

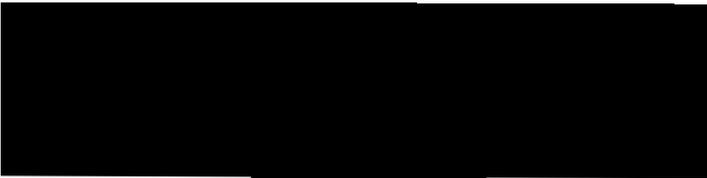
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U.S. Citizenship  
and Immigration  
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FILE: [REDACTED]  
LIN 03 198 51377

Office: NEBRASKA SERVICE CENTER

Date: JAN 31 2007

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.

A handwritten signature in cursive script that reads "Robert P. Wiemann".

2 Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The director reopened the matter on motion to amend the initial decision and subsequently denied the petition a second time. The matter is now before the Administrative Appeals Office (AAO) on certification. The director's decision will be affirmed.

The petitioner is an institution of higher education. 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). On the petition, the petitioner indicated that it sought to employ the beneficiary 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, that the beneficiary had the necessary experience or that the beneficiary is recognized internationally as outstanding in her academic field, as required for classification as an outstanding researcher.

Counsel filed an appeal, listing the receipt number for this petition but asserting that the appeal related to a national interest waiver petition pursuant to section 203(b)(2) of the Act. The brief also includes several references to the alien as a self-petitioner, which is not permissible in the classification sought in this matter. The content of counsel's brief, however, does address the issues raised by the director in this matter. Thus, the appeal does appear to relate to this petition.

On appeal, counsel referenced certain factual mistakes by the director, such as the name of the beneficiary's supervisor and pronouns referencing the beneficiary. Counsel concluded that these mistakes demonstrated that the director had not thoroughly examined the record of proceeding. As stated above, the director reopened the matter and amended the beneficiary's supervisor and the relevant pronouns. On certification, counsel asserts that the director erred in allowing the same adjudicator to review the multiple petitions filed in behalf of the beneficiary and in allowing this same adjudicator to review the petition after the appeal was filed. Counsel requests a *de novo* review by this office and asserts that the initial concerns raised on appeal have not been resolved by the amended decision.

In addition, counsel requests oral argument. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, counsel identified no unique issues of law to be resolved. In this matter, the written record of proceeding fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

Counsel provides no legal authority or policy, and we know of none, that would preclude a single adjudicator from reviewing different petitions filed on behalf of the same individual. It could be credibly argued that review by a single adjudicator insures consistency, improves efficiency and prevents contradictory claims from being advanced in separate proceedings involving the same individual. We note that current procedures do allow for a second review through the appeals process.

At the outset, we note that counsel alleges incompetence at the Service Center level, requesting that the adjudicator responsible for the decision be fired. Specific allegations, such as asserting that the adjudicator failed to review the record in this matter, appear unfounded. The use of boilerplate language, per se, is not evidence that the record was not reviewed. Many petitions in the same classification involve similar issues and it is unreasonable, to say nothing of inefficient, to expect the director to craft entirely original responses to similar evidence and assertions. Moreover, while the director's use of the wrong pronoun for the beneficiary reflects some carelessness, the gender of the beneficiary is not material to the merits of the petition. As discussed below in our discussion of the beneficiary's contributions to her field, counsel himself used incorrect pronouns on page 3 of his initial cover letter, suggesting that he employs the beneficiary.

While the director mistakenly references [REDACTED] on page 3 of the original decision, on page 2 of the original decision, the director correctly identifies the petitioner's faculty providing letters in this matter as including [REDACTED] and [REDACTED]. The decision includes numerous subsequent statements of fact that also correspond to the petitioner and beneficiary in this matter. Thus, the original decision does not appear to be a case where the director did not review the record and merely relied exclusively on language from another decision.

Counsel's more specific assertions will be addressed below.

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.

### **Permanent 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 CIS *affirming* the beneficiary’s employment is not a job *offer* within the ordinary meaning of that phrase.

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 letter from [REDACTED] a professor at the petitioning institution, addressed to CIS, asserting that the beneficiary “will be employed with us full-time as a Research Associate after thesis defense for her Doctoral degree.” This document does not constitute a job offer from the petitioner to the beneficiary. On January 31, 2005, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary *prior* to the filing of the petition.

