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

(b)(6)

U.S. Citizenship and Immigration Services

Date: APR 30 2019 Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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 in accordance with the instructions on 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, 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 filed this immigrant petition seeking 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, a California corporation, is self-described as a designer and manufacturer of semiconductors. The petitioner seeks to employ the beneficiary permanently in the United States as a researcher/electrical engineer specialized in electromagnetic modeling.

The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel contends the director applied an improper standard in determining whether the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher. Counsel asserts that the petitioner has submitted sufficient evidence to establish the beneficiary's eligibility for classification as an outstanding researcher. On appeal, the petitioner submits a brief and additional documentary evidence.

For the reasons discussed below, the AAO concurs with the director that the record fails to establish that the beneficiary enjoys international recognition. 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.[1] *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).

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

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):
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> * * *
>
> (B) Outstanding professors and researchers. -- An alien is described in this subparagraph if --
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> (i) the alien is recognized internationally as outstanding in a specific academic area,
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> (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,
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> (II) for a comparable position with a university or institution of higher education to conduct research in the area, or
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> (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
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> (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.

The petitioner has not submitted its job offer to the beneficiary. Instead, the petitioner submitted a support letter from [redacted] Director of Human Resources, addressed to U. S. Citizenship and Immigration Services (USCIS), stating that the petitioner "would like to employ [the beneficiary] as a Research Engineer (EM modeling), in regular full-time employment at our facility in San Diego, California."

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 letter from [redacted] expressing the petitioner's intention to employ the beneficiary is 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 [redacted] the petitioner has not explained why the AAO should accept [redacted] assertions of the fact of the offer of employment 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;

> (B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;
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> (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;
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> (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;
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> (E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or
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> (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 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 two of the given evidentiary criteria. 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.[2] Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

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

[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)).

> "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).

IV. Analysis

A. Evidentiary Criteria

This petition, filed on October 9, 2012, seeks to classify the beneficiary as a researcher who is recognized internationally as outstanding in his academic field. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(i)(3)(i).[4]

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

The petitioner submitted evidence that the beneficiary, while a doctoral candidate at [redacted] was awarded third place in the student paper competition by the [redacted] at the [redacted] The petitioner also submitted evidence that an additional paper of the beneficiary's was also nominated for an award in the same student competition.

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

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[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.

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 director concluded that the petitioner had not demonstrated that the criteria used to select the recipients of this award satisfy the requirements of this criterion. The documentation contains the criteria used to select nominees for the student paper competition. The criteria state the purpose of the competition is "to recognize outstanding technical contributions from individual students." The rules make clear that the award is limited to students who matriculated full-time as undergraduate or graduate students during the time the work was performed.

The director concluded that the petitioner had not demonstrated that the criteria used to select the recipients of the award are indicative of international recognition in the academic field. From a review of the selecting criteria it is clear that this award is limited to students and is based on contributions students have made during the course of their academic study, not for accomplishments in a field of endeavor. While 8 C.F.R. § 204.5(i)(3)(A) references outstanding achievements in one's academic field, 8 C.F.R. § 204.5(i)(2) defines "academic field" as "a body of specialized knowledge offered for study." It remains that academic study is not a field of endeavor, academic or otherwise. Rather, academic study is training for a future career in an academic field. As such, awards in recognition of academic achievement are insufficient evidence of international recognition in the field. Rather, they represent high academic achievements in comparison with one's fellow students. An award limited to undergraduate or graduate students in the field is not indicative of international recognition in the field. The beneficiary did not compete with the most experienced and recognized members of the field.

Upon review of the selecting criteria, the beneficiary's inclusion in the [redacted] student paper competition honor is not indicative of international recognition in the academic field. We therefore concur with the director that this award does not constitute a major award.

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)(A).

> *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 submitted a citation record from Google Scholar showing that there have been 21 independent citations to the beneficiary's work in several different publications. The petitioner also submitted portions of several published articles that contain citations to the beneficiary's work. Upon review, the articles citing the beneficiary's work are still primarily about the author's own work, or recent work in the field generally, and not about the beneficiary's work. Thus, the articles cannot be considered published material about the beneficiary's work.

However, 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.

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

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 evidence that the beneficiary reviewed several papers for the journal *Transactions on Microwave Theory and Techniques.* The petitioner also submitted evidence that the beneficiary reviewed a paper submission for the professional conference (2009).[5] 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 14 letters of support (three of who are from the beneficiary's immediate circle of colleagues and collaborators).

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

[5] The petitioner also submitted evidence that the beneficiary was requested to review an additional paper submission for the (2009), but the petitioner did not submit evidence to establish that the beneficiary completed the requested review. The petitioner also submitted evidence that the beneficiary reviewed manuscripts for the journal *Transactions on Microwave Theory and Techniques* after the date of filing the petition. These reviews have not been considered since the petitioner must establish eligibility at the time of filing. *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Comm'r 1971).

