



U.S. Citizenship
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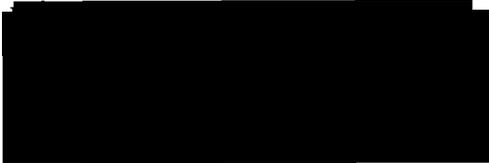


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: DEC 04 2009
SRC 08 232 51779

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

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a nonprofit medical center. 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 the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher.

On appeal, counsel submits a brief and additional evidence. While we withdraw the director's finding that the beneficiary does not meet the scholarly articles criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(F), we uphold the director's adverse findings regarding the remaining regulatory criteria, of which an alien must meet at least two. 8 C.F.R. § 204.5(i)(3)(i). Ultimately, the petitioner has not established that the beneficiary's academic awards, fellowships, job appointments and research grants constitute "major" awards or prizes pursuant to 8 C.F.R. § 204.5(i)(3)(i)(A); the citations do not meet the plain language of 8 C.F.R. § 204.5(i)(3)(i)(C) because the articles are not "about" the beneficiary's work; the significance of the beneficiary's review responsibilities for young investigator proposals has not been demonstrated pursuant to 8 C.F.R. § 204.5(i)(3)(i)(D); and the reference letters, while numerous, provide only broad assertions of contributions and international recognition without providing concrete examples of the beneficiary's work being used in the field beyond her collaborators as would be expected of contributions meeting the regulation at 8 C.F.R. § 204.5(i)(3)(E). Notably, the beneficiary's own supervisor repeatedly states that he is working to help the beneficiary become a fully independent researcher.

At the outset, we acknowledge counsel's concern that the director's decision did not address all of the evidence submitted. Our decision will address this evidence in detail. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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):

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(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.

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 July 24, 2008 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 the field as of that date, and that the beneficiary's work has been recognized internationally within the field as outstanding. The beneficiary received her Ph.D. in January 2002 and has been working for the petitioner since July 2002. Thus, she clearly had at least three years of research experience in her field as of the date the petition was filed.

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.¹

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

The petitioner submitted evidence that the beneficiary was one of 198 students, resident physicians and postdoctoral fellows to receive a travel grant from the ██████████ in 2002. In 2005, according to the record, the beneficiary was one of at least 115 students, resident physicians and postdoctoral fellows to receive a travel grant from the same society. The petitioner also submitted an ██████████ list of eight ██████████ one of which is the beneficiary. The petitioner also relies on the beneficiary's two-year fellowship from the ██████████ for the ██████████. The letter advising the beneficiary of her receipt of the fellowship reveals that it is a research grant. The petitioner also relies on the beneficiary's receipt of a research grant from the ██████████ in the form of a "██████████" Finally, the petitioner submitted a 2008 Discovery ██████████ issued to the beneficiary in November 2007 by the ██████████

In response to the director's request for additional evidence, the petitioner submitted a letter from ██████████ advising that the institute was established as a result of a class action suit brought by non-smoking flight attendants. ██████████ explains that ██████████ was established to sponsor scientific and medical research for the early detection, prevention, treatment and cure of diseases and medical conditions caused from exposure to tobacco smoke. ██████████ reiterates that the grant received by the beneficiary is for ██████████. In addition, the petitioner submitted a letter from ██████████. In his letter, ██████████ asserts that IASLC provides "fellowship and young investigator awards" that are "highly competitive." ██████████ concludes that the beneficiary's receipt of such a grant "indicates that she is among the top *young* investigators in the US and the World." (Emphasis added.)

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

The director concluded that academic awards and competitive postdoctoral appointments are limited to students and novices in the field and, thus, cannot serve to meet this criterion as they are not indicative of international recognition. The director further noted that grants are intended to fund future research rather than recognize past achievements and, thus, are not awards for outstanding achievement.