In response, the petitioner submitted a June 1, 2003 letter from [REDACTED] addressed to the director confirming the petitioner’s interest in employing the beneficiary “on a full-time indefinite basis as a Research Associate.” [REDACTED] also affirms his hiring authority as Chairman of the petitioner’s Department of Biochemistry & Cancer Biology. In a second letter dated March 6, 2005, [REDACTED] affirms that the beneficiary was promoted to Research Assistant Professor after working as a Research Associate for one year. The petitioner also submitted a May 25, 2005 press release announcing the beneficiary’s promotion to assistant professor.

The director questioned [REDACTED] authority to hire *permanent* employees and concluded that the initial job offer, as of the date of filing, was a “postdoctoral” position and “at will.” Thus, the director concluded that the position was not permanent as defined at 8 C.F.R. § 204.5(i)(2).

On appeal, counsel dismisses all of the director’s discussion as “sophistry” and provides a lengthy discussion of how the Department of Labor (DOL) defines “permanent.” Counsel has not explained, however, why DOL’s definition of “permanent” is relevant for the benefit sought. The statute does not use the term “permanent,” but “comparable” to tenure or tenure-track. The pertinent regulation clarifies that in order to be comparable to tenure or tenure track the position must be “permanent,” as defined in clear and unambiguous terms *in the regulation relating to this classification*. Where the regulation addressing a given classification includes its own definition for a given term, such as permanent, it is that definition, and no other, that is relevant. Thus, DOL’s definition of “permanent” for their own purposes is irrelevant in this matter. In light of the above, we find that the director’s focus on the definition of “permanent” at 8 C.F.R. § 204.5(i)(2) was legally sound.

In evaluating the evidence relating to the petitioner's job offer to the beneficiary, we must first consider whether the initial required evidence was even submitted. For the reasons discussed above, we read the statute and regulation as requiring the submission of the actual job offer issued by the petitioner to the beneficiary prior to the date of filing. The petitioner has never submitted the actual letter issued by the petitioner to the beneficiary. The failure to submit the required initial evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2). The petitioner has not established that it, a major university, does not issue job offer letters to prospective employees. Thus, the petitioner has not established that such evidence is unavailable or does not exist. As such, the petitioner cannot rely on secondary evidence of a job offer or affidavits affirming the terms of a job offer that is not in the record. *Id.*

Counsel notes that the petitioner promoted the beneficiary in 2005 and that the beneficiary has worked for the petitioner for three years since the filing of the petition. While such evidence might be relevant to the beneficiary's expectation of continued employment *from this point forward*, the petitioner must establish the beneficiary's eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Thus, the petitioner cannot secure a priority date for the beneficiary by filing a petition based on speculation that the beneficiary will eventually earn a promotion or demonstrate continued employment.

In promulgating the final regulation, the Immigration and Naturalization Services, now CIS, recognized that it is unusual for colleges and universities to place researchers in tenured or tenure-track positions. Thus, the commentary to the final rule accepts that research positions "*having no fixed term and in which the employee will ordinarily have an expectation of permanent employment*" as comparable. (Emphasis added.) 56 Fed. Reg. 60867, 60899 (November 29, 1991). Without the initial job offer issued by the petitioner to the beneficiary prior to the date of filing, we cannot determine whether that initial job offer constitutes a permanent offer as defined at 8 C.F.R. § 204.5(i)(2).

### **Three Years Experience**

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 former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

(Emphasis added.) We interpret the emphasized text as requiring acquisition of the advanced degree as of the date of filing if the experience while working towards that degree is to be counted.

This petition was filed on June 11, 2003 to classify the beneficiary as an outstanding researcher in the field of molecular biology. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in this field as of June 11, 2003, and that the beneficiary's work has been recognized internationally within the field of molecular biology as outstanding.

Pages 1 and 2 of counsel's initial brief, submitted with the petition, indicated that the beneficiary was still a Ph.D. student. Counsel asserted that she had "completed her work for her Ph.D." The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The initial letter from ██████████ indicated that the petitioner would employ the beneficiary as a research associate "after thesis defense for her Doctoral degree." In a more detailed letter, ██████████ asserted that the beneficiary was "a Ph.D. candidate."

