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FILE: LIN 05 071 50247 Office: NEBRASKA SERVICE CENTER Date: JUN 27 2006

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:

SELF-REPRESENTED

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.

Robert P. Wiemann, 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 on appeal. The appeal will be dismissed.

The petitioner is a state university. 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 associate. The director determined that the petitioner had not established that it had offered the beneficiary a permanent job as of the date of filing. The director also determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in her academic field, as required for classification as an outstanding researcher.

On appeal, the petitioner challenges both conclusions. For the reasons discussed below, we find that the petitioner has not submitted the required initial evidence, the initial job offer, and has not demonstrated the beneficiary's international recognition in the field.

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.

### **JOB OFFER**

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.

(Emphasis added.) Black's Law Dictionary 1111 (7<sup>th</sup> ed. 1999) 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." Black's Law Dictionary does not define "offeror" or "offeree." The online law dictionary by American Lawyer Media (ALM), available at [www.law.com](http://www.law.com), defines offer as "a specific proposal to enter into an agreement with another. An offer is essential to the formation of an enforceable contract. An offer and acceptance of the offer creates the contract." Significantly, the same dictionary defines offeree as "a person or entity to whom an offer to enter into a contract is made by another (the offeror)," and offeror as "a person or entity who makes a specific proposal *to another (the offeree)* to enter into a contract." (Emphasis added.)

In light of the above, we concur with the director that 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, a letter addressed to Citizenship and Immigration Services (CIS) *affirming* the beneficiary's employment is not a job *offer* within the ordinary meaning of that phrase. Even a letter addressed to the beneficiary confirming a prior offer is not the initial offer.

The regulation at 8 C.F.R. § 204.5(i)(2), provides, in pertinent part:

*Permanent*, in reference to a research position, means either tenured, tenure track, or for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination.

On Part 6 of the petition, the petitioner indicated that the proposed employment was a permanent position. The petitioner submitted a June 15, 2004 letter jointly signed by Dr. [REDACTED] Director of the petitioner's Physiology Core, and [REDACTED] Director of Administration and Information at the petitioner's Department of Surgery, addressed to the beneficiary. The letter purports "to confirm" a May 17, 2003 job offer for the "permanent position of Research Association." The letter states that if funding is not renewed, the petitioner intends to support the beneficiary from other sources. This document does not constitute the initial job offer. On June 6, 2005, the director requested the initial letter, predating the date of filing, providing the precise terms of employment. The director also suggested the executed contract and university guidelines as other evidence that might support the initial required evidence, the job offer letter.

In response, the petitioner submitted a new confirmation letter dated August 3, 2005 from Dr. [REDACTED] Chief of Cardiothoracic Surgery at the petitioning university. The new letter also purports to confirm the May 17, 2003 job offer for a "permanent position of Research Associate." Dr. [REDACTED] asserts that the petitioner "complies" with the regulatory definition of "permanent" quoted above. The petitioner also submitted a July 22, 2005 letter from [REDACTED], Executive Vice Chancellor and Dean of Faculties at the petitioning university. Mr. [REDACTED] distinguishes a research associate from a postdoctoral appointment. The petitioner did not submit the May 17, 2003 job offer referenced in the letters submitted initially and in response to the request for additional evidence.

The director concluded that the petitioner had not submitted "the actual job offer requested" and that the evidence did not establish the permanent nature of the job offer.

On appeal, the petitioner still does not submit the May 17, 2003 job offer. On appeal, the petitioner discusses funding for the position and attempts to distinguish *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972), cited by the director for the proposition that going on the record without supporting documentation is insufficient.

We acknowledge that research positions at universities are contingent on funding. We do not contest that a petitioning university can demonstrate a reasonable expectation that funding will continue. Moreover, our position is not that the petitioner has gone on the record without supporting evidence. Rather, the petitioner has not complied with the required initial evidence. As stated above, the regulations specifically require the submission of the job offer itself. A confirmation of a previous offer is not the primary evidence required, a job offer. Rather, a confirmation is secondary evidence of the existence of the job offer. The petitioner has not complied with the regulation at 8 C.F.R. § 103.2(b)(2)

regarding the submission of secondary evidence. Specifically, the petitioner has not demonstrated that the primary evidence required, the May 17, 2003 job offer, does not exist or is otherwise unavailable.

