPMC electrode deposition during IPMC fabrication in combination with surface pre-treatment which led to a marked decrease in ionic transport rate. This resulted in elimination of the problem of back relaxation of the IPMC actuators under DC voltage excitation. These achievements represent world class advances in this field.

* * *

[The beneficiary] came up with a method of embedding biocompatible metallic micro-particles in micro-porous substrates to prepare the conducting substrates for growing the polymer. The micro-porous nature of the substrate led to the polymer growing on both sides of the substrate and hence created a non-delaminating system. This new conducting polymer actuator also was one of world's first conducting polymer actuator to achieve more than 2 million cycles of mechanical bending fatigue life and more than 6 months of real-time actuation cycling at body temperature and in saline solution.

[The beneficiary's] research has led to several highly significant innovations in the field of electroactive polymers leading to the filing of more than 13 patent applications.

* * *

[The beneficiary'] research will have a great impact in the field of electroactive polymers and their applications in biomedical devices and he is an exceptionally skilled research scientist.

states that the beneficiary's work has led to "the filing of more than 13 patent applications," but he does not provide specific examples of how the beneficiary's methods and innovations are being successfully applied in the biomedical field. The petitioner initially submitted evidence that the beneficiary and three others received a U.S. patent in 2008 for their invention . The grant of a patent demonstrates only that an invention is original. There is no documentary evidence indicating the extent to which the beneficiary's adaptive control device has been licensed or successfully utilized in the industry. Thus, the impact of the beneficiary's invention is not documented in the record. The petitioner also submitted evidence indicating that the beneficiary and his coworkers have 19 patent applications pending. On appeal, the petitioner submits evidence of four additional patent applications filed by the beneficiary and his coworkers at . With respect to a lesser classification under section 203(b)(2) of the Act, 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.* In this instance, there is no documentary evidence showing the extent to which the beneficiary's innovations have contributed to the academic field at large.

, states:

In the fall of 2001 [the beneficiary] was admitted to Texas A&M University as a graduate student in the Department of Mechanical Engineering. [The beneficiary] joined my research group in the Fall of 2001 to do research primarily focused on modeling and control of ionic polymer metal composites (IPMCs).

IPMC actuator and sensors are the next generation of transducers having unique properties like a. low power consumption b. few moving parts c. ability to operate in fluids. These properties make IPMC an ideal actuator for biomedical devices, nano-scale devices and different aerospace applications. [The beneficiary's] research focused on developing a mathematical model of IPMC actuator.

This mathematical model was important for developing a feedback control system for the IPMC actuator. Based on the model, [the beneficiary] developed force and position control algorithms for the IPMC actuator and was one of the first researchers demonstrating precision micro-scale control of the IPMC actuator. His pioneering research on IPMC control and modeling was outstanding and led to an invention disclosure titled "Micro-gripper" which presented the concept of using IPMC actuator in micro-grippers for manipulating micro and nano scale objects. His research on hybrid position and force was highly significant and led to a paper "

which has been cited many times.

The petitioner submitted copies of nine articles citing to the beneficiary's article entitled " ". Two of the preceding citations were self-citations by " ". Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers. The seven independent cites to the beneficiary's article are not indicative of a demonstrable influence in the academic field as whole.

" " states:

I have reviewed [the beneficiary's] paper " " and his thesis " " published in 2003. His research was focused on developing a mathematical "black-box" model based on experimental open-loop IPMC response. Based on the model, he designed precision control algorithms for controlling the force and displacement of the IPMC actuator. He demonstrated micro-scale position control of the IPMC actuator by controlling the displacement precisely up to 20 μm resolution. He also demonstrated successfully micro-scale force control of the IPMC actuator. This work was outstanding and was one of the first research works published internationally in the field of micro-scale precision control of IPMC actuator. I have cited his thesis in my papers

We acknowledge that the beneficiary's scholarly articles have garnered some citation. As previously discussed, the petitioner submitted evidence of seven independent cites to the beneficiary's article entitled " "

The citation evidence for the beneficiary's remaining articles indicate that none of them had been cited to more than four times by independent researchers as of the petition's filing date. For instance, the petitioner submitted evidence that beneficiary's masters' thesis entitled [REDACTED] was independently cited to only four times. The beneficiary's article [REDACTED] was cited to an aggregate of five times, but four of the submitted citations were self-cites by the beneficiary's coauthor [REDACTED]. This minimal citation level is not indicative of contribution to the field as a whole.

