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

(b)(6)

[redacted]

Date: APR 0 4 2013 Office: TEXAS SERVICE CENTER FILE: [redacted]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an institution of higher education/university. It seeks to classify the beneficiary as an outstanding professor or 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 an assistant professor in the field of neuroradiology. 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 professor or researcher.

The petitioner submits a brief and additional evidence on appeal, including an updated citation record for the beneficiary and an article citing to the beneficiary's work.[1] For the reasons discussed below, the AAO concurs with the director that the record fails to establish that the beneficiary enjoys international recognition as outstanding in the academic field. 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 the 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.[2] *Employment-Based Immigrants,* 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)).

Beyond the decision of the director, the record lacks the actual job offer issued by the petitioner to the beneficiary, pursuant to 8 C.F.R. § 204.5(i)(3)(iii). 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 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

I. Law

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

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

[1] The remaining documentation offered on appeal has previously been submitted into the record.

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

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

(i) the alien is recognized internationally as outstanding in a specific academic area,

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

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

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

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

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

II. Job Offer from Qualifying Employer

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.

On Part 6 of the petition, the petitioner indicated that the proposed employment was a permanent position.

In the request for additional evidence (RFE) issued on July 16, 2012, the director requested a copy of the current job offer from the petitioner to the beneficiary. In counsel's response to the RFE dated September 24, 2012, counsel stated the following with respect to the job offer:

> The petitioner has made an offer of permanent, full-time employment to [the beneficiary] in his current position as Assistant Professor of Radiology. This is a tenure-track position. The relevant portions are highlighted in the letter from Chair of Radiology at [the petitioning institution] . . . .

The petitioner has not submitted its job offer to the beneficiary. Instead, the petitioner has submitted two letters from dated February 7, 2012 and August 18, 2012, respectively, addressed to U. S. Citizenship and Immigration Services (USCIS), describing in almost identical language the terms of the beneficiary's employment with the petitioner and affirming the job offer. The August 18, 2012 letter states the following with respect to the beneficiary's employment:

> [The petitioner] currently employs [the beneficiary] in the H1B status in the position of Assistant Professor of Radiology at [the petitioning institution] at an annual base salary of $225,000. At the level of associate professor this is a tenure track. As an assistant professor his responsibilities include clinical work, research and teaching of medical students, residents, fellows and other faculty and various academic activities . . . .
>
> [The petitioner] has offered [the beneficiary] a position as Assistant Professor in the Department of Imaging Sciences. This is a full-time teaching and clinical position in which [the beneficiary] will continue his work and serve as an attending radiologist at [the petitioner's] teaching medical students, residents and fellows . . . .

Black's Law Dictionary 1189 (9th ed. 2009) defines "offer" as "the 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.

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, the letters from addressed to USCIS describing the terms of the beneficiary's employment and *affirming* the job offer are not an *offer* of employment

within the ordinary meaning of that phrase. The record does not contain an offer of employment from the petitioner addressed to the beneficiary. While the AAO does not question the credibility of , the petitioner has not explained why the AAO should accept letters *affirming* the job offer in lieu of the offer of employment itself, which is required initial evidence pursuant to 8 C.F.R. § 204.5(i)(3)(iii).

III. International Recognition

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

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

The court stated that the AAO's evaluation rested on an improper understanding of the regulations.[3] Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

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

Id. at 1119-20.

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

IV. Analysis

A. Evidentiary Criteria

This petition, filed on May 16, 2012, seeks to classify the beneficiary as a researcher who is recognized internationally as outstanding in his academic field. The petitioner has submitted

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

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

documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(i)(3)(i).[5]

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

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).

The petitioner submitted evidence that the beneficiary received awards for excellence in resident radiology teaching, three from the petitioner (2005, 2008 and 2010), and one from [redacted] 1998), respectively. The beneficiary's awards are also mentioned in the reference letters.[6] The director concluded that the beneficiary's awards do not qualify as major prizes or awards for outstanding achievement in the academic field. Neither counsel nor the petitioner challenges that conclusion on appeal. Accordingly, the petitioner has abandoned that claim. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005); *Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *9 (E.D. N.Y. Sept. 30, 2011).

Nevertheless, upon review, the AAO concurs with the director's conclusion that the petitioner did not submit qualifying evidence that meets the plain language requirements of this criterion, set forth at 8 C.F.R. § 204.5(i)(3)(i)(A).

