



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **AUG 23 2013** Office: NEBRASKA SERVICE CENTER

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)

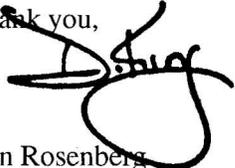
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is engaged in the production of fiberglass building 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 Research and Development (R&D) Project Manager. The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher.

On appeal, counsel submits a brief and new exhibits. For the reasons discussed below, the AAO concurs with the director that the petitioner has not established that the beneficiary enjoys international recognition as outstanding.

Specifically, when the AAO simply “counts” 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 does not 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. 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. Statute

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

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

* * *

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

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

- (i) the alien is recognized internationally as outstanding in a specific academic area,
- (ii) the alien has at least 3 years of experience in teaching or research in the academic area, and
- (iii) the alien seeks to enter the United States --
 - (I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,
 - (II) for a comparable position with a university or institution of higher education to conduct research in the area, or
 - (III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

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.

In the instant matter, the petitioner has not submitted its job offer letter to the beneficiary as required by 8 C.F.R. § 204.5(i)(3)(iii). In fact, in her letter dated March 21, 2012 accompanying the initial petition,

counsel erroneously claimed that pursuant to 8 C.F.R. 204.5(h)(5), an offer of employment in the United States is not required for this classification.²

The petitioner's letter dated March 21, 2012, addressed to the United States Citizenship and Immigration Services (USCIS), does not constitute a job offer letter to the beneficiary. This letter contains one section entitled "Permanent Position Offered to [the beneficiary] Research and Development (R&D) Project Manager," which states that "we [the petitioner] are seeking the permanent services of a *Research and Development (R&D) Project Manager* with deep expertise in polymer coatings and pultrusions," and concludes with a list of qualifications needed for "this individual." This letter, addressed to USCIS, is not addressed directly to the beneficiary. The ordinary meaning of an "offer" requires that it be made to the offeree, not a third party.³ Furthermore, it is unclear from this letter whether the beneficiary has even been offered the permanent position, as it contains non-specific language such as "we are seeking the permanent services of a *Research and Development (R&D) Project Manager*" and "this individual." In light of the above, the petitioner failed to submit required initial evidence pursuant to 8 C.F.R. § 204.5(i)(3)(iii).

III. Beneficiary's Qualifications

A. Law

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

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

This petition was filed on March 22, 2012 to classify the beneficiary as an outstanding researcher in the field of polymers, coatings and pultrusions. Therefore, the petitioner must establish that the beneficiary had at least

² 8 C.F.R. 204.5(h)(5) relates to the classification of an alien with extraordinary ability, not to the classification of an outstanding professor or researcher.

³ See *Black's Law Dictionary* 1189-90 (9th ed. 2009) (defining "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;" defining "offeree" as "[o]ne to whom an offer is made;" and defining "offeror" as "[o]ne who makes an offer").

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. At issue in this matter is whether the petitioner has demonstrated that the beneficiary's work has been recognized internationally within the field as outstanding.

The regulation at 8 C.F.R. § 204.5(i)(3)(i) states that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The regulation lists the following six criteria, of which the beneficiary must submit evidence qualifying under at least two.

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

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under a similar classification set forth at section 203(b)(1)(A) of the Act. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion. With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while 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.⁴ Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to

⁴ 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)).

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.⁵ 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*.

B. Analysis

1. Evidentiary Criteria

The petitioner initially asserted that the beneficiary was submitting qualifying evidence under four of the six criteria. The director determined that the petitioner had submitted qualifying evidence under two of the criteria. For the reasons discussed below, the AAO finds that the petitioner has submitted qualifying evidence under two of the criteria.

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

The petitioner has not asserted that it was submitting evidence that meets the plain language requirements of this criterion, set forth at 8 C.F.R. § 204.5(i)(3)(i)(A), and the record contains no relevant evidence that relates to this criterion.