The director's request for additional evidence provided:

Submit 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 must be in the form of letter(s) from current or former employer(s) and must include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

Counsel acknowledged this request in his response, asserting that a March 6, 2005 letter from ██████████ reflecting that the beneficiary "has 6.5 years of teaching/research experience" resolves this issue. Counsel did not reference any other exhibit as relating to this issue. Significantly, while the petitioner's response includes evidence of the beneficiary's promotion to research assistant professor, it does not include the beneficiary's Ph.D. or transcript. Thus, the record remains absent primary evidence of this degree. While the record contains secondary evidence consistent with the beneficiary's eventual acquisition of this degree, we are unable to determine exactly *when* the beneficiary acquired this degree. Significantly, ██████████ asserts on March 6, 2005 that the beneficiary was promoted to a research assistant professor after one year of employment as a research associate. The press release announcing the beneficiary's promotion is dated May 25, 2005, suggesting that the beneficiary might not have acquired her Ph.D. until early 2004, well after the petition was filed in June 2003. Regarding

the beneficiary's experience, [REDACTED] asserts that he is writing "to confirm" that she has six and one half years of research experience *at the petitioning institution* including five years as a Ph.D. student.

The director concluded that since the beneficiary had not completed her Ph.D. as of the date of filing, she could not rely on her research experience while working towards that degree. On appeal, counsel responds:

Evidence submitted at the time did establish that the beneficiary had much more than three years experience at teaching and doing research. Had the examiner bothered to read the evidence he would have seen that. Had he bothered to REQUEST the exact evidence he is now referring to at any time prior to the denial, it would have been provided. Stating that specific evidence was not provided when it was never requested and is not mandated by the statute is a faulty reason for denying. This, like almost everything else in this denial is total garbage, taken from a boilerplate denial.

Evidence submitted with the original petition showed that [the beneficiary] worked as an Assistant Lecturer and Research Associate at Shandong Medical University from 1996 to 1998. Her teaching and research career started in 1993 when she was a Master Degree student.

Counsel's complaints are unsupported by the record. First, "the statute," section 203(b)(1)(B)(ii) of the Act, does mandate that the alien have at least three years of experience. It is the petitioner's burden to demonstrate every element of eligibility. Section 291 of the Act, 8 U.S.C. § 1361. Thus, the regulation at 8 C.F.R. § 204.5(i)(3)(ii) requires evidence of this experience. Moreover, counsel's assertion that the director did not request the exact evidence required is patently false. As quoted above, the director very specifically requested such evidence, advising that only student work leading to an acquired advanced degree could be considered. Counsel explicitly responded to this request, referencing only the letter from [REDACTED]. [REDACTED] only discusses the beneficiary's work for the petitioner. Thus, the director's failure to consider the beneficiary's experience at Shandong Medical University is at least in part based on counsel's own statements regarding this issue. Nevertheless, we concur with counsel's appellate assertion that the experience in China is at least relevant and will discuss it below.

The beneficiary obtained her Master's Degree from Shandong Medical University in July 1996. In response to the director's request for additional evidence, the petitioner submitted a letter from [REDACTED]

Dean of the School of Pharmaceutical Sciences at Shandong Medical University. [REDACTED] asserts that the beneficiary "has 5 years of research experience at Shandong Medical University including 3 years of research leading to her Master degree in Biomedical Pharmaceutics and two years working as a research associate and assistant lecturer."

For the reasons discussed below, we do not find that the beneficiary's Master's degree research has been recognized within the academic field as outstanding. Thus, we cannot count that work towards her three years of experience. Moreover, while [REDACTED] references specific courses for which the

beneficiary was responsible, he does not indicate whether the beneficiary taught those courses while still a student or only while an assistant lecturer. Thus, the petitioner has not established that the beneficiary has three years of teaching experience.

In light of the above, the petitioner has not demonstrated that the beneficiary had the necessary three years of experience as of the date of filing.

### **International Recognition**

In response to the director's request for additional evidence of the beneficiary's recognition as outstanding, counsel asserted "that the actual standard is 'national or international reputation.'" This standard does not appear in the statute or the regulation. 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." (Emphasis added.) 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 that the beneficiary has satisfied the following criteria.<sup>1</sup>

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

In his initial brief, counsel asserted that the beneficiary won five student awards from Shandong Medical University. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. at 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The petitioner submitted a single student award issued to the beneficiary by Shandong Medical University on July 4, 1996.