[REDACTED] states:

I have collaborated with [the beneficiary] on the development of biocompatible conducting polymers (a type of EAP [Electroactive Polymer]) for the past three years.

* * *

[The beneficiary] is leading the research at [REDACTED], in developing biocompatible EAP for implantable medical devices. He was one of the first researchers in the world to demonstrate biocompatible ionic polymer metal composites (IPMC) and integrate them in a long-term implantable product. He has done outstanding research in the field of conducting polymer actuators. He is one of the primary researchers to have demonstrated a biocompatible conducting polymer actuator which has high mechanical flexibility and high actuation life cycle. His research is paving the way for use of IPMC and conducting polymer actuators in different biomedical fields ranging from urology to cardiology, in-turn helping improve lives of millions of Americans. [The beneficiary] is also very active in the scientific community of artificial muscles and has become a leading figure in guiding the scientific and technological path of this increasing important category of smart materials.

[REDACTED] does not provide specific examples of how the beneficiary's original implantable medical devices are already being utilized in the field or otherwise equate to original scientific contributions to the academic field.

[REDACTED] states:

I am the initiator and, since 1999, have been Chairing the International Electroactive Polymer Actuators and Devices (EAPAD) Conference that is the major one in this field around the world.

* * *

[The beneficiary] is one of the researchers that are working on improving and modifying the properties of these electroactive polymers to meet the unique requirements of biomedical devices. [The beneficiary] has dedicated the past 4+ years researching IPMC

and conducting polymers, and has made highly significant contributions to the improvement of the fatigue life, biocompatibility, and biostability of these unique electroactive polymers. He is an outstanding scientist with great passion for the field of electroactive polymers which is clearly seen from his presentations at the EAPAD conference, publications in technical journals, and patent applications.

█ does not provide specific examples of the beneficiary's work with electroactive polymers being successfully utilized in biomedical devices. Regarding the beneficiary's conference papers and journal articles, we note that the regulations 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. To hold otherwise would render meaningless the regulatory requirement that a beneficiary meet at least two separate criteria.

█ states:

[The beneficiary] and I are co-inventors in several inventions in the field of obstructive sleep apnea. In my capacity as a scientific adviser, I have also reviewed [the beneficiary's] research up-close.

[The beneficiary's] research is in developing different electroactive polymers (EAPs) to be used in treatment of Obstructive Sleep Apnea. . . . [The beneficiary's] research has paved the way for developing implantable devices which can address both the multi-factorial and progressive nature of the disease. His passion for EAPs and finding a cure for OSA is demonstrated by his more than 13 pending patents. His inventions in the field of EAPs and their use in development of devices to treat OSA are highly significant. His research will definitely help millions of patients suffering from this grave disease.

█ does not provide specific examples of the beneficiary's inventions having been successfully implemented in medical products. █ opines that the beneficiary's research "will definitely help millions of patients suffering from [Obstructive Sleep Apnea]," but there is no evidence demonstrating that his work has already significantly impacted the field as of the date of filing. A petitioner must establish the beneficiary's eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

█ states:

I first came to know [the beneficiary] in late 2006 when he hired a researcher from my laboratory to join the █ research team that was focused on electroactive polymers. Later in 2007, I interacted with [the beneficiary] during the important SPIE [International Society for Optical Engineering] conference on smart structures and materials

