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

(b)(6)

U.S. Citizenship and Immigration Services

Date: FEB 05 2013 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 Delaware corporation, is self-described as a company engaged in software development. The petitioner seeks to employ the beneficiary permanently in the United States as a researcher/lead prototype engineer.

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

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. In support of its brief, counsel submits five unpublished decisions, in each of which the AAO determined the petitioner had established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in any of the unpublished decisions. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

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). Further, the petitioner has not established that it employs the requisite three full-time researchers in addition to the beneficiary as required by section 203(b)(1)(B)(iii)(III) of the Act; 8 C.F.R. § 204.5(i)(3)(C)(iii). An

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

application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a de novo basis).

## I. Law

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

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> * * *
>
> (B) Outstanding professors and researchers. -- An alien is described in this subparagraph if --
>
> (i) the alien is recognized internationally as outstanding in a specific academic area,
>
> (ii) the alien has at least 3 years of experience in teaching or research in the academic area, and
>
> (iii) the alien seeks to enter the United States --
>
> (I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,
>
> (II) for a comparable position with a university or institution of higher education to conduct research in the area, or
>
> (III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

## II. Job Offer from Qualifying Employer

The regulation at 8 C.F.R. § 204.5(i)(3)(iii) provides that a petition must be accompanied by:

> An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:
>
> (A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;
>
> (B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or
>
> (C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

The petitioner has not submitted its job offer to the beneficiary. Instead, the petitioner submitted a letter from addressed to U. S. Citizenship and Immigration Services (USCIS), stating "We hereby extend an offer of permanent, full-time employment as a full-time researcher to [the applicant]." *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 addressed to USCIS extending an offer of employment to 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, which is required initial evidence pursuant to 8 C.F.R. § 204.5(i)(3)(iii).

Secondly, the petitioner has not established that it employs the required three full-time researchers, in addition to the beneficiary. Instead, in the petitioner's support letter states "[The petitioner] employs nine full-time researchers, including However, the petitioner has not submitted any documentary evidence to establish that it employs the required three full-time researchers. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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. Comm'r 1972)). We reiterate that the regulation at 8 C.F.R. § 204.5(i)(3)(iii)(C) states that the petitioner must "demonstrate" that it employs at least three full-time researchers. Thus,

it is the petitioner's burden to establish this element of eligibility. Since the petitioner has not submitted evidence that it employs three full-time researchers in addition to the beneficiary, the petitioner has not established that it is a qualifying petitioner 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;
>
> (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 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 "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 April 10, 2012, seeks to classify the beneficiary as researcher who is recognized internationally as outstanding in his academic field. The petitioner has submitted

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[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)).

[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.

documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(i)(3)(i).[4]

> *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 printout from Microsoft Academic Search stating that there have been eleven citations to the beneficiary's work in eleven different publications. The regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) requires evidence of published material about the beneficiary's work. The AAO reads "published material" to mean the published material itself, not a mere citation record. 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.

The petitioner also submitted 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.

The petitioner has further submitted two conference reports from [redacted] respectively, summarizing the beneficiary's conference presentation along with those of others who presented at the conferences. The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) requires that the published material shall include the title, date, and author of the material. However, these articles are in the nature of press releases that, while including the author of the material, do not include the date the article was written. As a result, his published material cannot be considered as qualifying evidence that meets the plain language requirements of the criterion.

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 has reviewed paper submissions for national and international professional symposia and conferences, as well as manuscripts for professional journals such as [redacted]

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

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

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

As evidence relating to the beneficiary's original scientific or scholarly research contributions to the academic field, the petitioner submitted the following: three patent applications filed by the petitioner in which the beneficiary is listed as a co-inventor; and, six reference letters (four from the beneficiary's immediate circle of coauthors 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 "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.