The petitioner's subsequent submission was not responsive to the director's request for evidence as to the significance of any prizes or awards won. The director concluded that the record did not contain evidence regarding the national or international significance of the beneficiary's student award and that student awards recognize academic achievements. The director also concluded that the beneficiary's research funding and oral presentations, not presented as evidence to meet this criterion, were insufficient. In addressing the beneficiary's funding, the director asserted that while the past achievements of the principal investigator are a consideration in granting funding, its ultimate purpose is to fund future research, not recognize past achievement.

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<sup>1</sup> 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.

On appeal, counsel notes that the criterion specified awards in an academic field and should not exclude academic awards. Counsel asserts that students are responsible for the most advanced research and, thus, student awards recognize the best research “published by anyone.” Counsel also asserts that the director expressed concern that the beneficiary is not the principal investigator for the funding.

Counsel is not persuasive. The record does not support counsel’s assertion of fact that most scientists’ research careers are over upon obtaining a Ph.D.<sup>2</sup> If counsel’s assertions on this issue are true, it can be expected that the majority of Nobel Prizes or awards of a similar caliber would recognize work performed while the recipient was a student. The record contains no evidence that this is the case. Significantly, all of the beneficiary’s references have continued their research careers after obtaining their doctoral degrees and the United States boasts numerous universities where vast amounts of research is being performed by faculty and research staff. Moreover, while intellectual property considerations may *delay* the publication of private research, counsel is not persuasive in suggesting that such research is not “advanced” or eligible for major awards.

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).

While 8 C.F.R. § 204.5(i)(3)(i)(A) references outstanding achievements in one’s academic field, 8 C.F.R. § 204.5(i)(2) defines “academic field” as “a body of specialized knowledge offered for study.” The definition does not include typical bases for student awards, such as grade point average and class standing. It remains, academic study is not a field of endeavor, academic or otherwise. Rather, academic study is training for a future career in an academic field. As such, student awards in recognition of academic achievement, such as grade point average, are insufficient.

We acknowledge that the beneficiary’s award is in recognition of her research. While Shandong Medical University may be one of the top universities in China, it remains that the beneficiary only competed against other students at the university at that time for the student award. Student awards are

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<sup>2</sup> As stated above, the unsupported factual assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. at 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

simply not evidence of international recognition in the field. Rather, they represent high academic achievements in comparison with the recipient's fellow students.

On appeal, counsel accuses the director of filing to consider that in 2005, the beneficiary applied for funding *as the principal investigator*. Counsel's appellate brief completely mischaracterizes the director's concerns regarding the beneficiary's funding. The director never stated or implied that the beneficiary was not the principal investigator. Rather, the director noted that funding is not granted in recognition of past achievements. We concur with the director on this point. Obviously, as stated by the director, 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 *of the principal investigator*. Thus, regardless of whether the beneficiary was the principal investigator, and she was not prior to the date of filing, the funding cannot be considered an award or prize recognizing past achievements.

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 of the beneficiary's membership in the American Association for Cancer Research (AACR). Materials provided by the petitioner state that membership in AACR is "open to investigators worldwide." More specifically, prospective members must demonstrate two years of research resulting in peer-reviewed publications *or* substantial contributions in an administrative or educational capacity.

The petitioner's response to the director's request for evidence that the associations of which the beneficiary is a member require outstanding achievements of their members did not include any additional information about AACR or any additional memberships. The director concluded that the petitioner had not established that AACR membership is limited to those with outstanding achievements. Counsel does not challenge this conclusion on appeal and we concur with the director.

*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.*

Counsel initially indicated that Exhibit D of the initial submission included "Reports on [the beneficiary's] discovery." Exhibit D includes a July 30, 2002 article in *Reuters Health* about [REDACTED] findings published in *Blood*. The citation for the article by [REDACTED] being discussed is provided in the article as "Blood 2002; 100:594-602." Another undated *Reuters* article references a 2000 article in *Blood*. Initial Exhibit D also includes the beneficiary's article coauthored with [REDACTED] that appeared in *Blood*. The beneficiary's article, however, was not even submitted to *Blood*

until October 21, 2002 and was not published until 2003.<sup>3</sup> The citation for the beneficiary's article is "Blood 2003; 101:4551-4560," which is *not* the citation provided by *Reuters Health*. The beneficiary's 2003 article does cite the *Blood* article discussed by *Reuters Health*, listed under footnote 16. A review of the full citation reveals that the beneficiary is not listed as one of the authors for that article. Thus, counsel mischaracterizes the *Reuters* articles as being about the beneficiary's work.