⁵ 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 of the alien's membership in associations in the academic field which require outstanding achievements of their members

The petitioner has not asserted that it was submitting evidence that meets the plain language requirements of this criterion, set forth at 8 C.F.R. § 204.5(i)(3)(i)(B), and the record contains no relevant evidence that relates to this criterion.

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

The petitioner submitted evidence of the beneficiary's citation record and articles which cite or briefly reference the beneficiary's work. The director concluded that the submitted evidence did not establish eligibility under this criterion. On appeal, the petitioner does not contest or address the director's conclusion. Therefore, the AAO considers this particular issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).⁶

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 has participated as a referee and peer reviewer for manuscripts submitted for publication in the same academic field. The AAO concurs with the director that this evidence qualifies under the plain language of the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(D).

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

The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(E) does not require that the beneficiary's contributions themselves be internationally recognized as outstanding. That said, the plain language of the regulation does not simply require original research, but original "research contributions." Had the regulation contemplated merely the submission of original research, it would have said so, and not have included the extra word "contributions."

As evidence of the beneficiary's contributions to the academic field, the petitioner submitted letters from the peers, colleagues and other individuals within the academic field. The petitioner submitted a letter from Dr.

⁶ Regardless, the AAO concurs with the director's finding that citations or brief references to the beneficiary's work do not constitute published material *about* the beneficiary's work (emphasis added). Articles which cite or briefly discuss the beneficiary's work are primarily about the author's own work or recent work in the field generally, and are not *about* the beneficiary's work.

who was the beneficiary's Ph.D. advisor, collaborated with the beneficiary in several projects and co-authored papers with the beneficiary. In his letter, discussed the beneficiary's research, beginning from the time the beneficiary first joined his research group to her present research at the petitioning company. Regarding the beneficiary's initial research involving the synthesis of a large series of unsaturated polyesters, highlighted that this "is the first reported comprehensive study on these systems" and was the basis of a 2004 conference presentation. Of the beneficiary's research on the effect of incorporation of organically modified clay nanoparticles on the properties of the donor-acceptor UV curable system, highlighted that this "represents the first time that the incorporation of nanoparticles had been reported for a donor-acceptor UV-curable polymer system" and formed the basis of a journal publication. highlighted the beneficiary's subsequent research in the properties of clay-polymer nanocomposites, claiming that this work formed a "significant breakthrough in the field of UV cured nanocomposites containing clay nanoparticles" as well as formed the basis of additional research funding and subsequent research. also highlighted the beneficiary's work with a graduate student in developing a novel UV curable low surface energy coatings technology, which resulted in a patent application being filed and industry interest in the technology. He explained that this technology is "a break through because only a very small amount of the expensive component responsible for low surface energy is needed to yield a coating that can be applied as a liquid, rapidly cured using UV light and then can function as a release layer at an economical cost." then highlights two other discoveries that the beneficiary made in another project, stating that these discoveries "appeared to be very promising" and "[w]hile further work is required, this could represent a breakthrough technology for the protection of aircraft in the event of fire." concludes that the beneficiary's technical discoveries "set her apart from other scientists" and that her research "is both novel and has proven to be immediately able to be applied to the market."

While I explains the beneficiary's research in detailed, highly technical terms and why her research is novel, fails to explain with specificity how the beneficiary's research is being applied in the field. highlights the fact that the beneficiary's work has resulted in one patent application which has generated industry interest. However, as will be discussed below, the beneficiary's patent application is not proof of the beneficiary's contributions to the academic field. also highlights the fact that the beneficiary's work has resulted in additional research funding and has formed the basis of research publications, but he fails to establish that the beneficiary's research has resulted in contributions to the academic field rather than simply the work of or the petitioner. As to statements regarding the potential of some of the beneficiary's research to be "promising" or to "represent a breakthrough," speculation as to potential future contributions cannot establish that the beneficiary has already contributed to the academic field. Overall, letter fails to explain how the beneficiary's research findings have contributed to the academic field as a whole.