This office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm'r. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* While the patent application states that the rights to the patent have been assigned to the petitioner, the petitioner does not indicate that it has licensed or marketed the beneficiary's patent-pending innovations, but merely states, "The ideas in those patents have been developed into prototypes currently at use in [the petitioning company] as well as in other private companies." However, the petitioner has not submitted any documentary evidence to establish that other independent companies employ the beneficiary's patent-pending innovations or that they had contributed to the field as a whole as of the date of filing. For example, the record contains no evidence that the petitioner has attracted media attention or new investment based on the beneficiary's research or patent-pending innovations. In its response to the director's request for further evidence (RFE), the petitioner states that proprietary prototypes it has developed based upon the beneficiary's patent-pending innovations "are confidential, and company policy and licensing agreements prevent the disclosure of any specific information that is not publicly available." While intellectual property protections are a valid reason to delay publication, without evidence of a patent or publication that has garnered attention in the field, we cannot conclude that the beneficiary's work is a recognized contribution to the field as a whole. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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. Comm'r 1972)). Thus, the impact of the innovations is not documented in the record.

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.

an assistant professor in the department of electronics and telecommunications, states that he met the beneficiary in 2011 while both of them were working for the petitioner. Referring to the beneficiary's patent-pending innovations, he states that in those works "[the beneficiary] developed the finite state automata that are used as signatures for identifying network applications" and "developed the algorithms for generating the signatures . . ."[5] He states "The ideas behind these patents are already in use at [the petitioning company], and are currently being deployed in "large telecommunications companies" for "licensing trials" for "research and development purposes." However, does not provide examples of independent research institutions using the beneficiary's research or assert that the beneficiary's research is becoming one of the "widely accepted standard techniques" as would be expected of a contribution to the field as a whole. He states the beneficiary's research contributions in the area of network traffic classification "are outstanding original scientific contributions of major importance, because they enable automatic application signature generation and network traffic classification at a scale that has never been possible before." However, he does not explain how those contributions have impacted the academic field rather than simply the work of the beneficiary's employer.

further states that the fact that the beneficiary 's research projects "have been supported and funded in part by grants from the National Science Foundation are further evidence of the national and international importance of his research work." While the beneficiary's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who obtains a Ph.D. or is working with a government grant has made a contribution of major significance. The record does not establish that the beneficiary's work represented a groundbreaking advance in his field. In addition, the petitioner has not submitted any

[5] The AAO notes that both use almost identical language in summarizing the beneficiary's research work:

> He developed the finite strata automata that are used as signatures for identifying network applications in these works, and he developed the algorithms for generating the signatures, improving the quality of the signatures by identifying and removing redundancies, providing quality metrics for the signatures, and optimizing the signatures for improving the performance of the resulting traffic classifiers. The ideas and technology encompassed in these patents have been develop into a prototype which is in use at Narus, Inc.

documentary evidence to establish that that the beneficiary has received a research grant from the National Science Foundation. As stated above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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. Comm'r 1972)).

an associate professor for information assurance, College of Computer and Information Science, states he met the beneficiary in 2007 at a professional conference where the beneficiary was a poster presenter. He states that "[the beneficiary's] work on packet classification optimization and reverse engineering of firewall rule sets based on automata-centric approach are outstanding contributions to the field of Internet security." He states that the beneficiary's research techniques have resulted in "significant reduction in the size of memory used by the classifiers." However, he does not explain how those contributions have impacted the academic field as a whole. He states that the beneficiary's research "has far-reaching potential implications for the research field of Internet security," but he does not provide specific examples of the potential applications for the beneficiary's research. Regarding both the petitioner and the beneficiary's previous employers, states "Many of the systems that [the beneficiary] built using these [research] techniques are being used internally and externally by these companies for network management and security." He does not provide any examples of independent institutions using the beneficiary's research techniques.

a full professor of computer science and engineering, states that he met the beneficiary in 2011 while both of them were working for the petitioner. In language almost identical to that of he summarizes the beneficiary's research work including his patent-pending innovations and his dissertation research, stating that the beneficiary's research findings are already in use at the petitioning company and at other companies for licensing trials. However, does not provide examples of independent research institutions using the beneficiary's research or assert that the beneficiary's research is becoming one of the "widely accepted standard techniques" as would be expected of a contribution to the field as a whole.