On appeal, counsel notes that the director used the phrase "lesser nationally or internationally recognized award or prize," which is the language found at 8 C.F.R. § 204.5(h)(3)(i) pertaining to aliens of extraordinary ability pursuant to section 203(b)(1)(A) of the Act, rather than the correct standard set forth at 8 C.F.R. § 204.5(i)(3)(i)(A). As discussed below, the commentary to the final regulation makes clear that a qualifying award or prize under 8 C.F.R. § 204.5(i)(3)(i) must be at least national. 56 Fed. Reg. 60897-01, 60899 (Nov. 29, 1991). For this reason and because the beneficiary's honors clearly do not qualify under the correct regulatory standard, the director's quotation of the wrong language did not prejudice the beneficiary.

Regarding the awards themselves, counsel asserts that they were awarded for post-academic research. Counsel further asserts that because the beneficiary's research is "ongoing," the research grants are not issued based on a mere "hope that a 'future' project will produce results." Counsel concludes that the director's conclusion that grants are designed to fund future research and, thus, not indicative of international recognition, is "over-broad." Counsel notes that past accomplishments are a consideration in awarding grant money. Counsel then asserts that the beneficiary was one of 16 recipients of the [REDACTED]. Counsel relies on a 1995 non-precedent decision by the AAO for the proposition that an award issued to 10 individuals is a "major prize." While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all U.S. Citizenship and Immigration Services (USCIS) employees in the administration of the Act, unpublished decisions are not similarly binding. Counsel further asserts that the beneficiary's selection for a job with the petitioning institution serves to meet this criterion based on the petitioner's prestige. Counsel asserts that the director provided no support for the proposition that experienced experts do not compete for postdoctoral appointments, asserting that the beneficiary sought these positions after completing her "academic training."

Counsel also references awards from 1996 and 1997 purportedly issued to the beneficiary in Italy. Those awards are not part of the record. These awards include a "Merit Award" to participate in a course, recognition for a top score on a Ph.D. exam and two fellowships. Counsel concludes: "A national prize or fellowship to the leading medical school in the United States and an award granted by the leading national institute of health in Italy differ dramatically in scope from a regional or local award given by an institution without standing as an institution of renown."

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. *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).

Student fellowships, as the ones purportedly received in Italy, are generally based on past *academic* achievement, not for accomplishments in a field of endeavor. While 8 C.F.R. § 204.5(i)(3)(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 scholarships, 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, scholarships in recognition of academic achievement, such as exam scores, are insufficient. In addition, while the beneficiary may have received a student fellowship from a national entity, it remains that the beneficiary only competed against other students. Such fellowships and awards are simply not evidence of international recognition in the field. Rather, they represent high academic achievements in comparison with her fellow students.

A job offer, even a competitive job offer at a prestigious institution, is not an award or prize. Moreover, as with student awards, we concur with the director that experienced experts do not compete for post-academic fellowships and competitive postdoctoral appointments. The Department of Labor's Occupational Outlook Handbook (OOH) provides that postdoctoral positions are temporary training positions that allow a biological scientist to accrue the publication record required for a permanent position. *See* <http://www.bls.gov/oco/ocos047.htm#training> (accessed November 30, 2009 and incorporated into the record of proceeding). Significantly, this information is supported in the record. Dr. Daniel G. Tenen, the beneficiary's supervisor for the past several years, states that his goal is to allow the beneficiary "to become a completely independent researcher" and that he will "continue to support her pathway to independence." Thus, the beneficiary's fellowships and postdoctoral appointments cannot serve to meet this criterion.

Regarding the beneficiary's research grants, the [REDACTED] grants are limited to young investigators just beginning their research careers. Regardless, we concur with the director that research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously, as noted by counsel on appeal, the past achievements of the principal investigator are a factor in grant proposals and the progress of the recipient's research is considered in grant extensions. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, we concur with the director that a research grant is principally designed to fund future research (including future research as part of an ongoing project), and not to honor or recognize past achievement. The money must be used for the proposed research (including as part of an ongoing project) and is not awarded unconditionally to the investigator for her personal use.

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

Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation.

