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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

B3

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 1 1 2011

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 engages in sales, services and research and development of electronic products. 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 "Senior RF Architect / Lead 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. For the reasons discussed below, we concur with the director's ultimate determination 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)(E) 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 --
>
> (i) the alien is recognized internationally as outstanding in a specific academic area,

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

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

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

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

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

The regulation at 8 C.F.R. § 204.5(i)(3) states that a petition for an outstanding professor or researcher must be accompanied by:

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from current or former employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

The petitioner filed the petition on March 31, 2010 to classify the beneficiary as an outstanding researcher in the field of electrical engineering. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching and/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. The beneficiary received his Ph.D. on August 3, 2004, more than three years before the petitioner filed the petition. As quoted above, the regulation at 8 C.F.R. § 204.5(i)(3)(ii) states that evidence of research experience "shall" be in the form of letters from current or former employers. While the petitioner submitted such letters, they do not specify the dates of employment. As such, the petitioner has not documented the beneficiary's three years of experience. Moreover, while the petitioner affirms the beneficiary's employment with the petitioner and its ability to pay the beneficiary, the petitioner did not submit an actual job offer issued by the petitioner to the beneficiary as required under 8 C.F.R. § 204.5(i)(3)(iii).

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.

As noted by counsel on appeal, 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

[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)).

concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). Counsel does not acknowledge the second half of the court's analysis, however. Specifically, the court also explained the "final merits determination" as the corollary to this procedure:

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

Id. at 1119-20.

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

II. Analysis

A. Evidentiary Criteria[4]

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

The petitioner did not initially assert that the beneficiary has received any qualifying awards but did submit the beneficiary's Peer Recognition Award from [redacted] where the beneficiary previously worked. In response to the director's request for more information about this award, the petitioner asserted that this recognition is a company award limited to [redacted]employees. The director

[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.

concluded that an award limited to employees of a single company is not a "major" award. Counsel does not contest this conclusion on appeal.

As noted by the director, the final rule removed the requirement in the proposed rule 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.)

The record lacks evidence that NXP employee recognition is widely recognized in the field as a major award. Thus, 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

The petitioner submitted evidence that in 2010 the beneficiary served as [redacted] of the Institute for Electrical and Electronic Engineers (IEEE). The initial submission included evidence that the [redacted] "has the largest membership of [redacted]"

In response to the director's request for additional evidence, the petitioner submitted the requested constitution and bylaws for [redacted] as well as a letter from [redacted] Committee. [redacted] asserts that the [redacted] is the world's largest technical professional association and the "trusted 'voice' for engineering, computing and technological information around the globe with more than 375,000 members in more than 160 countries." [redacted] further asserts that membership in IEEE "confers a level of distinction that is recognized throughout the world as the mark of excellence as well as many more tangible benefits." [redacted] concedes, however, that IEEE is "open to individuals who by education or experience give evidence of competence in an IEEE designated field." Finally, [redacted] confirms that the petitioner served as [redacted] and Treasurer in [redacted] elected positions.

The bylaws for the IEEE states that membership is open to candidates with as little as a three-to-five year university level or higher degree in a designated field from an accredited institution. Thus, the director determined that IEEE was not a qualifying membership.

On appeal, counsel discusses the overall prestige of IEEE as an association and notes the petitioner's roles for SCV. Counsel continues:

> [USCIS] contends that because IEEE or [redacted] organizations of which the beneficiary is a member, do not appear to require outstanding achievement as a precursor to membership, this criterion has not been established. However, this is not how all

> professional organizations work. Mensa International, the high IQ society, does not require outstanding achievements either as a precursor to membership, but of course all members have high IQs and are perhaps geniuses. Any organization that would limit membership to outstanding achievements would have the inherent problem defining "outstanding achievement." Without an objective measure, outstanding achievement is always determined by so-called experts or others who have achieved "outstandingly [*sic*]."

Counsel is not persuasive. The fact that not "all" professional associations limit membership to those with outstanding achievements does not require USCIS to waive that regulatory requirement. Notably, the bylaws for IEEE, submitted by the petitioner, state that IEEE accepts as fellows those with "unusual distinction in the profession" and that fellowship status "shall be conferred by the Board of Directors upon a person with an outstanding record of accomplishments in any of the IEEE fields of interest." The record contains no evidence that the petitioner is a fellow of IEEE. The existence of this category of membership, however, undermines counsel's implication that professional associations can only implicitly require outstanding achievements.[5]

We will not ignore the plain and unambiguous requirement in the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B) stating that the only qualifying professional associations are those that limit membership to those with outstanding achievements. It cannot be credibly asserted that requiring an undergraduate degree in a specific field is an outstanding achievement in a profession, especially as the definition of a profession is one in which a baccalaureate degree is the minimum requirement for entry into the field. 8 C.F.R. § 204.5(k)(2).

