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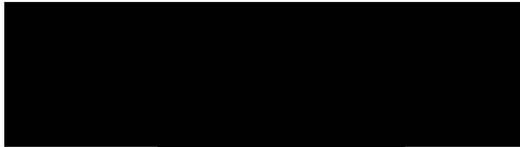
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



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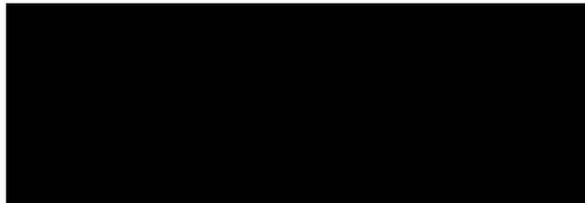


FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUN 04 2009  
LIN 07 103 51890

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

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, 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 a biotechnology company. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a senior biostatistician. 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. For the reasons discussed below, while we withdraw the director's adverse finding regarding the beneficiary's publication record as it relates to the regulatory criterion at 8 C.F.R. § 204.5(i)(3)(i)(F), we uphold the director's ultimate conclusion that the petitioner has not established the beneficiary's eligibility for the classification sought.

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.

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 February 20, 2007 to classify the beneficiary as an outstanding researcher in the field of biostatistics. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching and/or 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 his Ph.D. in December 2005, less than three years before the petition was filed. Thus, the petitioner must demonstrate that the beneficiary's research while pursuing his degree is recognized as outstanding or that he had full responsibility for the classes taught while pursuing that degree. While the petitioner submitted letters from [REDACTED] at Texas Tech University and [REDACTED] of the University of Maryland, Baltimore County (UMBC) confirming that the beneficiary worked as a teaching assistant at those institutions, neither professor indicates that the beneficiary held full responsibility for the classes he taught. Thus, the petitioner must demonstrate that the beneficiary's Ph.D. research is recognized as outstanding if that experience is to count toward the beneficiary's three years of experience.

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.<sup>1</sup>

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

On appeal, counsel does not contest the director's conclusion that the beneficiary's "Certificate of Award" recognizing the beneficiary's completion of an "apprentice program" at the Walter Reed Army Institute of Research (WREIR) cannot serve to meet this criterion and we concur with the director.

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).

We concur with the director that recognition for completing an apprentice program does not constitute a major prize or award for achievement. Thus, the petitioner has not established that the beneficiary meets this criterion.

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

The petitioner submitted evidence that the beneficiary is a member of the Drug Information Association (DIA), the American Statistical Association (ASA) and the International Biometric Society (IBS).

The bylaws for these organizations, submitted by the petitioner, reflect the following requirements: DIA membership "is open to those interested in upholding and contributing to the mission, goal and vision of the DIA," ASA membership is open to "an individual interested in the objectives of the Association or an individual representing an organizational member" and IBS membership is open to "individuals who are interested in the scope and purpose of the Society."

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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.

The director concluded that the record does not reflect that these organizations require outstanding achievements of their general membership. On appeal, counsel asserts that “due to the highly specialized nature of these professional organizations, membership exceeds the mere payment of dues” and is “highly sought after by research professionals in the academic field of statistics.” The unsupported assertions of counsel, however, do not constitute evidence and, thus, cannot overcome the clearly expressed membership requirements specified in the associations’ bylaws, quoted above. See *Matter of Obaighena*, 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).

Finally, counsel asserts that the beneficiary has “actively participated in these professional organizations as an author, a presenter and an invited speaker,” which distinguishes him “from general members who maintain a passive posture.” Counsel is not persuasive. The petitioner’s scholarly articles and presentations will be considered below as they relate to the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(F). At issue for this criterion, however, are the membership criteria for the associations of which the beneficiary is a member. In other words, the membership criteria should be so exclusive that membership alone, rather than the level of participation within that membership,<sup>2</sup> is indicative of or consistent with international recognition as outstanding. An interest in the beneficiary’s field, the only membership requirement specified for any of the above associations, is not an “outstanding achievement” in that field. Thus, the beneficiary’s professional memberships do not meet the plain language regulatory requirements for this criterion, set forth at 8 C.F.R. § 204.5(i)(3)(i)(B).

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.*

The director concluded that the brief citations of the beneficiary’s work in articles that are primarily about the authors’ own work could not serve to meet this criterion. On appeal, counsel references one of two book reviews of a book by the beneficiary’s Ph.D. advisor which cites to the beneficiary’s work. In addition, counsel quotes several of the brief references to the beneficiary’s work in articles primarily reporting the work of the articles’ authors.

The book reviews are reviewing the work of the book’s authors, not the beneficiary. Counsel implies that the beneficiary authored chapter seven, a chapter characterized by one of the reviews as “another critical component of the book.” As stated above, however, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The record contains no evidence that the beneficiary is a credited author of this chapter; rather, the beneficiary’s collaboration with his Ph.D.