Initially, the petitioner submitted a news article about the location of a blood marrow donor that mentions the beneficiary as a person "familiar with" the case who suggested that the patient's parents seek a donor from a Mediterranean country. This article is not "about the alien's work in the academic field" as required by the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C). Initially, the petitioner also submitted a list of articles that purport to cite the beneficiary's work. While the list is the result of a database search, the search values are not listed. Thus, it cannot be determined whether the results represent a list of articles that actually cite the beneficiary's work. In response to the director's request for additional evidence, however, the petitioner submitted a list of articles that cite the beneficiary's work. The director concluded that the articles are about the authors' own work and not the work of each of the many research teams cited in the articles.

On appeal, counsel cites a July 30, 1992 correspondence memorandum from [REDACTED] Assistant Commissioner, to the then Director of the [REDACTED]. [REDACTED] issued his correspondence memorandum in response to an inquiry from [REDACTED] and makes clear that he is discussing his personal inclinations. Moreover, in contrast to official policy memoranda issued to the field, correspondence memoranda issued to a single individual do not constitute official USCIS policy and will not be considered as such in the adjudication of petitions or applications. Although the correspondence may be useful as an aid in interpreting the law, such letters are not binding on any USCIS officer as they merely indicate the writer's analysis of an issue. *See Memorandum from [REDACTED] Significance of Letters Drafted by the Office of Adjudications (December 7, 2000).*²

In his letter to [REDACTED] raised concerns about more than one criterion. Specifically, he noted that "it is almost a job requirement at many universities that professors and researchers publish papers." Separately, [REDACTED] questioned whether citations were published material about the cited author. In his response, [REDACTED] unequivocally states that "a footnoted reference to the alien's work without evaluation . . . would be of little or no value." [REDACTED] goes on to state that "entries (particularly a goodly number) in a field . . . would more than likely be solid pieces of evidence." Mr. [REDACTED] does not, however, identify the criterion to which this evidence would relate.

We concur with [REDACTED] that a "goodly number" of citations is solid evidence worth consideration. We find, however, that this evidence is of significance to one of the other criteria for which [REDACTED] expressed concern; namely, authorship of scholarly articles. We cannot ignore the plain language of the

² Although this memorandum principally addresses letters from the Office of Adjudications to the public, the memorandum specifies that letters written by any USCIS employee do not constitute official USCIS policy.

critterion at 8 C.F.R. § 204.5(i)(3)(i)(C), which requires published material "about the alien's work." We concur with the director that articles which cite the beneficiary's work are primarily about the authors' own work or, in the case of review articles, recent work in the field in general. As such, it cannot be credibly asserted to be published material about the beneficiary's work in the field.

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

Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field.

The petitioner submitted evidence that the beneficiary served as one of seven chairs and an unknown number of "invited external Judges" for a poster evaluation panel at a 2007 [REDACTED] for [REDACTED] symposium in Boston. The petitioner submitted no evidence regarding her duties as a "chair." Given that there were invited external judges, it is not clear that the chairs were involved in the judging process.

The petitioner also submitted an electronic mail message from [REDACTED] thanking the petitioner for her participation in [REDACTED] review process. [REDACTED] does not explain exactly what review services the petitioner provided. The petitioner also submitted a letter from [REDACTED] a senior scientist with the [REDACTED] [REDACTED] asserts that in her capacity of an ABIS peer review committee organizer, she saw the reviews of the beneficiary's [REDACTED] proposal. It is clear from this assertion that [REDACTED] contracts with AIBS for peer review services. [REDACTED] further asserts that based on the petitioner's high impact articles, the petitioner was "recently invited to join the peer review advisory board of [REDACTED] to serve as a reviewer for lung cancer related projects." As AIBS provides peer review services for [REDACTED] does not appear to be referencing any review duties other than the [REDACTED] peer review referenced by [REDACTED]

The director requested "evidence to establish the significance of the work judged by the beneficiary and the criteria used to select the beneficiary as a judge." In response, counsel references the previous letter from [REDACTED] In addition, the petitioner submitted evidence that the beneficiary has reviewed manuscripts submitted to journals for possible publication after the date of filing. The petitioner must establish the beneficiary's eligibility as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Thus, we will not consider any accomplishments after that date.