In response to the director's request for additional evidence, the petitioner submitted evidence that the beneficiary's article in *Blood* has been cited 10 times, including two self-citations by [REDACTED] and the beneficiary. All of the citations postdate the filing of the petition. The director concluded that articles which cite the beneficiary's work are primarily about the author's own work, not the beneficiary. As such, they cannot be considered published material about the beneficiary.

On appeal, counsel titles his response to the director's discussion: "Published Material by the Alien." Counsel lists the beneficiary's publications and oral presentations. The criterion at 8 C.F.R. § 204.5(i)(3)(i)(C) requires evidence of published material *about* the alien's work *by others*. Thus, none of counsel's discussion is relevant to this criterion.

The regulation provides that the materials must be "about the alien's work." Obviously, the most persuasive evidence that an article is about the alien's work is credit given to the alien in the article itself. An article that does not mention the alien by name is typically not indicative of international recognition, the ultimate standard for the classification sought. The "reports" submitted not only fail to mention the beneficiary by name but also appear to discuss work published in *Blood* that does not list the beneficiary as a coauthor. We concur with the director that articles that cite the beneficiary's work are about the author's work, not the work cited. Moreover, all of the citations postdate the filing of the petition. Thus, they are not indicative of the beneficiary's recognition as of that date and cannot be considered. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49.

*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.*

[REDACTED], Dean of the School of Pharmaceutical Sciences at Shandong Medical University, asserts that the beneficiary was "invited to write multiple review articles for major journals in the pharmaceutical field," a privilege limited to the "most authentic experts at the very top of the field." [REDACTED] does not indicate that he is an editor for the journals that published the articles or otherwise is responsible for selecting the authors of review articles. Initially, the petitioner submitted several articles in Chinese publications, including a 1996 article reviewing the latest advances in expression and purification of heterogeneous proteins synthesized in *Escherichia coli*, a 1997 review of recent advances on the study of streptokinase and its applications in medicine and a 1994 review of advances in the research of biochemical drugs in China during 1993. The petitioner did not submit the actual invitations from the journals themselves. It is noted that the beneficiary was a Master's student and

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<sup>3</sup> The article did appear online prior to formal publication.

recent graduate at the time. The petitioner has not demonstrated that the beneficiary herself, and not her mentor, was specifically solicited based on her international reputation. In response to the director's request for additional evidence, the petitioner submitted the beneficiary's 2003 review article. The article bears no indication as to whether it was published prior to the filing date in June 2003. While counsel listed the article as an exhibit, counsel did not indicate that it was being submitted to meet this criterion.

The director did not specifically consider the above evidence. Rather, the director acknowledged the beneficiary's teaching experience but concluded that teaching responsibilities do not set a teacher apart from others in the field. The director ultimately concluded that the record lacked evidence of judging responsibilities that would set the beneficiary apart from others, such as serving on an editorial board. On appeal, counsel asserts that the director ignored the letters attesting to the beneficiary's "invited presentations and invited reviews."

The beneficiary's presentations are presentations of her own work and are, thus, comparable to authorship of scholarly articles. Thus, they are better considered below pursuant to the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(F). The record contains four review articles coauthored by the beneficiary. As stated above, the record lacks evidence that the 2003 review was published prior to the date of filing. As stated above, the petitioner must demonstrate the beneficiary's eligibility as of that date. Moreover, the final page of the 2003 review article submitted indicates that [REDACTED] is the author for correspondence. The record lacks evidence that the beneficiary was the individual who was requested to compile the review article. The record contains no evidence that the beneficiary was personally solicited to author the Chinese review articles. Being requested to assist one's own professor or advisor on a review article is not evidence of international recognition.

