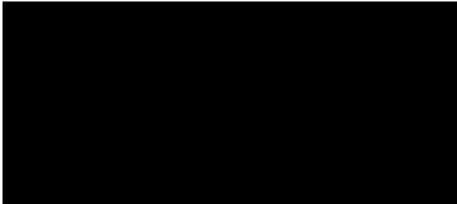


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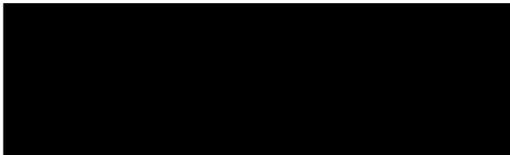
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Beneficiary: 

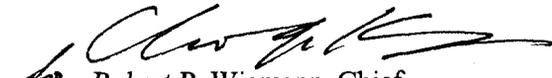
PETITION: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is an educational institute. 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 had attained the outstanding level of achievement required for classification as an outstanding researcher. While the director denied the petition on its merits, the director concluded that no response had been submitted to the notice of intent to deny.

On appeal, counsel resubmits the petitioner's response to the notice of intent to deny. We withdraw the director's conclusion that no response was submitted and will consider the response on appeal. For the reasons discussed below, we find that the petitioner has overcome the director's concern that the petitioner had not offered the beneficiary a permanent job as of the date of filing. We further find, however, that the petitioner did not overcome the director's concerns regarding the beneficiary's eligibility as an outstanding researcher. Thus, we uphold the director's ultimate conclusion that the petitioner has not established the beneficiary's eligibility.

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 (7th 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, 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.

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] of the petitioner's Department of Biological Sciences, addressed to Citizenship and Immigration Services (CIS), asserting that the petitioner anticipated that the beneficiary would "continue full time employment with this department as a Research Associate." In addition, the petitioner submitted a letter from Betsy Reigle, Senior Accountant with the petitioner's Department of Biological Sciences, confirming that the beneficiary was working as a Limited Term Researcher but was promoted to Research Associate II in January 2007. Neither document constitutes a job offer from the petitioner to the beneficiary. On March 12, 2007, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary.

In response, the petitioner submitted a joint letter dated March 19, 2007 from [REDACTED] and Dr. [REDACTED] the beneficiary's supervisor, offering her a Research II position.

In the notice of intent to deny, issued April 3, 2007, the director concluded that the job offer submitted on appeal was inconsistent with the original assertions that the beneficiary had been offered the Research II position prior to the filing of the petition on March 5, 2007.

In response, counsel explains that the beneficiary was promoted through a memorandum with human resources without an official job offer letter and that the March 19, 2007 letter was prepared to comply with the director's request for additional evidence. The petitioner submitted the memorandum, dated November 30, 2006, providing that the [REDACTED] department was classifying the beneficiary's position as a Research Associate II. We are satisfied that this memorandum resolves the inconsistencies noted by the director.

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. 60897, 60899 (November 29, 1991). We are satisfied that the beneficiary, as of the date of filing, was no longer in a fixed term position.

Outstanding Researcher

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

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

This petition was filed on March 5, 2007 to classify the beneficiary as an outstanding researcher in the field of cellular biology. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field and that the beneficiary's work has been recognized internationally within the field as outstanding as of that date.

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. 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. *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.

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

The petitioner relies on (1) a letter from Empire Who's Who advising the beneficiary that she had been “appointed as a biographical candidate to represent Newark, DE in the **Empire Who's Who Among Executives and Professionals**, and for inclusion in the upcoming 2005/2006 ‘Honors Edition’ of the registry” (emphasis in original); (2) two Merit Certificates from the Indian Society for Radiation and

Photochemical Sciences (ISRAPS) certifying the beneficiary's participation at symposia in Mumbai in 1998 and 2000 and her inclusion "among the twelve best"; (3) a certificate of participation at the 1997 International Symposium on Free Radicals in Medicine and Biology at RNT Medical College in India; (4) a certificate confirming the beneficiary's attendance, presentation or lecture at the 1999 National Symposium on Radiation and Photochemistry at Sambalpur University in India and (5) her results from the Indian Chemical Society's 1995 aptitude test.

In the notice of intent to deny, the director concluded that the beneficiary's proposed listing "among thousands of accomplished individuals" in the *Empire Who's Who Registry* and the certificates for participation were not major prizes for outstanding achievement. In response, counsel asserted that the certificates for merit and participation "denote [the beneficiary's] excellent presentation qualities and her valuable research." Counsel then noted that Empire merged with Cambridge Who's Who, "whose mission is to recognize successful individuals both nationally and internationally in multiple industries and professions." The petitioner resubmitted the evidence previously submitted and materials from Cambridge's website.