The director stated that judging duties must be reflective of national or international acclaim and concluded that the petitioner had not demonstrated that the beneficiary's judging responsibilities set her apart from others in the field. On appeal, the petitioner submits a new letter from [REDACTED] and a letter from [REDACTED] [REDACTED] in Transfusion Medicine and a professor at the medical school affiliated with the petitioner, who asserts that journals and funding agencies are "very selective in their choice of scientists invited to participate in the review process" and

concludes that the beneficiary's "recognition" as an "important reviewer in itself, demonstrates her reputation as an up-and-coming leader in her field of research." The statutory standard in this matter, however, is not "up-and-coming leader," but international recognition as outstanding.

In her new letter, ██████████ asserts that because of the high quality of the beneficiary's research, AIBS invited her to join the peer review advisory board where she has reviewed an average of 60 proposals per year since 2006. ██████████ explains that the beneficiary's evaluations "are used to guide the decisions about the distribution of funds to the most qualified researchers with the highest potential for success."

First, we withdraw the director's use of the phrase "national or international acclaim," a standard appropriate to the extraordinary ability classification set forth at section 203(b)(1)(A) of the Act. The appropriate standard for the classification sought in this matter, pursuant to section 203(b)(1)(B) of the Act, is international recognition as outstanding. Thus, we will evaluate the evidence submitted under this criterion as to whether it is consistent with the beneficiary's international recognition as outstanding. 56 Fed. Reg. at 30705; see *Kazarian v. USCIS*, 580 F.3d 1030, 1035 (9th Cir. 2009) (evidence of judging the work of others may be considered in the context of the statutory standard for the classification sought).

As stated above, the beneficiary's service as a chair at the IABMR symposium in Boston where she works rather than as one of the external judges has not been documented to involve judging the work of others. Thus, this position cannot serve to meet this criterion.

The beneficiary's review of ██████████ proposals through AIBS has not been shown to be indicative of or consistent with international recognition. The beneficiary is a ██████████ grant recipient. Her evaluations of other FAMRI proposals, which are limited to young researchers just beginning their careers, are completed for AIBS and forwarded to FAMRI which presumably makes the ultimate decision of which proposals to fund. ██████████ affirmation that the beneficiary was invited to serve on a panel based on the quality of her work is not supported by official AIBS materials explaining how their reviewers are selected. A policy of using peer reviewers solicited through various media is not indicative of the international recognition of the reviewers.³ The record contains no evidence that AIBS boasts a group of internationally recognized reviewers in its official materials.

The beneficiary's peer review of manuscripts postdates the filing of the petition and cannot be considered. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. 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.

³ The AIBS website, <http://www.aibs.org/peer-review/become-a-reviewer.html> (accessed November 30, 2009), solicits applications from anyone interested in performing reviews for AIBS.

Without evidence that sets the beneficiary apart from others in her field, such as evidence that she has reviewed manuscripts for a journal that credits a small, elite group of referees, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the beneficiary meets this criterion.

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

The director concluded that the petitioner had not established that the beneficiary had significantly impacted the field beyond her immediate circle of colleagues. On appeal, counsel notes that the beneficiary's work is well cited *in the aggregate* and relies on non-precedent decisions by this office for the proposition that citation can demonstrate an alien's impact. First, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Nevertheless, we do not contest the value of citations in support of letters explaining how the beneficiary's work has impacted the field. In the matter before us, however, the letters, while numerous, provide only general praise without providing examples of the beneficiary's work being used in the field. The record also lacks letters from independent references who have been influenced by the beneficiary's work, such as independent references utilizing the beneficiary's mouse model. The petitioner did not provide search results that reflect the citation level for individual articles. The petitioner also failed to provide a small sample of citations from authors relying on the beneficiary's work as the foundation of their own research rather than simply citing the beneficiary's work as previous work in a similar area.

Counsel further notes that the petitioner submitted letters from references around the world. While true, the international references have all worked with the beneficiary or were previously affiliated with the petitioning institution. We cannot conclude that Congress intended that international recognition could be demonstrated simply by having worked in more than one country or with colleagues who move on to work in other countries. We acknowledge the submission of a few letters from independent references. While these letters will be considered in detail below, we note at the outset that these independent references do not claim to have been influenced by the beneficiary's work.