"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 articles, and that many of the reference letters refer to the fact that the beneficiary has authored scholarly articles regarding the subject matter of his research which have been presented at conferences and symposia. The regulations, however, include a separate criterion for scholarly articles at 8 C.F.R. § 204.5(i)(3)(i)(F). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly articles. (We will consider the articles under 8 C.F.R. § 204.5(i)(3)(i)(F)). 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.

at San Diego, states that he is very familiar with the doctoral research work done by the beneficiary and his research team at curriculum vitae (CV) reveals that he was the doctoral advisor of the beneficiary's doctoral advisor, He states that the beneficiary's research contributions are his innovative method of utilizing commercially available radio frequency (RF) micro-electromechanical systems (MEMS) switches to create very high performance RF MEMS tunable filters. He states the beneficiary used substrate -integrated-waveguides (SIW's) to make the RF MEMS tunable filters. He states that although SIW's have been used extensively for many years, "[the beneficiary] brought RF MEMS technology to SIW's creating a whole new class of devices." He states that the beneficiary's research paves the wave for commercial success of RF MEMS, will be a valuable reference to researchers worldwide as they continually strive to improve RF MEMS technology, and can be applied in electronic warfare, military radar technology and wideband tracking receivers. However, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole. does not explain how the beneficiary's research findings are already being applied in the field.

an assistant group leader for the at the states that the beneficiary has made outstanding research contributions to RF MEMS tunable filters. He does not state how he first became aware of the beneficiary's work. His CV reveals that his doctoral advisor and co-author was He states that beneficiary's research innovation of the "substrate integrated waveguide RF MEMS tunable filter" is "among ten research inventions published to date where RF MEMS is incorporated into waveguides." He does not explain how the beneficiary's research innovation is already being applied in the field. He also states that the beneficiary's research on nonlinear noise in RF MEMS tunable filters can be applied to determine how to make RF MEMS switches reliable but at the same time provide the best signal-to-noise ratio. He also states that the beneficiary's research in RF MEMS technology can have as its results that

"the battery life of mobile devices will be improved, communication data rates will be dramatically larger, portable wireless medical devices will be numerous, and military technology will witness great advances." However, as stated above, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole.

assistant professor of electrical and computer engineering at was the beneficiary's doctoral advisor and co-author. He provides a brief description of some of the beneficiary's published materials. However, does not provide examples of independent research institutions using the beneficiary's research. He states that the beneficiary's excellent accomplishments at a very young age demonstrate great potential for ground-breaking innovation during the course of his career. However, as stated above, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole.

a research and development manager in science and engineering at in Albuquerque, New Mexico, states that he met the beneficiary at international conferences in the field. He also states that he has worked with the petitioning company in the past. He states that the research of the beneficiary and his colleagues at has developed "the first fully functional waveguide filter that can be manufactured very easily using circuit board technology, and is vital for advanced radar applications which rely on such high quality tunable microwave filters." However, does not explain how the beneficiary's research contributions have impacted the academic field as a whole.

project leader, advanced in Boulder, Colorado, states that, as a member of the he helped select the beneficiary's technical paper to receive a third place student paper award in 2011. He finds the paper's proposed measurement technique "to not only be unique, but to also have some very practical applications in the area of materials characterization." However, does not explain how the beneficiary's research findings are already being applied in the field.

is an associate professor with the Madrid, Spain. He does not state how he first became aware of the beneficiary's work. He states that the beneficiary "set new paradigms in the tunable filter industry by being the first person to successfully prove that commercial RF MEMS switches can be used to create top-of-the-line tunable filters which potentially outperform many filters made in expensive laboratories. He also states his belief that the beneficiary is the first person to calculate the effects of noise and nonlinearity in RF MEMS tunable filters. Although states that the beneficiary's results have been well-received, he does not assert that the beneficiary's research results are becoming one of the "widely accepted standard techniques" as would be expected of a contribution to the field as a whole.

a chief research scientist and team leader of adaptive radios at Espoo, Finland, states he met the beneficiary at a professional symposium in 2011 and has read several of his research papers. He states that the beneficiary is a very valuable research asset since he is "competent in both RF MEMS and Complementary Metal-Oxide-Semiconductor (CMOS) technologies" and since "the integration of RF MEMS fabrication into a commercially used CMO foundry process is currently a topic of intensive research." He states that researchers such as the beneficiary "are among the few in the world who have the potential to make RF MEMS a commercial technology and pave the way for growth of this dynamic and emerging industry." He also states that widespread adoption of the beneficiary's research findings "would make RF MEMS technology potentially affordable for consumer electronics, which has been one of the biggest challenges in the industry over the past decade." However, as stated above, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole.