We will next consider the beneficiary's election to officer positions in a local chapter of a society within IEEE. These elected positions are roles for a chapter, not memberships in an association. Thus, these roles simply do not meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B). As noted by counsel, USCIS may not utilize novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *Kazarian,* 596 F.3d at 1121, *citing Love Korean Church v. Chertoff,* 549 F.3d 749, 758 (9th Cir.2008). Looking at the beneficiary's elected position rather than the membership requirements would go beyond the substantive or evidentiary requirements set forth at 8 C.F.R. § 204.5(i)(3)(i)(B). We further note that the regulation at 8 C.F.R. § 204.5(i)(3)(i) does not permit the submission of comparable evidence. *Compare* 8 C.F.R. § 204.5(h)(4).[6]

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[5] [redacted]

[6] Even the regulation at 8 C.F.R. § 204.5(h)(4) only permits the submission of comparable evidence where the standards do not readily apply to the beneficiary's occupation. In this case, bylaws for IEEE, listing a strict fellowship membership status, suggests that the standard at 8 C.F.R. § 204.5(i)(3)(i)(B) does, in fact, readily apply to the beneficiary's field.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B). That said, we will consider the beneficiary's elected positions for [redacted] as part of the overall evidence submitted in our final merits determination.

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

The petitioner submitted a letter from [redacted] an associate editor of the *Journal of Solid-State Circuits* addressed to the beneficiary. The letter states:

> We would greatly appreciate if you or somebody in your team would be able to carry out a review for the IEEE [redacted] If not, maybe you can suggest an expert for us.

In response to the director's request for additional evidence, [redacted] also confirms that [redacted] asked the beneficiary to review a manuscript and concludes:

> Reviewers are identified via such means as peer contact, professional lists maintained by societies and other organizations, references listed at the end of the manuscript, Associated editor's own contacts.

The director concluded that peer review is routine in the field. On appeal, counsel asserts that the director went beyond the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(D). Counsel is correct with to respect to counting the evidence as the first step of the process set forth in *Kazarian,* 596 F.3d at 1119-20. Counsel, however, ignores the court's acknowledgement that the nature of the judging is a valid concern in the final merits determination. *Id.* at 1122. Nevertheless, the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(D) requires evidence that the beneficiary actually participated in judging the work of others, not merely that he was requested to do so. The letter from [redacted] asks that the beneficiary or someone on his team review the manuscript. The record lacks evidence that the beneficiary did, in fact, perform the review.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(D). Nevertheless, we will consider the potential that the beneficiary did perform this review in our final merits determination below.

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

The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(E) does not require that the beneficiary's contributions themselves be internationally recognized as outstanding. That said, the plain language of the regulation does not simply require original research, but original "research

contributions." Had the regulation contemplated merely the submission of original research, it would have said so, and not have included the extra word "contributions." Moreover, the plain language of the regulation requires that the contributions be "to the academic field" rather than an individual laboratory or institution. The director concluded that the petitioner had submitted sufficient evidence under this criterion. We will not withdraw that finding.

The beneficiary authored a patent application assigned to [redacted] an application published by the [redacted],[7] a patent assigned to [redacted] and what appear to be two German patents or patent applications. The petitioner did not submit a certified translation (or any translation) of the relevant portion of the foreign language patent documentation as required under 8 C.F.R. § 103.2(b)(3). Thus, that documentation has no evidentiary value. Regarding the documented patent and patent applications, 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.*

[redacted] a professor at the University of California, Santa Cruz, confirms collaborating with the petitioner [redacted] praises the petitioner's Ph.D. research using a rotary wave clock as a [redacted]. [redacted] affirms that this research represents a "successful attempt to break the fundamental speed limitation for a given power budget," proving that "the rotary clock oscillator integrated in a [redacted] technology is capable of combining very high frequency of operation with very low power consumption." While [redacted] suggests possible applications for this work, he does not identify any industry or academic institution already applying this work. Nevertheless, we acknowledge that the beneficiary's published Ph.D. research has garnered moderate citation.

[redacted] of [redacted] explains that at [redacted] the beneficiary "was particularly responsible for researching new ways of designing very high quality oscillators – one of the principal building blocks in [redacted]" [redacted] confirms that the beneficiary "did a spectacular job of extending the state of the art and generating multiple valuable elements to the design of analog to digital converters, frequency dividers and other fundamental components of Analog/RF electronics." As stated above, the beneficiary is the sole inventor named on a patent assigned to [redacted]

[redacted], a former RF IC Design Manager at [redacted] confirms that he hired the beneficiary to work at [redacted] [redacted] asserts that the beneficiary's innovations for [redacted] "allowed us to develop power efficient architectures that were not realizable in the past." As noted above, [redacted] recognized the beneficiary with an employee award.