In light of the above, we cannot evaluate whether or not the job offer meets the regulatory definition of permanent as that evidence has not been submitted as required. We further note that as the petitioner was on notice of the requirement to submit the initial job offer from the regulations and the director's request for additional evidence, the submission of that document in future filings related to this petition cannot resolve this issue. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

### **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 six criteria, of which the petitioner must satisfy at least two. It is important to note here 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. 56 Fed. Reg. 30703, 30705 (July 5, 1991). The petitioner claims to have satisfied the six criteria as follows.

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

The petitioner submitted evidence of the beneficiary's 2004 New Investigator Award in Shock Research from the Shock Society. A separate certificate reveals that it was a travel award. A separate letter reflects that the award covered the lowest, economy/super saver round trip cost to attend the conference. A letter from Dr. [REDACTED], a member of the Shock Society's awards committee, asserts that the beneficiary was one of four finalists presenting her work at the conference, but that she did not receive the top prize.

The beneficiary also received a first place certificate for outstanding academic article from the Medical Association of Sichuan and student awards from West China University of Medical Sciences. Finally, in 1998, the petitioner received the ASTRA Award from the Astra (wuxi) Pharmaceutical Company and the First School of Medicine, West China University of Medical Sciences. The petitioner submitted evidence about Astra Pharmaceutical Company but no information about the significance of the awards issued by that company.

The director requested additional evidence of the significance of the above awards. In response, the petitioner submitted additional information regarding the travel award indicating that the beneficiary

was allowed 10-minute presentations at the conference and before the awards committee. The petitioner also submitted evidence of accomplishments after the date of filing. Dr. [REDACTED] Past President of the Shock Society, asserts that the beneficiary competed against 50 other investigators from the United States, Canada, Europe and South America. Dr. [REDACTED] then asserts that the beneficiary won first prize, a claim contradicted by the initial letter from Dr. [REDACTED] who claims that the beneficiary was merely a finalist. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The director concluded the academic awards were insufficient and that the new investigator's award was limited to those at the beginning of their careers. On appeal, the petitioner asserts that the new investigator award is not a student award and that those at the beginning of their careers are not precluded from demonstrating international recognition. The petitioner continues to assert that the beneficiary's fellowship from the American Heart Association that postdates the filing of the petition is relevant and states simply that the Astra Award was issued in recognition of outstanding contributions to stem cell research.

It is significant that the *proposed* regulation relating to this classification would have required evidence of a major *international* award. The final rule removed the requirement that the award be "international," but left the word "major." The commentary states: "The word "international" has been removed in order to accommodate the *possibility* that an alien might be recognized internationally as outstanding for having received a major award that is not international." (Emphasis added.) 56 Fed. Reg. 60897-01, 60899 (November 29, 1991.)

Thus, the standard for this criterion is very high. The rule recognizes only the "possibility" that a *major* award that is not international would qualify. Significantly, even lesser international awards cannot serve to meet this criterion given the continued use of the word "major" in the final rule. *Cf.* 8 C.F.R. § 204.5(h)(3)(i) (allowing for "lesser" nationally or internationally recognized awards for a separate classification than the one sought in this matter).

The petitioner does not contest that the beneficiary's student awards and scholarships are non-qualifying and we concur with the director's discussion of this issue. As stated above, the record lacks evidence regarding the significance of the Astra Award, such as international media coverage of the selections. Thus, the petitioner has not demonstrated the significance of this award.

Regarding the young investigator travel award, the record is inconsistent as to whether the beneficiary won the top award or was merely a finalist that received a travel award to attend the conference. Regardless, we do not question the petitioner's assertion that an individual at the beginning of her career *can* demonstrate international recognition. The concern, however, is not that the petitioner won this award while at the beginning of her career, but that the award is limited to those at the beginning of

their careers. An award for which the most renowned members of the field cannot compete cannot be considered a *major* award indicative of international recognition in the field.

Regarding the beneficiary's fellowship (essentially a research grant) from the American Heart Association, it postdates the filing of the petition and cannot be considered. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Regardless, research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement.

