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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **MAY 26 2009**
SRC 08 279 54910

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner is an integrated oil and petroleum products company. 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 materials engineer/scientist. 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 director also concluded that the beneficiary did not have three years of experience as a researcher and would not be employed in a research position.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we uphold the director's findings.

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.

International Recognition

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 September 19, 2008 to classify the beneficiary as an outstanding researcher in the field of materials science and engineering. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field as of that date, and that the beneficiary's work has been recognized internationally within the field as outstanding.

The 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 six criteria, of which the beneficiary must satisfy at least two. The director discussed all six criteria, noting that the petitioner had not submitted any evidence relating to two of those criteria. On appeal, counsel states that the director should have focused on the evidence submitted rather than the evidence not submitted. We are not persuaded that the director's thorough analysis, which included an explanation of which criteria the petitioner was attempting to meet and which criteria remained undocumented, was in error. At no point did the director suggest that failing to meet an unclaimed criterion precluded eligibility even if the alien met at least two other criteria. As counsel does not contest the director's conclusion that the beneficiary does not meet the criteria set forth at 8 C.F.R. § 204.5(i)(3)(i)(A) and (B), however, we will not discuss those criteria further in this decision.

When considering the evidence submitted to meet a given criterion, it is necessary to take into account 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 petitioner claims to have satisfied the following criteria.¹

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 15 articles that cite the beneficiary's 2003 article, coauthored with his Ph.D. mentor, [REDACTED]. One of these citations is a self-citation by [REDACTED]. The director acknowledged the submission of this evidence but concluded that "no examples were presented of published material in professional publications written by others about the alien's work in the academic field."

On appeal, counsel asserts that a citation, "by its very definition," constitutes published material about the beneficiary's work. Counsel presumes that, despite explicitly stating that the citations were not "about the alien's work" (emphasis added), the director was actually applying the similar but stricter regulatory criterion for aliens of extraordinary ability pursuant to section 203(b)(1)(A) of the Act, set forth at 8 C.F.R. § 204.5(h)(3)(iii). This regulation requires evidence of published material "about the alien, relating to his work." Counsel concludes that USCIS has previously accepted citations to meet this criterion and requests that USCIS "continue with its record of consistently reviewing evidence in this category." Counsel cites no precedent decision or other binding authority concluding that citations can serve to meet this criterion. We note that we are bound by the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C).

The evidence does not meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C). The published material in this case, which we consider the complete articles that cite the beneficiary's work, are not about either the beneficiary or his work. Rather, they report the work of the citing authors. Counsel's assertion that the citations themselves, by definition, are about the beneficiary's work seems to suggest that we should consider just the sentence for which the beneficiary's work is cited as the published material rather than the articles containing the citations. An individual sentence by itself does not constitute the published material that must be about the beneficiary's work.

Moreover, even the majority of the individual sentences for which the beneficiary's article is cited as a supporting reference are not "about" the beneficiary's work. Almost all of the beneficiary's citations are simply one of several for a broad principal or area of research already being pursued. For example, [REDACTED] and [REDACTED] cite the beneficiary's work as one of five articles for the proposition that layered materials such as anionic clays "have been widely investigated as additives in organic anti-corrosion coatings." [REDACTED] and [REDACTED]

¹ The petitioner does not claim that the beneficiary meets any criteria not discussed in this decision and the record contains no evidence relating to the omitted criteria.

cite the beneficiary's work as one of two articles for the proposition that layered materials have been employed in applications such as drug delivery and corrosion protection. [REDACTED] and [REDACTED] cite the beneficiary's work as one of four articles for the proposition that solubility control and sustained release can be achieved through a number of methods. [REDACTED] and [REDACTED] cite the beneficiary's work as one of nine examples of review studies on vandate speciation. It cannot be credibly asserted that these sentences are "about" the beneficiary's work.

We acknowledge that some of the citing articles mention the results reported in the beneficiary's article. For example, [REDACTED] and [REDACTED] cite the beneficiary's work for the proposition that Dr. [REDACTED] and his coauthors demonstrated that a coating of hydrotalcite-like powder and epoxy promotes corrosion protection on an aluminum alloy in aggressive environments. As explained in the abstract, however, the citing article is about protecting magnesium alloys from corrosion. We are not persuaded that these single sentences appearing in larger articles that are not in any way about the beneficiary's work can serve to meet this criterion.

In light of the above, we concur with the director that the record lacks evidence of published material by others in professional journals about the beneficiary's work. Thus, the petitioner has not established that the beneficiary meets this criterion.