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

[6] The reference letters mention that the beneficiary's presentations at professional conferences were awarded Magna Cum Laude at conferences held by the American Society of Neuroradiology (ASNR)(2010) and Educational Exhibit Certificate of Merit Award at the Radiologic Society of North America (RSNA)(2010). The director's decision did not address the beneficiary's receipt of these awards. However, the AAO finds the petitioner has not submitted evidence to establish either the beneficiary's receipt of these awards or that these awards qualify as major prizes or awards for outstanding achievement in the academic field

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

The petitioner documented the beneficiary's membership in the and the

The director concluded that the materials the petitioner submitted did not establish that the organizations require outstanding achievements of their members. Neither counsel nor the petitioner challenges that conclusion on appeal. Accordingly, the petitioner has abandoned that claim. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005); *Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *9 (E.D. N.Y. Sept. 30, 2011).

Nevertheless, upon review, the AAO concurs with the director's conclusion that the petitioner did not submit qualifying evidence that meets the plain language requirements of this criterion, set forth at 8 C.F.R. § 204.5(i)(3)(i)(B).

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

The petitioner submitted a letter from professor of radiology at the petitioning institution and editor-in-chief of the stating that the beneficiary has been a reviewer for the journal in the subject of neuroradiology. He states the beneficiary's reviews have been excellent and timely.

This evidence qualifies under the plain language of the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(D). Pursuant to the reasoning in *Kazarian,* 596 F. 3d at 1122, however, the nature of these duties may be and will be considered below in our final merits determination.

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

As evidence relating to the beneficiary's original scientific or scholarly research contributions to the academic field, the petitioner submitted the following: testimonial letters from 11 individuals all of whom are from the beneficiary's immediate circle of coauthors, collaborators and colleagues; and, a citation record revealing that the beneficiary's work has been cited approximately eight times.

Citations, such as a reference to the beneficiary's work in an article, are evidence of the impact and influence of the article cited. A review of the one citing article submitted by the petitioner reveals it lists the beneficiary's work as one of several references. 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 F3d at 1122. The citation history will be considered below in our final merits determination.

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 being said, the plain language of the regulation does not simply require original research, but an original "research contribution." Had the regulation contemplated merely the submission of original research, it would have said so, and not have included the extra word "contribution." Moreover, the plain language of the regulation requires that the contribution be "to the academic field" rather than an individual laboratory or institution.

We acknowledge that the beneficiary has authored several journal articles in the academic field. We also acknowledge that the beneficiary has presented his work at several international conferences and symposia, as is mentioned in the reference letters. 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. In addition, even if we considered the original nature of the beneficiary's research to qualify it under the criterion at 8 C.F.R. § 204.5(i)(3)(i)(E), and we do not, whether or not the contributions are indicative of the beneficiary's international recognition in the field is a valid consideration under our final merits determination. (We will consider the published materials under 8 C.F.R. § 204.5(i)(3)(i)(F)).

We further acknowledge that the beneficiary has received awards for excellence in resident radiology teaching, as is mentioned in the reference letters. 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 awards. (We have considered the awards under 8 C.F.R. § 204.5(i)(3)(i)(A)).

an associate professor of radiology at the petitioning institution, states he met the beneficiary during the beneficiary's neuroradiology fellowship at the petitioning institution. He states that the beneficiary is an exceptional radiologist and neuroradiologist.

the chief of diagnostic and interventional neuroradiology at the petitioning institution, states he met the beneficiary in July 2003, when the beneficiary became a neuroradiology fellow in the petitioner's department of imaging sciences. He states he was the beneficiary's supervisor for two years. He describes the beneficiary as a superb diagnostic radiologist. He states the beneficiary's diagnostic skills and "wide solid general medical knowledge" are of great value to the petitioning institution.

, a professor of radiology at states she met the beneficiary in 1997 at where she was his mentor. She states she also subsequently worked with him during his fellowship at the petitioning institution. She describes some of the beneficiary's research as including an understanding of the various states of stroke imaging and signal recovery in different malignant brain lesions. She states the beneficiary has the potential to make significant contributions in the field of neuroradiology. However, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole.

an associate professor of radiology at the states he met the beneficiary over three decades ago when they both attended the India. He states the beneficiary is impressive in his depth of his knowledge, dedication to patient care and resident teaching ability.

an interventional neuroradiologist, states he met the beneficiary in 2007 when he and the beneficiary worked in the petitioning institution's imaging sciences department. He states he has collaborated with the beneficiary on a professional conference presentation. He states the beneficiary is a superb diagnostic neuroradiologist and educator of medical students and radiology residents.

a professor of radiology and neuroradiology at the petitioning institution, states he met the beneficiary in 2003 when the beneficiary began his neuroradiology fellowship at the petitioning institution. He states he has co-authored several articles in the academic field with the beneficiary. He describes the beneficiary as one of the most competent and skilled neuroradiologists he has met.