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 (Nov. 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. *Compare* 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).

Although counsel no longer asserts that the beneficiary's aptitude test results are relevant under this criterion, we emphasize that an aptitude test administered to college students is not a major prize or award and, thus, cannot serve to meet this criterion.

Regarding the certificates for presenting one of the top twelve papers and participation in conferences, we concur with the director that these certificates are not major prizes or awards for outstanding achievements. Participating in scientific conferences is inherent to the beneficiary's field and is akin to publishing scholarly articles, which fall under a criterion the director found that the beneficiary meets.¹ Thus, mere confirmation of participating in a conference is not a prize or award for outstanding achievement, major or otherwise. While we acknowledge that two of the certificates rank the beneficiary's paper as within the top twelve papers, we are not persuaded that a paper award limited to

¹ As will be discussed below, we uphold the director's finding that the beneficiary meets the scholarly articles criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(F).

researchers who presented their work at this particular symposium is a major prize or award for outstanding achievement in the beneficiary's field.

Finally, appearing as one of thousands of other successful individuals in a frequently published directory is not a major prize or award and is not indicative of international recognition as outstanding.

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), the American Chemical Society (ACS), the American Association for the Advancement of Science (AAAS) and Sigma Xi. The only evidence regarding the membership requirements of these associations submitted initially was a letter from ACS explaining that ACS had begun identifying potential members with degrees and academic training "working in academia, industry, government and other venues" and "pre-nominating" them. This letter does not suggest that ACS was only pre-nominating individuals with outstanding achievements or that such achievements were required for membership.

In the notice of intent to deny, the director concluded that the record lacked evidence that the above associations required outstanding achievements of their members. In response, counsel focused on the beneficiary's membership in AACR and Sigma Xi. Counsel notes that AACR requires nomination by a current member² and that Sigma Xi requires "notable achievements" for full membership and boasts 200 Nobel Laureates among its members. The petitioner submitted a letter from Sigma Xi and AACR.

The prestige of the Nobel Prize is not in dispute. It remains, however, that the petitioner is not a recipient of the Nobel Prize. Thus, its significance is irrelevant. That 200 of Sigma Xi's 65,000 active members have won the Nobel Prize does not impart that distinction to the vast majority (97 percent) of its members who have not been so recognized.

The submitted materials about Sigma Xi reveal that Sigma Xi invites to full membership "those who have demonstrated noteworthy achievements in research." These achievements must be evidenced by "publications, patents, written reports or a thesis or dissertation, which must be available to the Committee on Admission if requested." A noteworthy achievement is not necessarily an outstanding achievement. In fact, the record reveals that the society does not take a particularly strict view of noteworthy achievements. Specifically, Philip Carter, the Executive Director of the association, indicates that the "Committee on Qualifications and Membership interpreted this qualification to include primary authorship of two papers." In addition, an earned doctoral degree may be substituted

² While counsel asserts that the nomination must come from an Emeritus or Honorary member, the materials submitted actually state that any Active member may also nominate new members.

for one paper. We cannot conclude that primary authorship of one or two papers is an outstanding achievement in the beneficiary's field.

The letter from [REDACTED], Director of Membership for AACR, asserts that the beneficiary is an associate member and that associate membership is "open to graduate students, medical students and residents; and clinical and postdoctoral fellows who are enrolled in educational or training programs that could lead to careers in cancer research." These basic academic and training milestones in a typical scientific career cannot be considered outstanding achievements and do not become more exclusive merely because a prospective member must seek a nomination from a current member.

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.

In the notice of intent to deny, the director acknowledged the submission of evidence that the beneficiary had been cited but concluded that the articles which cited the beneficiary's work were primarily about the author's own work, not that of the beneficiary and, as such, could not be considered published material about the beneficiary. In response, the petitioner submitted a book chapter and article that cite the beneficiary's work.

The book chapter is 50 pages and is devoted to the subject of the biological and medicinal properties of curcumin. The beneficiary's work is cited in the four-page section on the chemical composition of curcumin. The section devotes only one, five-sentence paragraph to the beneficiary's work. Similarly, the article, which reports on the work of the authors, devotes only one sentence to the beneficiary's work. The petitioner did not provide the reference sections for either the book chapter or the article. Thus, we cannot determine how many other articles were also cited. Regardless, neither the book chapter nor the article can be considered to be about the beneficiary's work.