The petitioner submitted a letter from asserts that he was first introduced to the beneficiary's research when he was a Materials at and through her various conference presentations. attests that the beneficiary is "one of the very few leading researchers in this area [of polymers and coatings] with the proved record of significant discoveries which earned her international recognition in her field." briefly describes

the beneficiary's research in the area of unsaturated polyester chemistry and UV-curable coatings based on unsaturated polyesters, and notes that her work has resulted in one patent, patent applications, and journal publications. [REDACTED] then asserts that the beneficiary's development of a novel method to exfoliate layered silicates in a polymer matrix is "outstanding . . . significant and [a] breakthrough achievement . . . [which] has led and will continue [to] lead to very important developments in the area with potential applications in electronic and packaging applications." [REDACTED] also highlights the beneficiary's current work "towards development of novel, 'green', pultrudable resins." [REDACTED] concludes that the beneficiary is distinguished from her peers and "will continue to make significant contributions to the area of polymer and pultrusion technology."

[REDACTED] letter fails to explain with specificity how the beneficiary's research has contributed to the academic field as a whole. While he asserts that the beneficiary's research "has led and will continue [to] lead to very important developments in the area with potential applications in electronic and packaging applications" and is working towards the development of novel, green resins, [REDACTED] does not explain how the beneficiary's research is actually being applied in the field. Furthermore, while [REDACTED] highlights the beneficiary's patent and patent applications, these are not proof of the beneficiary's contributions to the academic field. Overall, [REDACTED] letter fails to explain how the beneficiary's research findings have contributed to the academic field as a whole, and his letter contains primarily conclusory assertions regarding the beneficiary's contributions and reputation.

The petitioner submitted a letter from [REDACTED] and [REDACTED] asserts that she does not personally know the beneficiary, but is familiar with the beneficiary's work through her publications, presentations, and conference participation. [REDACTED] briefly discusses the beneficiary's research. [REDACTED] asserts that "[t]he significance of this original scientific contribution is evidenced by potential application of this landmark research in the areas of barrier coatings for electronic packaging and food packaging." [REDACTED] further asserts that the beneficiary's patent "will lead to advances in microelectronics manufacture wherein conventional fabrication techniques can be replaced by precise laser machining techniques, which would also be an inherently greener technology." [REDACTED] concludes that the beneficiary "has made significant contributions to the area of radiation curable coatings and is among the few leading scientists in North America in this area." While [REDACTED] indicates that beneficiary's research will have "potential" applications in the packaging industry and "will lead to advances in microelectronics manufacture," speculation as to potential future contributions cannot establish that the beneficiary has already contributed to the academic field. [REDACTED] fails to explain with specificity how the beneficiary's research is actually being applied in the field.

The petitioner submitted a letter from [REDACTED] at the petitioning company.⁷ [REDACTED] briefly explains why the beneficiary was a "strategic hire" and summarizes the beneficiary's research projects at the petitioning company. [REDACTED] concludes that the beneficiary is "an indispensable team lead" who has contributed to the growth and success of the

⁷ It is unclear from [REDACTED] letter whether he can be considered an expert in the academic field of polymers, coatings and pultrusions.

petitioning company and who has left “a noticeable footprint in the field.” [REDACTED] letter does not explain with specificity how the beneficiary’s research findings have contributed to the academic field.

The petitioner submitted a letter from [REDACTED] who has worked in the same research department at [REDACTED] with the beneficiary. [REDACTED] highlights the beneficiary’s work on developing a patented cathodic protective coating system. [REDACTED] states: “The broader applications of the techniques to composites was the value she was expected to add in her new position with [the petitioning company] and it appears that she has done so based on the details in her curriculum vitae.” [REDACTED] also highlights the beneficiary’s patents on UV curable technologies and her publication history. [REDACTED] states that the beneficiary’s “significant scientific contributions are built on her unique industrial research experience and credentials” and concludes that the beneficiary “has made original contributions of major significance as clearly signified by three patent/patent applications.” [REDACTED] letter fails to explain with specificity how the beneficiary’s research findings have contributed to the academic field as a whole. His letter contains primarily conclusory assertions regarding the beneficiary’s contributions and reputation. As will be discussed below, although [REDACTED] highlights the beneficiary’s patent/patent applications, the beneficiary’s patent/patent applications alone do not constitute evidence of contributions to the academic field.