Professor of Microwave Signal Processing at the UK, states he knows of the beneficiary's technical work through his publications in professional journals and conference presentations. He states the beneficiary is one of the few researchers worldwide with significant knowledge of and experience in research on microwave filters and a specialization in RF MEMS. He states the beneficiary "has made outstanding contributions to the development of *RF MEMS* tunable filters," by being the first researcher to demonstrate a fully working prototype. He also states the beneficiary developed the first dual-band half-mode substrate integrated waveguide filter. However, does not explain how the beneficiary's research contributions have impacted the academic field as a whole.

The petitioner has also submitted support letters from researchers who have published articles that contain citations to the beneficiary's work.

academic staff member with the Christchurch, New Zealand, states that he cited the beneficiary's work in his paper because he considers the beneficiary's novel method to integrate diodes with SIW to permit electronic tuning of SIW filters "to be an important advancement of active SIW technology."

states that he cited to the beneficiary's research in order to make more researchers aware of the beneficiary's three-dimensional circuit integration with regard to SIW filters.

a research associate in the Barcelona, Spain, states he cited the beneficiary's work in using SIW resonator cavities to create an electrically tunable filter, because in his own work he used a similar concept for mechanical tuning of SIW resonators. He states that the concept of tuning introduced by the beneficiary is an original one that has extensive applications "whether the tuning is achieved by electrical or mechanical methods."

a researcher also at the Barcelona, Spain, states that he cited the beneficiary because he was the first researcher to use semiconductor technology to reconfigure an SIW filter.

an employee in the Department of Electrical and Computer Engineering at the San Diego states that he cited the beneficiary's research showing "how metallic posts can he used in a cavity to tune its resonant frequency to create a new class of high performance tunable filters."

, an associate professor in the School of Physical Electronics at the in Chengdu, states that he cited the beneficiary's research in the ability of UWB filters to reject interference from wireless networks. He states he also extended the beneficiary's research findings to extend the ability of UWB filters to reject multiple interferences that may arise from many different sources.

In addition, the petitioner has submitted e-mails from engineering students in Malaysia and the Philippines asking the beneficiary about his work.

The petitioner has submitted copies of portions of some of the citing articles, which reveal that the citing articles do not single out the beneficiary's work, but merely cite it as one among many other authorities. While the citations reflect some reliance on the beneficiary's work this minimal reliance cannot, by itself, establish that the beneficiary's research constitutes a contribution to the field as a whole. Although the witnesses characterize the beneficiary's published work as an outstanding achievement they do not explain how the beneficiary's research work is becoming one of the "widely accepted standard techniques" as would be expected of a contribution to the field as a whole. Rather, the citation evidence as a whole indicates that the beneficiary's work is part of a growing interest in the area of research.

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.[6] Considering the letters and other evidence in the aggregate, the record does not establish that the beneficiary's research, while original, can be considered a contribution to the field as a whole.

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.

The petitioner submitted evidence that sixteen articles authored by the beneficiary have been published in professional journals and international conference publications. 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)).

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[6] *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).

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. Counsel asserts that the beneficiary's participation as a peer reviewer for a professional journal and at a professional conference is evidence that he is internationally recognized as being outstanding in his field. As stated above, the petitioner submitted evidence that the beneficiary reviewed several papers for the journal *Transactions on Microwave Theory and Techniques* and reviewed a paper submission for the professional conference (2009). The AAO cannot ignore that scientific journals and conference submissions 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, 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."

In addition, the several independent references do not indicate that they learned of the beneficiary's work through the beneficiary's international reputation. Indeed, the record lacks evidence that a significant number of members of the academic field outside of the beneficiary's immediate circle of colleagues are even aware of his work.

While the beneficiary has published 16 articles, original published research, whether arising from research at a university or private employer, does not set the researcher apart from others in the researcher's field. While such publication demonstrates the promising nature of the beneficiary's work, more persuasive evidence is how the beneficiary's work was received upon publication. As stated above, 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 petitioner has provided, as evidence to establish the impact of the beneficiary's work, a 2011 Thomson Reuters Journal Citation Report for several of the journals that have published the beneficiary's work, listing the impact factors of those journals. The impact of a given journal is not persuasive evidence of the impact of every article published in that journal. The fact that a

journal has a high overall impact factor does not imply that any one article in that journal has had a proportionate impact.

The petitioner has also submitted, as evidence to establish the impact of the beneficiary's work, documentation from Google Scholar showing that independent researchers have cited six of the beneficiary's articles. Three of the beneficiary's articles were cited eleven, five and two times, respectively. An additional three articles were cited minimally. The remaining ten articles have not been cited by independent researchers. The petitioner has submitted portions of some of the citing articles. A review of the citing articles reveals they do no single out the beneficiary's work but merely cite it as one among many other authorities. While evidence that the beneficiary's work is widely cited can serve to establish the impact of this work, the record does not contain evidence that independent experts have consistently cited or relied upon the beneficiary's work, 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.

C. Conclusion

The petitioner has shown that the beneficiary is a talented researcher/electrical engineer, who has won the respect of his collaborators, employers, and mentors, while securing some degree of 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, and the petition will be denied.

The petition will be denied for the above-stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.