While the evidence that the beneficiary has been consistently moderately cited has evidentiary weight, it is best considered as evidence of the significance of the beneficiary's articles as discussed below. For the reasons discussed above, the citations cannot serve to meet 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 petitioner initially submitted a letter from [REDACTED] Associate Dean of Natural Sciences and Mathematics at the petitioning university, thanking the beneficiary for judging oral presentations of undergraduate research. The petitioner also submitted a letter from [REDACTED] a member of the editorial board of *Research on Chemical Intermediates*, requesting that the beneficiary review a

manuscript submitted for publication in that journal. We note that [REDACTED] was also the beneficiary's Ph.D. advisor.

In the notice of intent to deny, the director concluded that judging the work of undergraduates could not serve to meet this criterion and that the invitation to review a manuscript seemed to be based solely on the beneficiary's authorship of an article that appeared in that journal. In response, counsel asserted that the beneficiary was nominated to judge the oral presentations by "other participating professors and experts" and that not all authors who publish in *Research on Chemical Intermediates* are invited to review manuscripts. The petitioner submitted a new letter from [REDACTED] asserting that a reviewer is selected "based on his/her knowledge and the publications in the corresponding field" and that the beneficiary was specifically invited due to her "expertise in the field of free radicals and antioxidants."

The record contains no evidence regarding the selection process for judging the undergraduate oral presentations. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Judging undergraduate oral presentations at the request of the university where one is employed is not evidence indicative of international recognition.

Regarding the manuscript review, the petitioner has not demonstrated that being requested to review a manuscript by one's own Ph.D. advisor is indicative of international recognition as outstanding. Regardless, 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. Without 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 other evidence indicative of international recognition as outstanding, we cannot conclude that the beneficiary meets this criterion.

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.

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. *See* 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.

The beneficiary received her Ph.D. in 2001 from Mumbai University. She then worked as a postdoctoral fellow for the University of Medicine and Dentistry, New Jersey (UMDNJ) and Thomas Jefferson University in Pennsylvania before joining the petitioning institution. The petitioner submits letters from the beneficiary's colleagues, associates of those colleagues and more independent references.

We will consider the letters in detail below. At the outset, however, we note that 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. 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 of widespread acclaim 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 far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. 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.

In her November 25, 2006 letter, [REDACTED] Director of the Bhabha Atomic Research Centre (BARC) in India and the beneficiary's Ph.D. advisor, asserts that the beneficiary worked on BARC sponsored projects investigating the antioxidants beta-carotene and curcumin. [REDACTED] states that the beneficiary demonstrated the reason behind the unexpected results showing that beta-carotene actually increases the risk of lung cancer in smokers. [REDACTED] further states that the beneficiary also demonstrated that the reduced derivative of curcumin is a more potent antioxidant than the original molecule and "designed a novel approach for its action." [REDACTED], a research scientist at the University of Notre Dame who met the beneficiary when visiting BARC, asserts that he has continued to follow her work. He asserts that she has unique skills. The issue of whether similarly trained workers are available in the United States, however, is not within our jurisdiction. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 (Commr. 1998).³ While [REDACTED] asserts that the beneficiary proposed novel mechanisms for the protective action of antioxidants, [REDACTED] does not, however, identify any laboratory, clinic or pharmaceutical company that is pursuing these mechanisms.

[REDACTED], an associate professor at UMDNJ, asserts that the beneficiary played a key role in various projects at UMDNJ. [REDACTED] praises the quality of the beneficiary's training in India (and the quality of training in India in general), but the issue is not whether the beneficiary is well trained but whether her research contributions are indicative of her international recognition as outstanding. Dr. [REDACTED] asserts that the beneficiary "explained the mechanism for the specificity of the primer synthesis during bacterial replication based on the association of helicase and primase enzymes." [REDACTED] explains that this work is significant because MCM helicase is a plausible agent for cancer detection and the beneficiary characterized it for its DNA-dependent helicase activity. [REDACTED] further states that the beneficiary also "explored the structural assembly of the DNA elongation enzyme polymerase alpha and the binding interactions of DNA with Origin recognition complex, a replication checkpoint control protein." [REDACTED] explains that these results have "implications and direct applications to the development of cancer therapeutics that utilize DNA replication regulatory proteins as targets."