The petitioner submitted a letter from [REDACTED] Center, who has collaborated on various research projects with the beneficiary at [REDACTED], co-authored two papers with her, and is a co-inventor on an invention disclosure. [REDACTED] briefly describes the research project he worked on with the beneficiary, which led to a patent application and interest from a large multinational company to license this technology. [REDACTED] also briefly describes the beneficiary’s skills in diverse areas of chemical sciences, and her mentorship of students and fellows at [REDACTED] concludes that the beneficiary’s “extraordinary skills along with her proven track record of leadership abilities sets [the beneficiary] apart from most scientists” and “clearly shows that she is [sic] has risen among the very top position in the field.” [REDACTED] letter fails to explain with specificity how the beneficiary’s research findings have contributed to the academic field as a whole, and his letter contains primarily conclusory assertions regarding the beneficiary’s contributions and reputation.

The petitioner submitted a letter from [REDACTED] “in the Electronics business,” and who previously worked indirectly with the beneficiary at [REDACTED] asserts that the beneficiary “continues to be a critical member in the field of the development of polymers and coatings as evidence by her involvement in peer reviews . . . , the patent applications she has applied for . . . , her scholarly articles and Textbook Chapter and her activity in the [REDACTED] also briefly mentions the beneficiary’s work at the petitioning company, which she asserts is ground breaking research and has proven to be a vital resource in that corporation.” [REDACTED] letter fails to explain with specificity how the beneficiary’s research findings have contributed to the academic field as a whole, and her letter contains primarily conclusory assertions regarding the beneficiary’s achievements.

⁸ It is unclear from [REDACTED] letter whether she can be considered an expert in the academic field of polymers, coatings and pultrusions.

The petitioner submitted a letter from [REDACTED], who is familiar with the beneficiary “through extensive research collaborations” at [REDACTED] briefly describes his joint research project with the beneficiary and the beneficiary’s current work at the petitioning company, which he asserts “will enable [the petitioner] to meet market demand for green products.” [REDACTED] asserts that the demand for green and sustainable construction materials is growing and that the beneficiary’s research and its practical application “are instrumental to the development of next-generation products meeting that demand.” [REDACTED] concludes that the beneficiary “has already made and continues to make scientific contributions well beyond the contributions made by a typical scientist focusing on applied research in the field of coatings and polymeric materials.” [REDACTED] letter fails to explain with specificity how the beneficiary’s research findings have contributed to the academic field as a whole, and his letter contains primarily conclusory assertions regarding the beneficiary’s achievements. While [REDACTED] highlights the beneficiary’s research in developing next-generation green products and the growing market for such products, he fails to explain how the beneficiary’s research is actually being applied in the field. Speculation as to potential future contributions cannot establish that the beneficiary has already contributed to the academic field.

In response to the director’s request for evidence (RFE), the petitioner submitted additional letters from colleagues and peers. Through these letters, the petitioner emphasized the beneficiary’s patents as well as her influence on other researchers within the academic field.

The petitioner submitted a letter from [REDACTED] who is a formulation scientist at [REDACTED]. [REDACTED] states she was introduced to the beneficiary’s research while she was a graduate student at [REDACTED]. The record reveals that she is one of the beneficiary’s co-authors. [REDACTED] describes her own graduate research focus as spanning from the beneficiary’s discoveries, and asserts that “[u]nquestionably, [the beneficiary’s] previous research was instrumental for me to be able to develop my research.” [REDACTED] then asserts that the beneficiary has made “a significant contribution to the area of UV-curable nanocomposite coatings.” However, the fact that the beneficiary’s research impacted the research of another graduate student at the same department as the beneficiary, without any information as to the significance of the impacted research, does not establish that the beneficiary has made contributions to the academic field as a whole. [REDACTED] assertion that the beneficiary has made “a significant contribution to the area of UV-curable nanocomposite coatings” is conclusory and bears little, if any, weight.