, chief technology officer at states that he met the beneficiary in 2008 when he hired him to work as a researcher at He describes the beneficiary's research work at project as "original and outstanding" because it "showed how network monitoring . . . could be used for real-time diagnostics." He states that some of the beneficiary's research ideas from that project were adopted into products, such as the Network Analysis Module (NAM.) He also describes the beneficiary's work on the definition of a new engine for content inspection, to be adopted into other products. However, the witness does not explain how the beneficiary's research findings have impacted the academic field rather than simply the work of the beneficiary's employer at the time.

an associate professor of computer science at the states that he selected the beneficiary to be on the program committee of an international professional conference, "on the basis of his outstanding ability and original

contributions to improving the state of the art in packet classification for network and security applications." However, the witness does not state how he first became aware of the beneficiary's work. However, the AAO notes that was a student at working on his doctoral dissertation in computer science at the same time that the beneficiary was there working on his master's thesis in the same subject, and that both he and the beneficiary shared the same dissertation and thesis advisor, Thus, it appears that may not be an independent reference. In addition, does not provide examples of the beneficiary's specific research contributions or explain how those contributions have impacted the academic field.

a professor of computer science at states that the applicant has reviewed paper submissions for national and international professional symposia and conferences, as well as manuscripts for professional publications, "including two conferences and three journals for the top tier He states that the beneficiary was chosen to be a peer reviewer, "based upon his expertise in the area of network management and security. In particular [the beneficiary] is an expert on performance optimization and configuration management of firewalls and intrusion detection systems." does not state the basis for his knowledge of the beneficiary's work. He fails to acknowledge that he is listed as the beneficiary's dissertation and thesis advisor and that he is one of the beneficiary's coauthors. Thus, is not an independent reference. He states that the mere fact of the beneficiary's participation as a peer reviewer for certain professional journals and at certain professional conferences is evidence that he is internationally recognized as being outstanding in his field. We acknowledge that the beneficiary reviewed paper submissions for national and international professional symposia and conferences, as well as manuscripts for professional journals. The regulations, however, include a separate criterion for judging the work of others in the field at 8 C.F.R. § 204.5(i)(3)(i)(D). 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 judging. (We have considered evidence of the beneficiary's judging experience under 8 C.F.R. § 204.5(i)(3)(i)(D)). Whether or not the beneficiary's judging experience is indicative of the beneficiary's international recognition in the field is a valid consideration under our final merits determination.

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 several articles authored by the beneficiary, including his doctoral dissertation and his master's thesis. 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

[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).

evaluating whether a professor or researcher is deemed outstanding. *Employment-Based Immigrants,* 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)).

The nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. Counsel asserts, with the submission of the recommendation letter of the beneficiary's dissertation and thesis advisor, that the beneficiary's participation as a peer reviewer for certain professional journals and at certain professional conferences is evidence that he is internationally recognized as being outstanding in his field. As stated above, the petitioner submitted evidence that the beneficiary has reviewed paper submissions for national and international professional symposia and conferences, as well as manuscripts for professional journals such as The AAO cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. Without 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."

Of far greater importance in this proceeding is the impact the beneficiary's work has already had on the overall academic field. The beneficiary's citation history is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian,* 596 F. 3d at 1122. While evidence that the petitioner'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 the petitioner's work. The petitioner submits evidence that five of the beneficiary's articles have been cited a total of eleven times. In addition, a review of the citing articles reveals that they do not substantively discuss the beneficiary's work, but cite it as one among many other authorities. The record does not contain evidence that independent experts have consistently cited or relied upon the beneficiary's work, nor does the record contain other comparable evidence that demonstrates that the beneficiary's publication record is consistent with international recognition.

In addition, the two 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.

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/prototype 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.

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.