IPMC and conducting polymers are a new class of electroactive polymer actuators which can replace traditional actuators like motors and cylinders but still do the same job effectively with less energy and smaller size. They can also act like artificial muscles and potentially have several applications in the body. [The beneficiary] is one of few researchers in the world working to tailor the properties and performance of these unique materials for use in the human body. Traditional IPMC actuators which work in body fluids suffer from a problem called "back relaxation." This refers to the property of the actuator to relax back to its original position when a constant voltage is applied to it. Back relaxation limited the potential applications for this material. [The beneficiary] and his team overcame that problem and presented experimental data demonstrating an IPMC actuator with no back relaxation at the 2007 SPIE conference. This is an excellent example of the outstanding research caliber of [the beneficiary].

There is no evidence showing that the beneficiary's paper [redacted] conference has been frequently cited or that his findings otherwise equate to an original contribution to the academic field as a whole.

[redacted] states:

I have known [the beneficiary] for the past 3 years. In 2007 [the beneficiary] had send me for evaluation an IPMC actuator which he had developed at [redacted]. I analyzed the material and found it to have higher force output and high electrolysis potential than other IPMC actuators previously investigated. Electrolysis is a phenomenon related to the breakdown of water into hydrogen and oxygen when the actuator operates in solvents like water or body fluids. This limit's the operating voltage range of the IPMC actuator to 1.23 V and significantly limited the useful applications of IPMC.

Thanks to the developed electrodes the actuator which [the beneficiary] developed was able to operate up to 2.2 V and this was a highly significant research breakthrough. . . . He is definitely an outstanding researcher of international caliber and his work is leading the way for electroactive polymers use in biomedical applications.

[redacted] asserts that the beneficiary's development of an IPMC actuator operable up to 2.2 V "was a highly significant research breakthrough," but there is no evidence showing the extent to which the beneficiary's innovation has been utilized in the industry or otherwise constitutes an original contribution to the academic field at large.

[redacted], states:

I have known of [the beneficiary's] work since 2006. I first met him during the 2006 Society of Optical Engineering (SPIE) conference on electroactive active polymers and devices (EAPAD) and we had several research discussions during the conference.

* * *

[The beneficiary's] significant and highly innovative research led to the development of a novel IPMC actuator which does not exhibit back relaxation when operated in salt solution under DC voltage. This can lead to the development of novel implantable medical devices.

█ opines that the beneficiary's work "can lead to the development of novel implantable medical devices," but there is no evidence that this work has already significantly impacted the academic field as of the date of filing. As previously discussed, a petitioner must establish the beneficiary's eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. 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 master's thesis or doctoral research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every mechanical engineer or material scientist who performs original research that adds to the general pool of knowledge has inherently made an original contribution to the academic field as a whole.

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. at 165.

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 several scholarly articles authored by the beneficiary. Thus, the beneficiary 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 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.

B. Final Merits Determination

It is important to note at the outset that the controlling purpose of the regulation at 8 C.F.R. § 204.5(i)(3)(i) 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 his recognition beyond his own circle of collaborators. *See Kazarian*, 596 F.3d at 1122. Regarding the beneficiary's service as a referee for *Smart Materials and Structures*, the ACC, and the CDC, the petitioner has not established that this level of judging is commensurate with being internationally recognized as outstanding in the beneficiary's field. We cannot ignore that scientific journals and conferences are peer reviewed and rely on many scientists to review submitted articles. For instance, IOP Publishing's "Peer review policy" specifically encourages individuals "to volunteer as a referee." Normally a journal or conference's editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for the editorial staff to ask multiple reviewers to review a manuscript and to offer comments. The editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. For example, according to IOP Publishing's "Peer review policy," a referee makes a recommendation regarding a paper's suitability for publication. The final decision regarding acceptance or rejection of a paper, however, rests with the journal's Editorial Board. We note that IOP Publishing's referees may be overruled by both the adjudicator and members of the Editorial Board. Regarding the beneficiary's review of a student's master's thesis for CPSU, the petitioner has not established that performing such a review is indicative of being internationally recognized as outstanding. With respect to the beneficiary's participation, the role played by him was clearly subordinate to the Committee Chairperson. We cannot conclude that evaluating local students, who have not yet begun working in the field, is commensurate with international recognition. Without evidence that sets the beneficiary apart from others in his field as of the petition's filing date, such as evidence that he completed numerous manuscript reviews for a substantial number of distinguished journals or scientific conferences, chaired a conference session (such as [REDACTED]), or served in an editorial position for a distinguished journal (such as [REDACTED]), 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 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. 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." Notably, the Department of Labor's OOH, 2010-11 Edition (accessed at www.bls.gov/oco on January 10, 2011 and incorporated into the record of proceedings), contains the following information on mechanical engineers and materials scientists:

Mechanical engineers research, design, develop, manufacture, and test tools, engines, machines, and other mechanical devices. Mechanical engineering is one of the broadest engineering disciplines. Engineers in this discipline work on power-producing machines such as electric generators, internal combustion engines, and steam and gas turbines. They also work on power-using machines such as refrigeration and air-conditioning equipment, machine tools, material-handling systems, elevators and escalators, industrial production equipment, and robots used in manufacturing. Some mechanical engineers design tools that other engineers need for their work. In addition, mechanical engineers work in manufacturing or agriculture production, maintenance, or technical sales; many become administrators or managers.

* * *

Many . . . materials scientists work in research and development (R&D). In basic research, they investigate the properties, composition, and structure of matter and the laws that govern the combination of elements and reactions of substances to each other. In applied R&D, these scientists create new products and processes or improve existing ones, often using knowledge gained from basic research. For example, the development of synthetic rubber and plastics resulted from research on small molecules uniting to form large ones, a process called polymerization. R&D . . . materials scientists use computers and a wide variety of sophisticated laboratory instrumentation for modeling, simulation, and experimental analysis.

* * *

Materials scientists study the structures and chemical properties of various materials to develop new products or enhance existing ones. They also determine ways to strengthen or combine materials or develop new materials for use in a variety of products. Materials science encompasses the natural and synthetic materials used in a wide range of products and structures, from airplanes, cars, and bridges to clothing and household goods. Materials scientists often specialize in a specific type of material, such as ceramics or metals.

See <http://www.bls.gov/oco/pdf/ocos027.pdf> and <http://www.bls.gov/oco/pdf/ocos049.pdf>. As researching, designing, and developing new products are inherent to mechanical engineers and materials scientists, the mere originality of the beneficiary's work does not set the beneficiary apart in the academic community through eminence and distinction based on international recognition,

the purpose of the regulations. 56 Fed. Reg. at 30705. For the reasons discussed above, the record does not contain sufficient evidence that the beneficiary's original innovations have had a notable influence in the field, let alone an influence consistent with being internationally recognized as outstanding.

While the beneficiary has authored scholarly articles at Texas A&M University and for his employers, the OOH (accessed at www.bls.gov/oco on January 10, 2011 and incorporated into the record of proceedings) provides information about the nature of employment as a postsecondary teacher and the requirements for such a position. See <http://www.bls.gov/oco/pdf/ocos066.pdf>. 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 citation evidence for the beneficiary's research articles indicates that none of them have been cited to more than seven times by independent researchers as of the petition's filing date. As the petitioner has not established that the beneficiary's research findings have been frequently cited and the record contains no other comparable evidence demonstrating the impact of the beneficiary's scholarly articles, we cannot conclude that the beneficiary's citation record is consistent with international recognition.