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

As stated above, outstanding researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. 56 Fed. Reg. at 30705. Any Ph.D. thesis, postdoctoral or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. To conclude that every researcher who performs original research that adds to the general pool of knowledge meets this criterion would render this criterion meaningless.

Furthermore, the regulations include a separate criterion for scholarly articles. 8 C.F.R. § 204.5(i)(3)(i)(F). Thus, the mere authorship of scholarly articles cannot serve as presumptive evidence to meet this criterion. To hold otherwise would render the regulatory requirement that a beneficiary meet at least two criteria meaningless. *See also Kazarian*, 580 F.3d at 1036 (publications and presentations are insufficient absent evidence that they constitute qualifying contributions).

The petitioner relies on several reference letters. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of international recognition. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread recognition and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through her reputation *and* who have applied her work are the most persuasive. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with international recognition should be able to produce unsolicited materials reflecting that recognition. Vague, solicited letters from local colleagues or letters that do not specifically identify contributions or how those contributions have influenced the field are insufficient. *See Kazarian*, 580 F.3d at 1036.

[REDACTED] in Pisa, Italy, asserts that she mentored the beneficiary's Ph.D. research, which also included a year in the laboratory of [REDACTED] at the [REDACTED]. [REDACTED] asserts that the beneficiary's Ph.D. research focused on the role of the brain gene Otx1 in hematopoiesis. [REDACTED] explains that their "data demonstrated that Otx1 is expressed in

hematopoietic cells and that mice in which the gene was removed suffered from anemia." According to [REDACTED], they cured the red blood cell deficiency by strongly activating the SCL stem cell gene in these mice, "demonstrating that Otx1 and SCL are important genes to drive red blood cell production." [REDACTED] asserts that the beneficiary's "input was essential to the success of the work," which was published in the *Proceedings of the National Academy of Sciences*. [REDACTED] also discusses the beneficiary's collaboration with a researcher at the University of Milan, investigating the role of Sox2 in neural stem cells and blood and on a project involving the [REDACTED]. [REDACTED] asserts that this work was accepted for presentation and publication, she does not identify the results or explain their significance. Ultimately, she does not explain how any of the beneficiary's Ph.D. research has been utilized in the field outside of the laboratories with which she has worked.

[REDACTED] [REDACTED] at the University of Montreal, explains that the beneficiary spent one year of her Ph.D. studies working in his laboratory, obtaining a grant from the [REDACTED] to fund the fellowship. [REDACTED] **tates that the beneficiary investigated the role of Otx1 and SCL genes in regulating blood cell production. While** [REDACTED] asserts that this work was published in the *Proceedings of the National Academy of Sciences*, he does not explain how this work has impacted the field. We will not presume the impact of an article from the journal in which it appeared. Rather, it is the petitioner's burden to demonstrate the significance of the individual article.

[REDACTED] an assistant professor with the medical school affiliated with the petitioning institution, asserts that the beneficiary showed that the Otx1 gene plays a pivotal role in hematopoietic, pluripotent and erythroid progenitor cells. [REDACTED] further explains that mice in which this gene is removed suffer from anemia and low red blood cell numbers, which can be cured by inducing strong activation of the [REDACTED] gene. [REDACTED] concludes that the beneficiary's work "thus contributes important new information to the our [*sic*] current understanding of the mechanisms that regulate blood cell production." As stated above, all research must be original and contribute to the general pool of knowledge to be accepted for publication. We are not persuaded that every published research article constitutes a contribution sufficient to meet this criterion, which is designed to demonstrate the alien's international recognition as outstanding. 56 Fed. Reg. 30705.