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

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

The petitioner submitted evidence that the beneficiary is a regular member of the Society for Neuroscience (SfN), which defines regular members as those who have done meritorious research and requires sponsorship by two members. SfN is the world's largest organization of scientists devoted to the study of the brain, with 29,000 members, and has an emeritus membership level, which is more exclusive than regular. The membership application requires only the submission of a curriculum vitae and bibliography and the signature of two sponsors. The applicant need not supply her published work or reference letters from the sponsors explaining the significance of her work. The beneficiary is also a member of the American Heart Association (AHA) and a student member of the Shock Society.

In response to the director's request for additional evidence relating to this criterion, the petitioner asserted that the beneficiary's membership in SfN served to meet this criterion. The director concluded that sponsorship by others was not an outstanding achievement. On appeal, the petitioner asserts that the evidence relating to this criterion is "a minor aspect" of the petition but maintains that the requirement for "meritorious research" and sponsorship by two members is sufficient to qualify SfN membership under this criterion.

The record contains no evidence as to how SfN defines "meritorious" research. If the society defines "meritorious" as published, we are not persuaded that publication of one's research is an outstanding achievement in the sciences, where researchers must publish their work to be considered competent in the field. Similarly, the signatures of two members of the society are not indicative of an outstanding achievement in the field. The very fact that SfN boasts 29,000 members suggests that it is not exclusive. The record contains no evidence that the beneficiary is an emeritus member or the requirements for that level of membership.

In light of the above, the petitioner has not established that the beneficiary meets 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*

Initially, the petitioner submitted several requests for reprints and evidence that one of the beneficiary's articles was cited a single time. In response to the director's request for additional evidence, the petitioner submitted evidence that two of the beneficiary's articles published prior to the date of filing had been cited four times (including three self-cites) and twice (including one self-cite and one citation that postdates the filing of the petition). A third article published after the date of filing was cited once by the beneficiary and another time by an independent research team.

The requests for reprints are not published and cannot be considered under this criterion under any credible interpretation of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C). Self-citations included within the beneficiary's own articles are not "written by others." Finally, articles which cite the beneficiary's work are primarily about the author's own work, not the beneficiary's work. As such, they cannot be considered published material about the beneficiary's work.

In light of the above, 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*

Initially, the petitioner submitted evidence that the beneficiary authored a comment; a letter from Dr. [REDACTED] Chair of the Department of Pediatrics at the West China Second University Hospital, asserting that the beneficiary reviewed manuscripts for the *Journal of Chongqing Pediatric Pharmacology* and a letter from a former Master's student at West China University indicating that the beneficiary provided thesis advice to that student. In response to the director's request for additional evidence, the petitioner submitted a new letter from Dr. [REDACTED], asserting that the beneficiary reviewed doctoral dissertations at the university from 2003 through 2005. The petitioner also submitted an August 3, 2005 request to review a manuscript for *Shock Magazine* that the petitioner acknowledges postdates the filing of the petition.

The director concluded that the petitioner had not demonstrated how the above duties distinguish the beneficiary from other scientists with a doctoral degree. On appeal, the petitioner asserts that the criterion only requires evidence that the alien has judged the work of others, which the petitioner provided. As stated above, the criteria are to be used in evaluating whether the alien is deemed outstanding. 56 Fed. Reg. 30703, 30705 (July 5, 1991). Thus, the evidence submitted to meet a given criterion must be indicative of or consistent with international recognition if that statutory standard is to have any meaning.

We are not persuaded that the general review of new developments in the field inherent in a scholarly “comment” is the type of judging of the work of others contemplated by the regulation at 8 C.F.R. § 204.5(i)(3)(i)(D). Rather, such evidence is better considered under the scholarly articles criterion at 8 C.F.R. § 204.5(i)(3)(i)(F). Regarding manuscript reviews, we 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. Similarly, evidence that the beneficiary reviewed theses at the university where she once worked, as opposed to serving as an outside reviewer for a university with which she was never affiliated, is not indicative of or uniquely consistent with any recognition beyond her immediate circle of colleagues. We agree with the director that the record lacks evidence that sets the beneficiary apart from others in her field, such as evidence that she has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, served in an editorial position for a distinguished journal or served as an external expert thesis advisor for a university with which she has no current or prior affiliation.