We acknowledge that under the classification sought, the beneficiary need not be within the small percentage at the top of the field. Compare section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2). Thus, the fact that the qualifications of the beneficiary's references far outweigh his own does not necessarily preclude eligibility. That said, we cannot ignore that the qualifications of the beneficiary's references are far more consistent with international recognition than the beneficiary's qualifications. For example, [REDACTED] states:

In August 2004, I joined the Department of Electrical and Computer Engineering at Michigan State University as an Assistant Professor, and founded [REDACTED], which I have been directing since. . . . My research has been supported by NSF [National Science Foundation], Office of Naval Research (ONR), and other agencies and organizations and I am Associate Editor of *Automatica*.

Regarding his qualifications, [REDACTED] states:

I am [REDACTED] specializing in synthetic polymers. . . . I am widely recognized as an expert in the field of electroactive polymers and smart materials. I have published more than 100 papers in refereed journals and have 29 U.S. patents issued.

In discussing his qualifications, [REDACTED] states:

I have been [REDACTED]
[REDACTED] September 2000. I received . . . my Ph.D. in Electrical Engineering and Computer Science from MIT. I have published more than 70 papers in peer reviewed journals/conferences and am on the editorial board of several renowned journals such as [REDACTED]
[REDACTED].

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 that have not garnered a significant level of citation or other documented response in the academic field, does not set the beneficiary apart in the scientific community through eminence and distinction based on international recognition, the purpose of the regulatory criteria. 56 Fed. Reg. at 30705.

III. Conclusion – International Recognition as Outstanding

The petitioner has shown that the beneficiary is a talented research and development engineer, who has won the respect of his coworkers, collaborators, and supervisors, while securing a small 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.

IV. Job Offer

Beyond the decision of the director, 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.

(Emphasis added.) Black's Law Dictionary 1189 (9th ed. 2009) defines "offer" as "[t]he act or an instance of presenting something for acceptance" or "a display of willingness to enter into a contract on specified terms, made in a way that would lead a reasonable person to understand that an acceptance, having been sought, will result in a binding contract" and defines "offeree" as "[o]ne to whom an offer is made." In addition, Black's Law Dictionary defines "offeror" as "[o]ne who makes an offer." *Id* at 1190. The online law dictionary by American Lawyer Media (ALM), available at <http://www.law.com/jsp/law/dictionary.jsp>, defines offer as "a specific proposal to enter into an agreement with another. An offer is essential to the formation of an enforceable contract. An offer and acceptance of the offer creates the contract." Significantly, the same dictionary defines offeree as "a person or entity to whom an offer to enter into a contract is made by another (the offeror)," and offeror as "a person or entity who makes a specific proposal to another (the offeree) to enter into a contract." (Emphasis added.)

In light of the above, the ordinary meaning of an "offer" requires that it be made to the offeree, not a third party. As such, regulatory language requiring that the offer be made "to the beneficiary" would simply be redundant. Thus, a letter from the petitioner addressed to USCIS *affirming* the beneficiary's employment is not a job *offer* within the ordinary meaning of that phrase.

The regulation at 8 C.F.R. § 204.5(i)(2), provides, in pertinent part:

Permanent, in reference to a research position, means either tenured, tenure track, or for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination.

On Part 6 of the petition, the petitioner indicated that the proposed employment was a permanent position. The petitioner's initial evidence included an August 11, 2009 letter from [REDACTED] to USCIS stating that the beneficiary has been offered a full-time, indefinite duration position, but this letter does not constitute a job offer from the petitioner to the alien beneficiary. Thus, the petitioner has not submitted the required primary initial evidence, the original job offer submitted to the beneficiary. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). Without evidence of the initial job offer to the beneficiary, we cannot consider the petitioner's explanations about the terms and conditions set forth in that job offer.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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.

We note that the beneficiary is also the beneficiary of an approved petition classifying him as a member of the professions holding an advanced degree pursuant to section 203(b)(2)(B) of the Act. This decision is without prejudice to the approval of that petition, filed under a lesser classification.

ORDER: The appeal is dismissed.