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 record contains a letter from [REDACTED], Peer Review Administrator for the Society of Petroleum Engineers (SPE), thanking the beneficiary for agreeing to serve as a "technical editor" for the society's Editorial Review Committee, which "evaluates technical papers presented at SPE-sponsored meetings plus other papers submitted directly for review." As a technical editor, the beneficiary would "review selected papers related to [his] specific technical interest."

The director concluded that peer review could not serve to meet this criterion because peer reviewers are not selected based on international recognition as outstanding. On appeal, counsel asserts that the peer review process is a "generally accepted practice by professional journals" for selecting which manuscripts to publish, that the beneficiary was selected "as a result of his noted expertise in materials science and its direct application to drilling, production, and operations in the petroleum industry" and that the beneficiary reviewed and edited "highly complex written and graphic technical materials for accuracy, persuasiveness, clarity, and conciseness." Counsel concludes that the language at 8 C.F.R. § 204.5(i)(3)(i)(D)² "makes no stipulation that the peer review process is not an acceptable means of evidence for being a judge of the work of others."

The regulation at 8 C.F.R. § 204.5(i)(3)(i)(D) does not stipulate that any particular activity can never serve to meet this criterion. In fact, such an endeavor would be pointless as it can hardly be expected

² Counsel actually cites 8 C.F.R. § 204.5(i)(3)(i)(E), but presumably meant 8 C.F.R. § 204.5(i)(3)(i)(D), the regulation setting forth the criterion for judging the work of others.

for the regulation authors to envision every activity that is *not* sufficient to meet this criterion. Thus, the failure of the regulation to explicitly exclude peer review does not suggest that peer review must be presumed to meet this criterion. For example, proofreading the work of a laboratory partner is not explicitly excluded by the regulation. Nevertheless, it would be absurd to suggest that every postdoctoral researcher who proofreads the work of a collaborator meets this criterion.

As stated above, the regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. 56 Fed. Reg. 30703, 30705 (July 5, 1991). Thus, while we do not necessarily require that the petitioner demonstrate that the beneficiary was selected as a peer reviewer based on his international recognition as outstanding, the petitioner must demonstrate that the selection is at least indicative of or consistent with international recognition as outstanding in that it sets the beneficiary apart from the majority of his colleagues. *See Yasar v. DHS*, 2006 WL 778623 *9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005). The record does not contain any evidence that SPE utilizes only a small exclusive group of technical editors or that SPE credits the technical editors prominently in its conference proceedings.

As noted by counsel on appeal, scientific journals are generally peer reviewed. The fact that peer review is so widespread and necessary to the field, however, reveals that conferences and journals must rely on many scientists to review submitted articles. Thus, peer review is routine in the field and is not indicative of or consistent with international recognition. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the beneficiary meets this criterion.

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

Regarding this criterion, the exhibit list submitted initially provides:

[The beneficiary] has conducted novel research in the area of corrosion inhibiting processes. His research in the development of the mineral hydrotalcite as a corrosion inhibitor in coatings holds great importance to both the U.S. defense industry and the U.S. energy industry. [The beneficiary's] original technology has been applied to aircraft engineering and to offshore oil platform engineering and maintenance ensuring that structural stability is not compromised by harsh environmental conditions.

The exhibit list then lists the beneficiary's reference letters, publication record and conference presentations as evidence to meet this criterion.

The director considered the beneficiary's publication and presentation record and concluded that while the beneficiary was "very capable," the record did not support a finding that the beneficiary is

internationally recognized as outstanding. On appeal, counsel asserts that the petitioner is one of the largest integrated energy companies in the world and is committed to hiring the most talented and outstanding researchers available in the world. Counsel concludes that the beneficiary's work is international in scope and has been recognized as outstanding in the field.

We will not presume the beneficiary's international recognition as outstanding from his association with the petitioner. Rather, it is the petitioner's burden to demonstrate that the beneficiary as an individual meets the necessary regulatory criteria.

Obviously, the petitioner cannot satisfy this criterion simply by listing the beneficiary's past projects and demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research. Research work that is unoriginal would be unlikely to secure the beneficiary a master's degree, let alone classification as an outstanding researcher. Because the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher, it stands to reason that the beneficiary's research contributions have won comparable recognition. 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."

As stated above, outstanding 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. 56 Fed. Reg. 30703, 30705 (July 5, 1991). Any Ph.D. thesis, postdoctoral or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. To conclude that every researcher who performs original research that adds to the general pool of knowledge meets this criterion would render this criterion meaningless.