The beneficiary's supervisor at the petitioning institution, [REDACTED] explains that the beneficiary joined his laboratory in July 2002, where she has been working on multiple projects related to stem cell biology. Specifically, [REDACTED] asserts that the beneficiary collaborated in characterizing the involvement of the transcription factors in hematopoietic stem cells. [REDACTED] further asserts that the beneficiary coauthored an article "exploring the role of transcription factors in the lung, which has also been published." [REDACTED] also explains that the beneficiary located a crucial regulatory element directing expression in blood stem cells using the human hematopoietic stem cell, CD34. [REDACTED] asserts that this work, which was presented at a conference, is important for gene therapy and general transcriptional regulation and "will be of interest to others outside of the field of hematology and stem cell biology." [REDACTED] then discusses the beneficiary's current projects and

their future potential. [REDACTED] emphasis on the beneficiary's ability to secure funding and publish her work is not persuasive. To conclude that the beneficiary's funding and publication record is significant evidence that her work constitutes internationally recognized contributions would require a presumption that most scientific work is unfunded and unfit for publication.

Most significantly, [REDACTED] states that his goal is to provide the beneficiary "with the environment and instruction to allow her to become a completely independent researcher." He explains that he will "continue to support her pathway to independence." He concludes that the beneficiary "is an outstanding candidate with exceptional potential." None of this language is consistent with a researcher who already enjoys international recognition as an outstanding researcher.

In his second letter, [REDACTED] asserts that the beneficiary "took over our efforts on human CD34 gene regulation several years ago" and is the "driving force" behind the project. He further asserts that she is "responsible also for directing another main project aimed at studying the function of the gene C/EBP alpha in lung tumorigenesis." As part of this project, [REDACTED] explains that the beneficiary "generated a novel murine model that mimics human lung adenocarcinoma," which is useful in identifying drugs that can restore or activate the C/EBP alpha gene. [REDACTED] notes that the beneficiary's work in this area, relating to the "Sonic Hedgehog Pathway," was selected for presentation. This work, however, was not disseminated in the field prior to the date of filing. Significantly, however, [REDACTED] concludes only that the beneficiary "compares very favorably to others in her peer group" and continues to affirm his plans to assist the beneficiary becoming a "completely independent researcher."

On appeal, [REDACTED] addresses several of the beneficiary's projects, some of which postdate the filing of the petition. He concludes that he expects the beneficiary "to be one of the leading researcher[s] to lead the U.S. medical community toward effective, safe cures for numerous deadly diseases, including lung cancers and leukemia." He does not explain how the beneficiary's work has already won her international recognition as outstanding. While [REDACTED] discusses the beneficiary's importance to his laboratory and the United States, the issue in this proceeding is whether the beneficiary enjoys international recognition.

[REDACTED] an assistant professor at [REDACTED] and a former colleague of the beneficiary, discusses the beneficiary's work at the petitioning institution. Specifically, [REDACTED] asserts that the beneficiary discovered a novel critical regulatory element of the human CD34 stem cell gene. [REDACTED] characterizes this work as "seminal" and notes that it was presented at a conference. [REDACTED] does not, however, explain how this work has already impacted the field. [REDACTED] further asserts that the beneficiary "identified a critical gene linked to human lung cancer formation and generated the first murine model able to mimic the human condition." This model consisted of mice with a low amount of the C/EBP alpha protein. [REDACTED] asserts that this model is invaluable for studying human pulmonary tumorigenesis, but provides no examples of independent laboratories now using this model. Finally, [REDACTED] discusses the beneficiary's "pivotal research" to develop a Magnetic Resonance Imaging (MRI) protocol for

detecting small solitary nodules in mice. [REDACTED] concludes that the beneficiary's "observations are of critical importance for lung cancer research" but provides no examples of how the beneficiary's work with MRIs has impacted the field.

[REDACTED] a research supervisor at the [REDACTED] [REDACTED] in Paris who recently spent four years affiliated with the petitioning institution, asserts that while investigating candidate genes that may elucidate the mechanism of lung cancer formation, the beneficiary identified [REDACTED] "a protein whose contribution in promoting the malignant phenotype promises to be as important biologically and therapeutically." [REDACTED] does not explain, however, how this work is being used in the field.

[REDACTED] at the University of [REDACTED] explains that he knows the beneficiary because he previously worked in [REDACTED] laboratory. [REDACTED] asserts that the beneficiary "generated novel information on a pathway that is working abnormally in lung cancer." Specifically, [REDACTED] explains that the beneficiary "observed that the Sonic Hedgehog genetic pathway is abnormally regulated in the adenocarcinomas she is studying." Once again, however, [REDACTED] does not provide examples of this work being used in the field.