Finally, the record does not establish that compiling a review of advances in the field constitutes judging the work of others at a level indicative of international recognition in the field. Rather, such an article would appear to involve researching what has been published and its impact rather than performing a high level evaluation of such work. We concur with the director that without evidence that sets the beneficiary apart from others in her field, such as evidence that she has judged work under consideration for a major award, reviewed grant applications or served in an editorial position for a distinguished journal, we cannot conclude that she meets this criterion.

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

As stated above, 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). Obviously, the petitioner cannot satisfy this criterion, set forth at 8 C.F.R. § 204.5(i)(3)(i)(E), 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 stands apart from her peers through eminence and distinction based on international recognition, 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."

In counsel's initial brief, he asserts that the beneficiary "was recruited to my laboratory" and continues as if the beneficiary works for him. The language is not in quotes, indented, or otherwise attributed to another source. The record, however, does not reflect that counsel actually operates a laboratory and has employed the beneficiary.<sup>4</sup> Rather, the beneficiary obtained her Master's degree from Shandong Medical University, worked there for two years and then entered a doctoral program at the petitioning institution. While the beneficiary began working for the petitioner after the date of filing, that work cannot be considered as evidence of her eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner submitted numerous letters in support of the petition, most of which are from independent sources. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of international recognition. Citizenship and Immigration Services (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)).

In evaluating the reference letters, we note that letters containing mere assertions that the beneficiary is well known and claims of "multiple original and significant contributions" or a "monumental discovery,"<sup>5</sup> must be consistent with the remaining evidence of record. In addition, letters from independent references who were previously aware of the beneficiary through her reputation and who have applied her work are the most persuasive.

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<sup>4</sup> While not quoted or otherwise attributed, counsel's language appears verbatim in a letter authored by [REDACTED]

<sup>5</sup> These phrases appear in several unrelated letters in the record. In addition, three separate references with no relationship to each other characterize either a journal or experts as "authentic." According to the *Miriam-Webster Dictionary* 47 (New Ed. 2004), "authentic" means "genuine, real." It is presumed that all journals and experts are real; thus, "authentic" is an odd choice for three separate individuals.

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 acclaim.

█ asserts that the beneficiary's national reputation is apparent from the top-tier journals that published her work. We will not presume the influence of a given article from the publication in which it appeared. Rather, the petitioner must demonstrate the significance of the individual article. █ asserts more specifically that the beneficiary genetically engineered E. coli bacteria to produce recombinant streptokinase, a medicine to dissolve vascular thrombi. Genetically engineered streptokinase has fewer side effects than traditional streptokinase. █ further asserts that the beneficiary's work led to China's first manufacture of recombinant streptokinase. The record lacks evidence that the beneficiary is listed as an inventor on a Chinese patent or letters from Chinese pharmaceutical companies confirming that they manufactured recombinant streptokinase based on the beneficiary's methods.

The beneficiary authored a single article reporting the results of her own research on the isolation and purification of recombinant streptokinase; the other article on this subject was a review article cataloguing the work of others. The beneficiary's article on the subject was published in China. The petitioner has not demonstrated that the journal has an international circulation. The record also lacks evidence that the beneficiary's process was used outside of China or that streptokinase manufactured in China has attracted international attention. Thus, the record lacks evidence that this work gained any recognition outside of China. Both the statute and the regulation require evidence that the beneficiary is recognized *internationally* as outstanding.

█ asserts that the beneficiary "uncovered the mechanism by which folate is up-regulated in leukemia cells," providing a less toxic strategy for treating leukemia. Specifically, this work provides guidance for targeting leukemia cells with chemotherapy. This work was published in *Blood*. While the references attest to the potential of this work to eventually result in more targeted chemotherapy for leukemia, the record lacks evidence that the pharmaceutical industry or anyone else is successfully or otherwise pursuing this potential. In response to the director's request for additional evidence, the petitioner submitted evidence that eight independent research teams had cited this work. The petitioner, however, must establish that the beneficiary's work was recognized internationally as outstanding as of the date of filing.