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[7] The record contains no evidence that [redacted] is a patent-issuing authority rather than a means of posting notice of innovations internationally. Regardless, we have confirmed on the U.S. Patent and Trade Office's website that the beneficiary is the author of a U.S. patent application for the innovation listed on the [redacted] application.

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

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

Most significantly, in support of these letters, the petitioner submitted evidence that the beneficiary has authored scholarly articles. 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. The petitioner, however, submitted evidence that one of the beneficiary's articles and one of his presentations have garnered moderate citation. The petitioner also submitted three of these citations, two articles and a presentation. This evidence confirms that the beneficiary has produced useful results.

As stated above, it is inappropriate to consider at this point whether the evidence of the beneficiary's contributions are indicative of or consistent with international recognition as outstanding. Given the evidence discussed above in the aggregate, we will not withdraw the director's conclusion that the beneficiary has made original contributions to his field.

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

As stated above, the petitioner submitted several articles authored by the beneficiary. As noted by counsel, the only consideration when counting this evidence is whether the beneficiary has authored articles in qualifying journals. Thus, the petitioner has submitted evidence that qualifies under 8 C.F.R. § 204.5(i)(3)(i)(F).

In light of the above, the petitioner has submitted evidence that meets 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)(E) and (F). The next step is a final merits determination that considers whether the evidence is consistent with the statutory standard in this matter, international recognition as outstanding. Section 203(b)(1)(B)(i) of the Act.

B. Final Merits Determination

It is important to note at the outset that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. More specifically, outstanding professors and researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. *Employment-Based Immigrants,* 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)).

As discussed above, the beneficiary received employee recognition from [redacted] We reiterate that this recognition is local to [redacted] and is not indicative of or consistent with international recognition as outstanding or any recognition outside the beneficiary's own employer.

Even if we accepted that the beneficiary's elected positions with the [redacted] was a membership in an association that requires outstanding achievements of its members, and we reiterate that we do not, these roles are not persuasive evidence of the beneficiary's international recognition. Rather, he was elected to these positions by members of a local chapter. Thus, this election is not evidence of his recognition beyond that local chapter.

Even assuming that the beneficiary reviewed a manuscript for publication, as stated above, the nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian,* 596 F. 3d at 1122. We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed manuscripts for a journal that credits a small, elite group of referees, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the beneficiary's judging experience is indicative of or consistent with international recognition.

Regarding the beneficiary's original research, 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."

Significantly, the Department of Labor's Occupational Outlook Handbook (OOH) provides the following information about electrical engineers:

> ***Electrical engineers*** design, develop, test, and supervise the manufacture of electrical equipment. Some of this equipment includes electric motors; machinery controls, lighting, and wiring in buildings; radar and navigation systems; communications systems; and power generation, control, and transmission devices used by electric utilities. Electrical engineers also design the electrical systems of automobiles and aircraft. Although the terms *electrical* and *electronics engineering* often are used interchangeably in academia and industry, electrical engineers traditionally have focused on the generation and supply of power, whereas electronics engineers have worked on applications of electricity to control systems or signal processing. Electrical engineers specialize in areas such as power systems engineering or electrical equipment manufacturing.

See www.bls.gov/oco (accessed March 3, 2011 and incorporated into the record of proceedings). Thus, original designs, including those resulting in a patent, are inherent to the beneficiary's occupation. The letters establish that the beneficiary has provided useful designs for his employers but do not establish his international recognition beyond his employers. As this classification is designed for aliens, we conclude that Congress did not intend international recognition to cover any individual who has worked in more than one country. While the letters include unsupported assertions of widespread recognition, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[8] While the beneficiary's name appears on a patent and patent applications, the record lacks evidence that the innovations described in the patents have garnered any independent attention in the trade media or otherwise.

The record does include the beneficiary's moderately cited articles. While citations are valuable evidence, two moderately cited articles, without more, cannot establish the beneficiary's eligibility.

In light of the above, our final merits determination reveals that the beneficiary's qualifying evidence, an employee recognition certificate, evidence of having served as an elected officer for a local chapter, a request for the beneficiary or someone on his team to participate in the widespread peer review process and two moderately cited articles, does not set the beneficiary apart in the academic community through eminence and distinction based on international recognition, the purpose of the

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

regulatory criteria. 56 Fed. Reg. at 30705. Indeed, the record lacks evidence that members of the academic field outside of the beneficiary's immediate circle of colleagues are even aware of his work.

III. Conclusion

The petitioner has shown that the beneficiary is a talented 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. 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.