Furthermore, the regulations include a separate criterion for scholarly articles. 8 C.F.R. § 204.5(i)(3)(i)(F). Thus, the mere authorship of scholarly articles and conference presentations cannot serve as presumptive evidence to meet this criterion. To hold otherwise would render the regulatory requirement that a beneficiary meet at least two criteria meaningless.

Regarding the letters, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of international recognition. U.S. Citizenship and 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 evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. 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)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread recognition and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with international recognition should be able to produce unsolicited materials reflecting that recognition.

The beneficiary received his Ph.D. from The Ohio State University in 2005. The beneficiary then worked as an engineer for Cessna Aircraft Company through June 2007. The beneficiary has been working for the petitioner as a materials engineer/scientist since June 2007.

██████████, a member of the beneficiary's thesis evaluation committee at The Ohio State University, discusses the beneficiary's work with ██████████. Dr. ██████████ asserts that the beneficiary's work on the use of hydrotalcite compounds as paint additives was "completely novel and groundbreaking" and has "the potential to revolutionize the paint industry." Finally, ██████████ attests to his "belief" that ██████████ is working with a private company to commercialize the concept.

The petitioner also submitted letters from ██████████, a professor at the University of Cincinnati whose graduate students collaborated with the beneficiary and ██████████ a senior lecturer at Monash University in Australia and a coauthor of ██████████ discussing the beneficiary's doctoral research. ██████████ praises the beneficiary's cooperation with the University of Cincinnati as part of a four year project at the Fontana Corrosion Center (FCC). ██████████ asserts that the beneficiary "utilized his exceptional research capacities to put in place innovative experimental techniques to characterize and validate the performance of these hydrotalcites as viable, environment-friendly replacements for chromates." ██████████ asserts that the beneficiary's work has impacted the engineering community worldwide, noting that the beneficiary has been published in international academic journals. While publication in an international journal is evidence of international exposure, it does not necessarily demonstrate international recognition as outstanding. Specifically, we will not presume the impact of a given article from the journal in which it appears. The beneficiary's sole cited article will be addressed in more detail below. ██████████ asserts that the beneficiary's work with hydrotalcites is "multi-disciplinary" but does not provide any examples of this work influencing the field.

Director of Defense Programs Support at Boeing, asserts that Boeing does considerable work with composite materials and aluminum and, thus, "had the opportunity to become familiar with and impressed by [the beneficiary's] expertise in corrosion protection using inhibitors and protective coatings, and also his expertise in metallurgical failure analysis." While ██████████ asserts that the beneficiary's Ph.D. dissertation "caught our attention," he does not assert that Boeing has utilized or been influenced by the beneficiary's work.

None of the letters discussing the beneficiary's doctoral research provide any examples of the beneficiary's work being utilized in the field. We acknowledge that one of the beneficiary's articles has been cited 15 times. As discussed above, one of these cites is a self-citation by [REDACTED] and many of these citing articles merely cited the beneficiary's work as one of many pursuing his area of research. Moreover, as noted by the director, [REDACTED] is the corresponding and first author of this article. While the beneficiary's position as third of four authors does not necessarily indicate a minor role on this project, the record does not contain a letter from [REDACTED] explaining the nature of the beneficiary's role on this project or the status of [REDACTED] efforts to commercialize a hydrotalcite paint additive.

[REDACTED] the beneficiary's immediate supervisor with the petitioning company, asserts that he initially met the beneficiary at a conference and hired him once an opportunity arose. [REDACTED] asserts that the beneficiary contributes to the petitioning company. As an example, [REDACTED] explains that for an oil platform in the North Sea, the beneficiary "successfully developed novel specifications, solved unique technical issues involving corrosion and cracking of stainless steels through development methodology to effectively remove iron and chloride contamination to non-detectable levels." According to [REDACTED], the beneficiary also "developed an original testing program to qualify coatings that had been improperly applied, saving millions of dollars in repair costs."

Finally, [REDACTED], a retired professor who has "worked with" the petitioning company on several training projects during the past two years, asserts that the beneficiary's advice was sought at the outset of these projects. [REDACTED] asserts that the beneficiary's comments "resulted in major improvements in the offerings we were able to develop." This information does not suggest that the beneficiary has contributed to the field of materials science as a whole. Dr. [REDACTED] further asserts that supply of American engineers and technicians cannot meet the demand for these professionals in the United States. The issue of whether similarly-trained workers are available in the United States, however, is an issue under the jurisdiction of the Department of Labor. *New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 (Comm'r. 1998).