The petitioner submitted a second letter from [REDACTED] notes the four citations to his and the beneficiary’s joint patent application, and claims that this “higher number of patent citations . . . is notable and indicates that [the beneficiary’s] discoveries are instrumental to further original research.” [REDACTED] then explains that the joint invention disclosure has been cited by a global company on three different spin-off discoveries and by a Japanese company, and has resulted in industry interest. [REDACTED] concludes that, “[g]iven the geographical spread of [the beneficiary’s] citations and the global industry interest over [the beneficiary’s]

⁹ It is unclear from [REDACTED] letter whether he can be considered an expert in the academic field of polymers, coatings and pultrusions.

discoveries, without a question—[the beneficiary's] work is internationally known and recognized." [REDACTED] also notes that the beneficiary's work has been "instrumental to my own continued research" and that an entire chapter in his Ph.D. dissertation was built upon work done by the beneficiary. However, the fact that the beneficiary's patent application has been cited four times, without any detailed information as to the significance of the citing research or the claimed "spin-off discoveries," does not establish that the beneficiary has made contributions to the academic field as a whole. As will be discussed below, the fact that beneficiary's research resulted in a patent application is not proof of the beneficiary's contributions to the academic field. Furthermore, [REDACTED] provides no factual basis to support his assertion that four citations to a patent application are considered high. In addition, the fact that the beneficiary's research was "instrumental" to Dr. [REDACTED] dissertation, without any information as to the significance of [REDACTED] dissertation, does not establish that the beneficiary has made contributions to the academic field as a whole.

The petitioner submitted a letter from [REDACTED] who states that he was the beneficiary's direct and indirect supervisor when she worked for [REDACTED] and then briefly discusses the beneficiary's current work at the petitioning company based on her curriculum vitae. [REDACTED] concludes that the beneficiary "has a solid record of continued significant contributions to the area of coatings technology and I believe that her Ph.D. training will enable her to continue making important contributions to this area and also in the area of composites." Mr. [REDACTED] letter fails to explain with specificity how the beneficiary's research findings have contributed to the academic field as a whole. His letter not only contains primarily conclusory assertions regarding the beneficiary's contributions, but his assertions are based upon the beneficiary's curriculum vitae, not the beneficiary's reputation within the academic field.

The petitioner submitted a letter from [REDACTED] briefly describes the missions of [REDACTED] and the beneficiary's participation in these committees. [REDACTED] asserts that the beneficiary "is a qualified member for this committee due to her outstanding contributions and discoveries in the area of polymers, coatings and pultrusions," and that she has been a "valuable support to the [REDACTED] letter fails to explain with specificity how the beneficiary's research findings have contributed to the academic field, and his letter contains primarily conclusory assertions regarding the beneficiary's contributions.

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,

¹⁰ It is unclear from [REDACTED] letter whether he can be considered an expert in the academic field of polymers, coatings and pultrusions.

¹¹ It is unclear from [REDACTED] letter whether he can be considered an expert in the academic field of polymers, coatings, and pultrusions.

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)).

The letters considered above primarily contain conclusory assertions of widespread recognition and contributions, without specifically identifying the contributions and providing specific examples of how those contributions have influenced the field. 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). Similarly, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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.). In addition, several of the letters were written by the beneficiary's immediate collaborators, colleagues or employer, including by individuals whom the record fails to establish can be considered experts in the academic field of polymers and coatings, and pultrusions. As such, the letters, alone, are insufficient to establish that the beneficiary's research can be considered a contribution to the academic field as a whole.