The petitioner has submitted three testimonial letters from professor and chair of the petitioner's department of imaging sciences. He states he has known the beneficiary since July 2003 when the beneficiary began his fellowship in neuroradiology with the petitioning institution. He states the beneficiary is well known throughout the department and the petitioning university as an outstanding teacher and clinician. He states the beneficiary has expertise in research and the interpretation of advanced neuroimaging techniques in imaging stroke and brain tumors.

is a professor of radio diagnosis and imaging at the in India. He states he has known the beneficiary for more than 20 years, and was the beneficiary's supervisor when the beneficiary was a radiology resident at He states that he and his post-doctoral students in neuroradiology have been following the beneficiary's published work for potential application in their department. However, the witness does not state that his own institution has been using the beneficiary's techniques or research findings, as would be expected of a contribution to the field as a whole.

an interventional radiologist at the states he met the beneficiary 20 years ago when the beneficiary was a radiology resident at in India. He states he regards the beneficiary highly as a well-respected clinician, educator and researcher.

an assistant professor of radiology at states he has known the beneficiary since 2004, as a colleague in fellowship training and, subsequently, as an attending colleague at the petitioning institution. He describes the beneficiary as an outstanding physician, teacher and researcher.

an adjunct professor of neuroradiology at the petitioning institution, states he met the beneficiary in 2003 when the beneficiary was a neuroradiology fellow. He states he worked

with the beneficiary as an attending physician for two years. uses almost identical language to in describing the beneficiary's qualities as a physician, teacher and researcher. He states that he would rank the beneficiary "among the top 2% of the extraordinary scientists and radiologists with an enormous potential to make significant contributions" in the field of neuroradiology. However, as previously stated, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole.

While the witnesses describe the beneficiary's research and teaching as benefitting to the petitioning institution, they do not provide examples of independent research institutions using the beneficiary's techniques, or explain how the beneficiary's work has impacted the field, as would be expected of a contribution to the field as a whole.

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. United States Citizenship & Immigration Services (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 the AAO has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of widespread recognition and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions have influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[7] Considering the letters in the aggregate, the record does not establish that the beneficiary's research is original or can be considered a contribution to the field as a whole.

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

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

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

We acknowledge that the beneficiary has authored several journal articles in the academic field. The petitioner has also submitted evidence that the beneficiary has presented his work at several international conferences and symposia.

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

The nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. The petitioner has submitted evidence that the beneficiary has reviewed manuscripts for the [redacted]. The AAO 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 other 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, or received independent requests from a substantial number of journals, the AAO cannot conclude that the beneficiary's judging experience is indicative of or consistent with international recognition.

Regarding the beneficiary's original research, as stated above, it does not appear to rise to the level of a contribution to the academic field as a whole. Demonstrating that the beneficiary's

work was "original" in that it did not merely duplicate prior research is not useful in setting the beneficiary apart in the academic community through eminence and distinction based on international recognition. 56 Fed. Reg. at 30705. Research work that is unoriginal would be unlikely to secure the beneficiary a Master's degree, let alone classification as an outstanding researcher. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

The Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at www.bls.gov/oco on January 28, 2010 and incorporated into the record of proceedings), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See* www.bls.gov/oco/ocos066.htm. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field.

The 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. On appeal, counsel has submitted an updated citation record indicating the beneficiary's work has been cited approximately eight times. Counsel has submitted one article containing a citation to the beneficiary's work. A review of the citing article reveals it lists the beneficiary's work as one of several references. The record contains no evidence that the beneficiary's articles have been widely cited or other comparable evidence that demonstrates that the beneficiary's publication record is consistent with international recognition. This moderate level of citation is not sufficient to demonstrate that the beneficiary's published work has been widely cited or other comparable evidence that demonstrates that the beneficiary's publication record is consistent with international recognition.

In light of the above, the final merits determination reveals that the beneficiary's qualifying evidence, participating in the widespread peer review process and publishing articles that have not garnered widespread citations or other response in the academic field, does not set the beneficiary apart in the academic community through eminence and distinction based on international recognition, the purpose of the regulatory criteria. 56 Fed. Reg. at 30705.

The petitioner has shown that the beneficiary is a talented assistant professor and researcher, who has won the respect of his collaborators, employers, and mentors while securing some degree of exposure for his work. However, the evidence does not indicate that a significant number of members of the academic field outside of the beneficiary's immediate circle of colleagues are aware of his work. The record 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.

V. Conclusion

Review of the record does not establish that the beneficiary is internationally recognized as an outstanding professor or researcher. Therefore, the petitioner has not established the beneficiary's eligibility pursuant to section 203(b)(1)(B) of the Act and the petition may not be approved.

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

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.