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

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

The director acknowledged the submission of letters, but concluded that while the letters praise the beneficiary’s talent, they did not establish the beneficiary’s reputation beyond her immediate circle of colleagues. On appeal, the petitioner notes that many of the reference letters were from independent members of the field who knew of the beneficiary’s work through the beneficiary’s publications and asserts that the beneficiary is personally responsible for groundbreaking work in her field. We will consider the letters and other evidence of record.

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.”

Counsel relies on *Soltane v. U.S. Dep’t of Justice*, 381 F. 3d 143, 150-151 (3<sup>rd</sup> Cir. 2004), for the proposition that CIS cannot dismiss expert opinions without providing an adequate explanation for doing so. The letters in *Soltane* addressed job duties and years of experience. *Id.* Significantly, the regulation at 8 C.F.R. § 204.5(g)(1) provides that evidence of work experience “shall” be in the form of letters from employers. The court in *Soltane* did not hold that CIS must accept all expert opinions as they relate to less concrete concepts such as the significance of research results and international recognition in one’s field. Unlike evidence of work experience, the regulations relating to the

classification sought do not specify that expert opinions “shall” constitute the proper form of evidence to establish eligibility.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of international recognition. CIS 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. 1988). However, CIS 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; CIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795-796. CIS 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).<sup>1</sup>

The beneficiary obtained a medical doctor degree (1994) and a Master of Science degree (2000) from the West China University of Medical Sciences. She then worked as a research associate and lecturer at the university, a visiting scientist at the National Research Group of Cord Blood Bank, Sichuan Province and finally as a research analyst at the petitioning university.

Dr. [REDACTED], the beneficiary’s Master’s thesis advisor at West China University of Medical Sciences, asserts that the beneficiary’s Master’s research focused on human cord blood stem cells. Dr. [REDACTED] asserts that the beneficiary “made very important contributions to the project,” but provides no examples. Rather, Dr. [REDACTED] notes that the work resulted in six publications and the Astra Award. While Dr. [REDACTED] asserts that the award is “international,” the record contains no objective evidence of the significance of this award, such as international media coverage of the award selections. Dr. [REDACTED] Director of Esophageal Cancer Research at Massachusetts General Hospital, asserts that the beneficiary’s six peer-reviewed articles in China constitute “a remarkable number to achieve early in one’s career.” At issue is not whether the beneficiary’s accomplishments are remarkable for her level of experience, but whether her original contributions have garnered international recognition. The record lacks evidence that any of the beneficiary’s articles reporting her work in China have been extensively cited. The record also lacks comparable evidence, such as letters from independent researchers who affirm applying the beneficiary’s results in China in their own work.

According to Dr. [REDACTED] a staff scientist at the National Institute on Deafness and other Communication Disorders (NIDCD), National Institutes of Health (NIH), the beneficiary first worked in the laboratory of Dr. [REDACTED] at the petitioning university. In that laboratory, the beneficiary focused on the calcium channel, overlapping with Dr. [REDACTED] area of expertise. Dr. [REDACTED], however, does not discuss the beneficiary’s work on calcium channels, discussing instead the beneficiary’s work on

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<sup>1</sup> As noted by the petitioner, the court in *Soltane* held that *Matter of Treasure Craft of California*, 14 I&N Dec. at 190, was applicable only in matters that also involved an administrative finding contrary to the unsupported assertions made in that matter. Thus, we find *Matter of Soffici*, 22 I&N Dec. at 165, which extended this concept, to be a more relevant citation.

the use of stem cells to treat cardiovascular disease. As such, the record contains little evidence regarding the significance of the beneficiary's work with calcium channels.

The beneficiary then began working in the laboratory of Dr. [REDACTED], Director of the University Core Labs in CV Physiology at the petitioning university. Dr. Meldrum boasts authorship of an article cited 250 times, ranked as the sixth top cited article in that journal. Dr. [REDACTED] is also on the editorial board of two journals. The beneficiary's articles coauthored with Dr. [REDACTED] reflect no more than a single independent citation per article, suggesting that Dr. [REDACTED] collaboration with the beneficiary has not garnered nearly as much recognition as some of Dr. [REDACTED] other work. While not decisive, it supports our position that the beneficiary cannot establish her own recognition solely by demonstrating an association with renowned mentors.