As additional evidence of the beneficiary's contributions to the academic field, the petitioner submitted evidence of the beneficiary's awarded patent and 3 patent applications. In particular, the beneficiary, along with her colleagues

[REDACTED]
[REDACTED]
[REDACTED]. The beneficiary's three other patent applications are still pending.

The petitioner also submitted two letters from [REDACTED] Foundation, which leads the patenting efforts at [REDACTED] and engages in marketing and potentially licensing patentable inventions. In his first letter, [REDACTED] lists the beneficiary's three main invention disclosures, one of which was awarded a U.S. patent. [REDACTED] explains that in order to be awarded a U.S. patent, an invention must meet three criteria: novelty, non-obviousness, and usefulness. Furthermore, [REDACTED] explains that one of the beneficiary's pending patent applications has generated industry interest from a large global company and two other "major players." [REDACTED] attests: "As one can imagine, patenting, licensing, and commercialization of an invention do not happen simultaneously and it takes a significant amount of time

and resources to bring a new technology to the market.” [REDACTED] concludes that the “high level of interest in the industry in [the beneficiary’s] invention is a good indication of the commercial value of her current breakthrough inventions and indicative of the commercial potential for [the beneficiary’s] future inventions.” In his second letter, [REDACTED] affirms that the beneficiary’s three patent/patent applications have received interest from eleven different companies that have resulted in executed confidentiality agreements and/or material transfer agreements “to enable further discussion and/or evaluation of the technologies.” Again, Mr. [REDACTED] attests that that the “level of interest demonstrates the commercial relevance and potential of [the beneficiary’s] work.”

The petitioner asserts that the submitted evidence regarding the beneficiary’s patent and patent applications, as well as the industry interest surrounding these discoveries, constitutes additional evidence of the beneficiary’s original scientific or scholarly research contributions to the academic field. However, the AAO has stated that a patent or patent applications are 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 Department of Transportation*, 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.* A patent primarily recognizes the originality of the idea, but it does not demonstrate that the petitioner made a contribution to the academic field as a whole. In the case here, the petitioner submitted sufficient documentary evidence demonstrating the beneficiary’s research is original, but the petitioner failed to establish how the beneficiary’s research has contributed to the field as a whole. Furthermore, there is no guarantee that the beneficiary’s patent applications will result in the patents actually being awarded.

Moreover, the actual present impact of the beneficiary’s patent and patent applications has not been established. While the petitioner establishes that the beneficiary’s patent and patent applications have garnered industry interest, industry interest that has resulted in only “further discussion and/or evaluation of the technologies” falls short of establishing that the beneficiary’s discoveries have made an actual, present impact on the field and constitute contributions to the academic field. Instead, industry interest is speculative about how the petitioner’s discoveries may affect the field at some point in the future. As [REDACTED] attests, the commercialization of an invention “do[es] not happen simultaneously and it takes a significant amount of time and resources to bring a new technology to the market.” Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998). The fact remains that any measurable impact that results from the petitioner’s discoveries will likely occur in the future.

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

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

As stated above, the petitioner submitted evidence of articles and a book chapter authored by the beneficiary. Thus, the petitioner has submitted evidence that qualifies under the plain language of 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 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.

2. 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 her own circle of collaborators in the final merits determination. *See Kazarian*, 596 F.3d at 1122. Counsel discusses the prestige of the journals for which the beneficiary has reviewed manuscripts. Counsel also submits evidence establishing that the beneficiary has been a productive reviewer, including having completed a record number of 39 reviews for a single journal. While impressive, the petitioner failed to establish that the beneficiary's record as a peer reviewer sets her apart from other researchers in the field. Generally, 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 she 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 petitioner cannot establish that the beneficiary's judging experience is indicative of or consistent with international recognition.