More significantly, █ addresses the beneficiary's work with ChIP technology, asserting that the beneficiary has achieved what others could not using this technology. ChIP technology is significant because it "provides a bridge connecting in vitro and in vivo methodologies that can be used to study the gene regulation in vivo." The beneficiary utilized this technology to "answer important questions about the mechanism of folate receptor regulation." An independent reference, █ of Harvard Medical School, explains that this work provides "guidance in up-regulating folate receptors, which is crucial to efficiently apply targeting treatment to cancer." █, a

research scientist at Harvard Medical School, asserts that the beneficiary's developed models using ChIP technology have helped other research scientists, including [REDACTED]

Finally, [REDACTED] discusses the beneficiary's development of yeast models expressing human folate receptors. While [REDACTED] asserts that his laboratory is applying for a patent as a result of this work, the patent application is not in the record. [REDACTED] not only asserts that these models are being used by "many investigators," but confirms using them himself. We will not entirely dismiss this claim, but [REDACTED]'s statements would carry more weight if he had explained how this work, unpublished as of the date of [REDACTED]'s letter, had been disseminated and adopted by "many investigators."

The remaining letters include similar discussions and need not be reproduced here. In addition, several letters submitted in response to the director's request for additional evidence reference work completed after the date of filing. That work is not relevant to this proceeding. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The claims in the letters are poorly corroborated by a record that reflects the beneficiary was a Ph.D. candidate with only a handful of full-length articles reporting her own results as of the date of filing. Significantly, none of these articles had been cited as of the date of filing. Nevertheless, the independent letters are from multiple institutions within and outside of the United States. Some provide specific examples of how the beneficiary's models and techniques are being applied. Thus, we are persuaded that the beneficiary meets this single criterion based on the letters, not the beneficiary's publication record.

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

The petitioner initially submitted evidence that the beneficiary had authored six published articles and one abstract and had presented her work at three meetings including two in China and one at an AACR conference held in Toronto. The beneficiary's 1994 review article appeared in the *Chinese Pharmaceutical Journal*, a journal that references a company responsible for its "Overseas Distribution." The record lacks evidence that the other Chinese journals that published the beneficiary's articles have an international circulation as required by the regulation at 8 C.F.R. § 204.5(i)(3)(i)(F). The record lacks evidence that the two meetings in China sponsored by Chinese associations were internationally significant meetings. For example, the record lacks the programs for these meetings reflecting whether it drew speakers from outside China. It is the petitioner's burden of proof to meet every element of a criterion and our concern that the record lacks this initial required evidence is a permissible appellate-level review of the evidence, including identifying regulatory deficiencies that may not have been expressly raised by the director. 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 *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). We further note that in his certification brief, counsel expressly requested that the AAO review this matter *de novo*.

Counsel repeatedly emphasizes that the beneficiary's most recent article (as of the date of filing) appeared in *Blood*. In response to the director's request for additional evidence, the petitioner submitted additional articles published by the beneficiary and evidence that, *after the date of filing*, the beneficiary's article in *Blood* had been moderately cited.

The director noted that publication is inherent to the field and concluded that the beneficiary's publication record was not notable. On appeal, counsel reiterates that the beneficiary's work appeared in *Blood*.

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." Moreover, the Occupational Outlook Handbook, available online at [www.bls.gov/oco](http://www.bls.gov/oco), provides that, for biological scientists, "a solid record of published research is essential in obtaining a permanent position involving basic research, especially for those seeking a permanent college or university faculty position."

The above statements reinforce 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.

We will not presume the influence of the beneficiary's articles from the journals in which they appeared. Rather, we look for evidence of the influence of the individual article. The statute and regulation require evidence indicative of or consistent with international recognition as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. As of the date of filing, the beneficiary's two articles in internationally circulated journals had yet to be cited. We are not persuaded that the record contains comparable evidence of the articles' influence. While the record contains numerous reference letters, discussed above, original contributions and scholarly articles are separate criteria. Moreover, as discussed above, the only work that was demonstrated as influential as of the date of filing was still unpublished. To presume that evidence relating to one criterion also serves to meet another would render the regulatory requirement than an alien meet at least two criteria meaningless. Thus, we concur with the director that the petitioner has not established that the beneficiary meets this criterion. The beneficiary's publication record as of the date of filing, a handful of articles that had not been cited, was not indicative of international recognition in the field.

The petitioner has shown that the beneficiary is a talented researcher who is able to secure positive reference letters from members of the field and who has secured 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 decision of the director denying the petition will be affirmed.

**ORDER:** The petition is denied.