Other colleagues currently or previously affiliated with the petitioning institution, such as [REDACTED] [REDACTED] provide similar information, list the beneficiary's credentials (such as her publications and funding), praise her professionalism and creativity, and conclude broadly that her work is internationally recognized. None of these colleagues, however, provide examples of the beneficiary's impact in the field.

As noted by counsel on appeal, the petitioner did submit letters from independent references supporting the petition. [REDACTED] [REDACTED] Research at the University of Texas Southwestern Medical Center, identifies the petitioner's supervisor, [REDACTED] as enjoying international renown. Regarding the beneficiary, [REDACTED] praises her work but does not explain its impact. For example, he praises her murine model as a "critical tool" but does not claim to be using this tool or identify any other independent laboratory that is doing so. While [REDACTED] discusses the difficulty in securing funding, we note that most, if not all research, receives funding from some source. We are not persuaded that every funded researcher enjoys international recognition as outstanding. Finally, [REDACTED] affirms his own belief that the petition should be approved because "such an exceptional young investigator should be granted the opportunity of working permanently in the excellent laboratories we have in our country." [REDACTED] belief that exceptional researchers should be afforded the opportunity to work in the United States permanently does not shed light on the statutory standard in this matter, whether the beneficiary enjoys international recognition. We note that the classification sought in this matter is not the sole classification for which a researcher might qualify.

██████████ asserts that the beneficiary was "the first researcher worldwide to succeed in developing a lung-specific mouse model of tumorigenesis determined by low amount of C/EBP alpha protein in the lung." As stated above, however, all research must be original to qualify for publication, presentation and even graduation. ██████████ does not provide any examples of independent laboratories using the beneficiary's model.

In response to the director's request for additional evidence, the petitioner submitted a letter from Dr. ██████████ Senior Vice President and Franchise Head, ██████████ Laboratories. ██████████ however, was previously a professor at the medical school affiliated with the petitioning institution and acknowledges that he has known the beneficiary for many years. Thus, ██████████ is not an independent reference. Significantly, ██████████ does not suggest that ██████████ is using or even evaluating the beneficiary's mouse model for use in their own research.

On appeal, ██████████ a professor at ██████████ asserts that the beneficiary's 2007 article in *Blood* reported that the drug CDDO favors differentiation of primary blasts from leukemic patients, suggesting the inclusion of CDDO in the therapy of these patients. ██████████ states that a clinical trial is currently underway at an unidentified institution to determine the efficacy of a CDDO analog. ██████████ does not specifically assert that the clinical trial resulted from the beneficiary's work, which dealt with CDDO (an existing drug) rather than a CDDO analog. ██████████, a professor at the medical school affiliated with the petitioner, asserts that clinical tests involving the use of CDDO (not an analog) to treat lung cancer patients are underway, but then states only that the beneficiary's work led her team to pursue ██████████ in murine models. Dr. ██████████ asserts only that the beneficiary's work helped his laboratory secure funding to test ██████████ but does not state whether the funding will support human or murine studies. Regardless, none of the references indicate that clinical trials were initiated prior to the date of filing in this matter. The petitioner must demonstrate that the beneficiary's work was internationally recognized as outstanding as of that date. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

Similarly, ██████████ affirms that the beneficiary identified the molecular target Sonic Hedgehog as a major abnormality that occurs in lung cancer and notes that clinical trials aimed at studying the role of this pathway are now underway at the National Institutes of Health (NIH). The record lacks letters from these investigators confirming the importance of the beneficiary's discovery to the initiation of their clinical trial. Regardless, once again, it is not clear that this trial predates the filing of the petition.

While the beneficiary's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge.

The record does not establish that the beneficiary's 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 record establishes that the beneficiary has authored several scholarly articles and is well cited in the aggregate. Thus, we are persuaded that the beneficiary meets this single criterion. For the reasons discussed above, however, the petitioner has not documented that the beneficiary meets a second 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. 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.