[REDACTED] Director of the Analytical Core Facility at UMDNJ, asserts that, at UMDNJ, the beneficiary focused on the functional role of enzymes and their interactions during DNA synthesis. Specifically, [REDACTED] states that the beneficiary performed proteomic studies in the yeast model that "revealed the exact structural assembly of the DNA polymerase alpha, a star enzyme of replication." He also reiterates the significance of the beneficiary's work with MCM helicase and the binding interaction of the replication initiation protein Origin Recognition Complex (ORC) with ARS of yeast. [REDACTED] concludes that the beneficiary's discoveries "have tremendous applications in the drug discovery for cancer cure [sic]." Neither [REDACTED] nor [REDACTED] however, identifies another laboratory, clinic or pharmaceutical company pursuing therapeutic agents based on the beneficiary's work at UMDNJ.

In his January 3, 2007 letter, [REDACTED], the beneficiary's supervisor, asserts that the beneficiary has made major contributions to the research efforts of his laboratory at the petitioning institution.

³ While this case involved a lesser classification, it does stand for the proposition that it is the Department of Labor that has jurisdiction over issues of skill shortages.

Specifically, [REDACTED] states that the beneficiary has addressed "several important questions that have strong relevance both to the understanding of the initiation step of DNA replication and to the development of therapeutics against rapidly growing tumors." He concludes that the beneficiary is indispensable to his projects.

As noted by counsel, the petitioner also submitted more independent letters. [REDACTED] an associate professor at the University at Buffalo, asserts that he knows of the beneficiary "through my collaborations and scientific interactions with [REDACTED]" Thus, [REDACTED] does not appear to have learned of the beneficiary's work through her own reputation. Moreover, [REDACTED] discusses the importance of the beneficiary's area of research without explaining how the beneficiary has already impacted the field beyond simply "expanding our knowledge."

Similarly, [REDACTED] a professor at Tufts University, asserts that he knows of the beneficiary "through my review of her publications and via my association with [REDACTED]" [REDACTED] also discusses the importance of the beneficiary's area of research and asserts that she has utilized novel techniques. He asserts that the beneficiary's work has appeared in prestigious journals and notes that [REDACTED] laboratory is "renowned for discoveries related to the initiation of DNA replication." He does not assert that the beneficiary is similarly renowned. We will not presume the significance of the beneficiary's work from the prestige of the journals in which it appears or the laboratory in which she works. Rather, the petitioner must demonstrate that the beneficiary's individual work is indicative of her own international recognition as outstanding.

[REDACTED], a lecturer at the National University of Ireland, Galway, asserts that he knows of the beneficiary through her published articles in their common field of DNA replication. In response to the director's notice of intent to deny, the petitioner submitted a new letter from Dr. [REDACTED] affirming that he has no personal or professional interest in the beneficiary and asserting that his initial letter was "based on [a] review of her internationally published peer-reviewed articles." In his initial letter, [REDACTED] reviews the beneficiary's research and concludes that the beneficiary's research "will certainly help the development of the human replication model and eventually would help to understand the neoplastic process in cancer." Finally, [REDACTED] predicts that the beneficiary's future work will be significant. He does not assert that he personally has been influenced by the beneficiary's work or, in fact, that he was aware of her work prior to being contacted for a reference letter.

Finally, [REDACTED], a professor at the University of Pittsburgh, asserts that he is aware of the beneficiary's work "due to our common research interest in [the] SV40 tumor virus." In response to the director's notice of intent to deny, the petitioner submitted a new letter from [REDACTED] advising that he has no personal or professional interest in the beneficiary and based his initial letter on a "review of her valuable research in [the] DNA replication field." In his initial letter, [REDACTED] asserts that the beneficiary has made important observations and has contributed to the general knowledge about helicases and their interactions with other replication factors. He asserts that the importance of the beneficiary's work is apparent from the publications in which her articles appear. He does not assert

that he personally has been influenced by the beneficiary or, in fact, that he was aware of her work prior to being contacted for a reference letter.

We acknowledge that the petitioner has submitted evidence that the beneficiary is moderately cited. The record only contains the text of two of those citations, neither of which single out the beneficiary's work as unusually significant. While we will consider the beneficiary's citations below as evidence that she meets the scholarly articles criterion pursuant to 8 C.F.R. § 204.5(i)(3)(i)(F), the beneficiary's citation record is not documented as sufficiently significant to also meet this criterion without more specific examples of how the beneficiary's work has already impacted the field. We emphasize that the requirement that an alien met at least two criteria would be meaningless if evidence sufficient to meet the scholarly articles criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(F) is always considered presumptive evidence of meeting the original contributions criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(E).

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. The record does not establish that the beneficiary's research contributions are consistent with international recognition 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 several articles that have been consistently moderately cited. Thus, we uphold the director's finding that the beneficiary meets this criterion.

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 the level of an alien who is internationally recognized as an outstanding researcher or professor. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The 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.