According to the Department of Labor's Occupational Outlook Handbook (OOH), available at <http://www.bls.gov/oco/ocos027.htm> (accessed on May 21, 2009 and incorporated into the record of proceeding), engineers develop and design new products as well as work in testing, production, or maintenance. Engineers also supervise production in factories, determine the causes of component failure, and test manufactured products to maintain quality. *Id.* Materials engineers are involved in the development, processing, and testing of the materials used to create a range of products, using metals, ceramics, plastics, semiconductors, and composites to create new materials that meet certain mechanical, electrical, and chemical requirements. *Id.* They also are involved in selecting materials for new applications. *Id.* The fact that the beneficiary has performed these duties does not set him apart from other materials engineers.

While the beneficiary's work is clearly important to his employer, the record does not establish that the beneficiary's work has been recognized internationally as outstanding.

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

The petitioner submitted evidence that the beneficiary has authored a book chapter and five articles published in journals or conference proceedings. The OOH (accessed at www.bls.gov/oco on May 21, 2009 and incorporated into the record of proceedings), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See www.bls.gov/oco/ocos066.htm. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field.

As stated above, the record contains evidence that one of the beneficiary's articles has been moderately cited. As noted by the director and above, [REDACTED] is the first author of the article and has not provided a letter in support of the petition explaining the beneficiary's role on this paper. The beneficiary's publication record overall is simply not indicative of or consistent with international recognition as outstanding.

The petitioner has shown that the beneficiary is a talented and prolific researcher, who has won the respect of his collaborators, employers, and mentors, while securing some degree of international exposure for his work. The record, however, stops short of elevating the beneficiary to the level of an alien who is internationally recognized as an outstanding researcher or professor. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

Research Position

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.

As quoted above, the regulation at 8 C.F.R. § 204.5(i)(3)(ii) requires evidence that the beneficiary has at least three years of research experience.

The beneficiary listed the following description of his job duties for the petitioner on his curriculum vitae:

- Working on technical services (failure analysis, corrosion) and technology development (materials selection, inspection) in support of projects and operations in North American and International oil and gas projects.
- Part of a Pipeline Assessment Team responsible for evaluation pipelines belonging to various business units.
 - Completed assessment programs for North Sea Business Unit (UK) and [the petitioner] in China.
- Completed at least 100h training in LRUT, marine survival, FCPA, ethics, safety, defensive driving, metallurgy & corrosion control and optimizing reliability of in-line inspection.

The petitioner initially submitted a letter from [REDACTED], the petitioner's International Assignment Analyst, asserting:

[The beneficiary] was charged with developing a research program aimed at simulating our field conditions within a laboratory setting. He utilizes his specialized research expertise in metallurgical composition and codes to specify industry use. He also sets up required test systems. If these test systems are not commercially available, he must research, conceive, design and oversee the assembly of the specialized test equipment in metallurgical fatigue, corrosion, cracking or corrosion. After the experimental phase of this work, he interprets the data using both his materials engineering expertise and novel research work.

The beneficiary also listed the following description of his job duties for Cessna Aircraft Company:

- Responsible for failure analysis, engineering sustaining, production support and materials testing.

Conduct metallurgical analysis of metallic components.

Review engineering requirements to ensure the accuracy of materials and process aspects.

- Provide consultation on engineering aspects of metallic materials
- Cross-training with other groups such as non-metals, advanced design, non-destructive evaluation while provided the relevant experimental, technical and analytical expertise.
- Completed at least 100h training in intellectual property, business conduct guidelines, OSHA safety standards, “Right Turns,” metal bonding, sealants, stress analysis and electrical conductivity certification.

The petitioner did not initially submit a letter from anyone at that company.

The director concluded that the petitioner was not offering the beneficiary a permanent research position and that the beneficiary did not have at least three years of research experience. On appeal, the petitioner notes that the beneficiary has authored several internal technical service reports on failure analysis and procedures for detecting and cleaning contamination and laboratory testing of coatings and that these reports have prevented future mistakes. The petitioner also submits a letter from [REDACTED] a former consultant for Cessna, asserting that while at Cessna, the beneficiary authored 30 failure analysis reports and other technical notes, which were all “highly research-oriented” and prevented potential aircraft disasters.

Consistent with the above, the OOH provides that materials engineers develop, process and test materials and create new materials that meet certain mechanical, electrical and chemical requirements. They also select materials for new applications.

It is noted that the Merriam-Webster Dictionary 595 (1974) defines research as a “careful or diligent search” or the “studious and critical inquiry and examination aimed at the discovery and interpretation of new knowledge.” Simply having design responsibilities does not mean that an employee is necessarily a researcher. Software engineers, architects, and even artists design products, but they are not researchers. Despite the characterizations by the petitioner and [REDACTED], the beneficiary’s job duties appear to be primarily engineering rather than research oriented.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.