Here, the petitioner submitted a letter from the [REDACTED] attesting that the journal requested the beneficiary to review articles "due to her internationally recognized expertise in coatings and composite materials." The petitioner submitted a letter from the [REDACTED] attesting that the journal relies on "technically qualified peer reviewers who are experts in their fields." The petitioner also submitted a letter from the [REDACTED], attesting that the journal has a "rigorous selection criteria" for peer-reviewers. All of these letters make conclusory assertions regarding the selection criteria for peer reviewers, but fail to provide any specific, factual information as to the actual selection criteria utilized for peer reviewers. Again, 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). Without credible evidence that the beneficiary 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 record fails to establish that the beneficiary's judging experience is indicative of or consistent with international recognition.

The beneficiary's publication and citation history are relevant considerations when evaluating the beneficiary's recognition in the field. *See Kazarian*, 596 F. 3d at 1122. Here, counsel emphasizes the distinguished nature of the journals that have published the beneficiary's articles. 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, i.e., her citation history. The petitioner failed to establish that the beneficiary's published articles, which have been cited six times in the aggregate, have been cited at a level consistent with international recognition. Similarly, the petitioner failed to establish that the beneficiary's patent applications, which have been cited four times in the aggregate, have been cited at a level consistent with international recognition. While counsel asserts that the beneficiary's citation record must be considered within the "narrow nature and uniqueness" of the beneficiary's research focus," the AAO emphasizes that the petitioner must establish that the beneficiary is recognized internationally as outstanding *in the academic field* in general, not only within a narrow and unique specialized area. *See* 8 C.F.R. § 204.5(i)(3)(i) (defining an "academic field" as "a body of specialized knowledge offered for study at an accredited United States university or institution of higher education"); USCIS Policy Memorandum *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* (December 22, 2010) (stating that by regulatory definition, a body of specialized knowledge is *larger* than a very small area of specialization).

The AAO acknowledges that the beneficiary has co-authored a textbook chapter on corrosion chemistry. The petitioner submitted a letter from the beneficiary's co-author, [REDACTED] in which he explains that the book chapter outlines the theory of corrosion with respect to metals, the different forms of corrosion, factors that cause corrosion, and the different approaches to prevent corrosion. [REDACTED] explains that corrosion chemistry is very important in "laying the foundations of Paints and polymer science and technology" and is fundamental to "a paint technologist." [REDACTED] also explains that the textbook is used in 15 colleges teaching a course in Paints Technology in India, and has sold nearly 2000 copies. While noteworthy, the fact that the beneficiary has co-authored a textbook chapter on corrosion chemistry does not establish that the beneficiary is internationally recognized as outstanding in the academic field of polymers and coatings. The AAO acknowledges that corrosion chemistry may be a foundational course for someone entering the polymer and coatings field, however, the fact remains that corrosion chemistry is a separate and distinct academic field from polymers and coatings.

On appeal, counsel emphasizes the beneficiary's patent/patent applications and the novelty of her work. However, as discussed above, the fact that the beneficiary's research is original does not establish that it rises 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 Ph.D. 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.”

On appeal, counsel emphasizes that other researchers have relied upon the beneficiary’s work and used it to build upon their own research. However, as previously discussed, the narrow scope within which the beneficiary’s work was relied upon, i.e., by two other graduate students within the beneficiary’s same university department, without any explanation of the significance of this impacted research, is not indicative of international recognition.

Finally, on appeal counsel emphasizes that the beneficiary’s research has received state and federal funding.¹² However, the AAO notes that research grants are principally designed to fund future research, not to honor or recognize past achievement. The petitioner submitted no objective, documentary evidence showing that the research grants were awarded based upon the beneficiary’s international recognition as an outstanding researcher.

In light of the above, our final merits determination reveals that the beneficiary’s qualifying evidence, participating in the widespread peer review process and publishing articles that have not garnered significant 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 remaining evidence in the record, when considered as a whole, also fails to establish that the beneficiary is internationally recognized as an outstanding researcher in the academic field.

IV. Conclusion

The petitioner has shown that the beneficiary is a talented researcher, who has won the respect of her collaborators, employers and peers. 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 appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

¹² The petitioner submitted a letter from [REDACTED], stating that state funding was given to collaborative research in which the beneficiary participated.