Dr. [REDACTED] asserts that the beneficiary's work produced the first report of gender differences in normal myocardial response to acute ischemia in rats. Dr. [REDACTED] explains that understanding the mechanisms that lead to these differences "may" lead to beneficial therapeutic intervention for both men and women. The beneficiary also "provided the first evidence that infusion of stem cells prior to ischemia produced cardiac protection." Dr. [REDACTED] explains that this work could lead to treatments for preoperative patients that protect the patients from ischemia during cardiothoracic surgery. According to Dr. [REDACTED], these results led to a grant from NIH and the beneficiary is essential to the completion of the project. Dr. [REDACTED] concludes that the beneficiary's work is "leading to the generation of novel therapy for heart disease."

Dr. [REDACTED], a Professor at the University of Colorado and a member of the U.S. National Academy of Sciences, indicates that he is also one of Dr. [REDACTED]'s collaborators. Dr. [REDACTED] acknowledges that there exists "a great deal of data" regarding stems cells regenerating infarcted myocardium and enhanced neovascularization of ischemic myocardium, but states that the beneficiary observed that the infusion of stem cells prior to ischemia provides protection of myocardial function. Dr. [REDACTED] concludes that the beneficiary's research "is absolutely critical for an in-depth understanding of the effect of stem cells on myocardial function after acute heart infarction (attack) and will provide new insight into clinical therapy of heart disease." Dr. [REDACTED] also praises the beneficiary's finding that estrogen plays a protective role in heart ischemia.<sup>2</sup>

Several references discuss the beneficiary's skill with the Langendorff models. While some references state that Dr. [REDACTED] laboratory is the only laboratory at the petitioning university that uses this model, they do not explain how that fact is significant given that it would not be expected for all laboratories at a university, presumably involved in investigating different areas of science, to use the same techniques and models. The references do not assert that Dr. [REDACTED] laboratory is unique internationally or even nationally, although Dr. [REDACTED] asserts that there is only "a small group of

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<sup>2</sup> Dr. [REDACTED] makes no attempt to reconcile these findings with the results of the highly publicized Women's Health Initiative (WHI) study finding no heart benefits from estrogen and aborted due to the risk of stroke from estrogen. NIH released these results in April 2004, prior to the date of Dr. [REDACTED]'s August 2004 letter. See [www.nih.gov/news/pr/apr2004/nhlbi-13.htm](http://www.nih.gov/news/pr/apr2004/nhlbi-13.htm).

researchers familiar with the technique.” In a case involving a lesser classification, this office held that special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 (Comm. 1998). If such knowledge cannot be considered evidence of a track record of success with some degree of influence on the field, then it cannot serve as evidence of an original contribution indicative of international recognition. In fact, training in a method developed by others is not original.

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 research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. Without evidence indicative of an international impact, such as evidence that the beneficiary is widely cited or at least letters from independent researchers who are not only aware of the beneficiary's work through contacts with her mentor, but who have applied the beneficiary's work in their own research, we cannot conclude that the beneficiary meets this criterion.

*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 13 published articles as of the date of filing, including the comment discussed above. While this authorship may be remarkable for an individual at this stage of her career, that is not the relevant issue. At issue is whether this publication record is indicative of or consistent with international recognition. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that “the appointment is viewed as preparatory for a full-time academic and/or research career,” and that “the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment.” Thus, this national organization considers publication of one's work to be “expected,” even among researchers who have not yet begun “a full-time academic and/or research career.” This report reinforces our position that publication of scholarly articles is not automatically evidence of international recognition; we must consider the research community's reaction to those articles.

The requests for reprints include requests from Australia and Canada. As of the date of filing, however, the beneficiary had been cited a single time by an independent research group. We find that the beneficiary's publication record is not indicative of or consistent with international recognition. Thus, the petitioner has not established that the beneficiary meets this criterion. Even if we were to limit our consideration to whether or not the beneficiary had published articles, the beneficiary would meet only a single criterion. For the reasons discussed above, the beneficiary falls far short of meeting any other criterion. An alien must meet at least two to be eligible for the classification sought.

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

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.