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<sup>2</sup> The petitioner has not documented that the beneficiary is an elected fellow of the ASA; thus, we do not reach whether this higher level of membership with its more exclusive membership criteria might meet this criterion.

advisor is reviewed in this chapter. Significantly, the acknowledgements at the beginning of the book indicate that the beneficiary's work was central to chapter five. Ultimately, it is extremely indirect to assert that a book review of a book that cites the beneficiary's work is itself about the beneficiary's work. Significantly, the book review does not even mention the beneficiary by name. Thus, the book review cannot be seen as garnering the beneficiary any national or international exposure, let alone international recognition as an outstanding researcher. Moreover, the review is one of 11 full-length book reviews published in *Biometrics*. Thus, without additional evidence explaining how *Biometrics* chooses the books it reviews, it is not clear that the review is indicative of the book's international recognition as outstanding. Finally, we concur with the director that articles which cite the beneficiary's work are primarily about the authors' own work, not the work of the beneficiary. As such, they cannot be considered published material about the beneficiary. *See generally Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

*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 evidence that the beneficiary had refereed a manuscript for *Biometrics* at the request of [REDACTED]. In addition, the beneficiary reviewed a chapter of the book "Statistical Advances in Biomedical Sciences: State of the Art and Future Directions," also at the request of [REDACTED]. Finally, [REDACTED] coauthor of a book with the beneficiary's Ph.D. advisor, asserts that the beneficiary reviewed the draft of the book. In response to the director's request for additional evidence, the petitioner submitted evidence that the beneficiary has been requested to review additional manuscripts for other journals after the date of filing. This evidence cannot be considered as evidence of the beneficiary's eligibility as of the filing 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).

The director concluded that peer review was routine in the field and that the record did not reflect that the beneficiary's level of participation in the peer-review process is noteworthy. On appeal, counsel asserts that the beneficiary has refereed manuscripts for top journals and notes the comments by editors contained in the record.

[REDACTED], Professor of Biostatistics at the Harvard School of Public Health and an associate editor for *Biometrics*, asserts that a "good journal needs excellent referees." He then states that referees for *Biometrics* are "selected according to their match of expertise to the subjects of the article." Dr. [REDACTED] further asserts that the beneficiary has contributed to the field of response adaptive randomization in clinical trials and reviewed a manuscript in this area. [REDACTED] praises the petitioner's care in completing the review, but does not suggest that *Biometrics* boasts a small, exclusive group of reviewers that are credited in the journal.

[REDACTED], an associate editor for the *Journal of Biopharmaceutical Statistics*, asserts that the journal selects reviewers based on their expertise in the field and an established record of

publications on the topic. He further asserts that the beneficiary has refereed two articles for the journal. The petitioner did not establish that the beneficiary performed these reviews prior to the date of filing. Regardless, while [REDACTED] praises the beneficiary's detailed reviews, he does not suggest that the journal boasts a small, exclusive group of reviewers that are credited in the journal.

In evaluating evidence submitted to meet this criterion, we must examine whether the evidence is indicative of or consistent with international recognition if that statutory standard is to have any meaning. *Accord Yasar v. DHS*, 2006 WL 778623 \*9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 \*11 (S.D. Tex. Aug. 26, 2005). 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 and is not necessarily indicative of or consistent with international recognition. Moreover, as of the date of filing, the beneficiary had only received requests from Dr. [REDACTED], with whom he has collaborated on a manuscript, and an informal request from [REDACTED] regarding a book coauthored with the beneficiary's Ph.D. advisor. These requests are not indicative of the beneficiary's widespread recognition. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the beneficiary meets this criterion.

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

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

As stated above, outstanding researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. 56 Fed. Reg. 30703, 30705 (July 5, 1991). Any Ph.D. thesis, postdoctoral or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. To conclude that every researcher who performs original research that adds to the general pool of knowledge meets this criterion would render this criterion meaningless.

Furthermore, the regulations include a separate criterion for scholarly articles. 8 C.F.R. § 204.5(i)(3)(i)(F). Thus, the mere authorship of scholarly articles 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.

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. U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

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

The beneficiary received his Master of Science in Mathematics from Texas Tech University in December 2002 and his Ph.D. from UMBC in December 2005. While working towards his Ph.D., the beneficiary completed an internship at the WRAIR's Navy Medical Research Command (NMRC). Upon receiving his Ph.D., the beneficiary began working for the petitioner.

██████████ the beneficiary's Ph.D. advisor, explains that statistical response-adaptive designs for analyzing clinical research data is a "hot" research area and asserts that the beneficiary's dissertation "has broadly expanded the knowledge of response-adaptive randomization and should have an impact on clinical trial practice."

██████████ a professor at UMBC, asserts that the beneficiary's research at that institution "has a profound impact on clinical trial design and practice in that it can help design more ethical trials by allocating more patients to the better performing treatments in the course of the trials." Dr. ██████████ does not explain how the beneficiary could have already had a "profound impact" on clinical trial design simply from the potential application of his research in the future.

██████████, Chair of the Statistics Department at the University of Missouri-Columbia, explains that the beneficiary's adaptive randomization model can be used to assign more patients to

the better performing treatment in continuous outcome studies without loss of power in detecting an existent superior treatment, which leads to an easier recruitment of patients and ultimately the expedition of the drug development process. According to [REDACTED], the petitioner was the first to apply a parametric approach for survival oncology trials. [REDACTED] speculates that the beneficiary's work "will significantly improve the understanding of this novel clinical trial design and have a profound impact on clinical trial practice." The record reflects that [REDACTED] has cited the beneficiary's work. Specifically, she cited an article by the beneficiary as one of three articles, the earliest one by [REDACTED] herself, reporting examples of linear regression models.

[REDACTED], an associate professor at the Indian Statistical Institute in Kolkata, asserts that he does not know the beneficiary personally, but only through the beneficiary's published work. While not mentioned by [REDACTED], he had coauthored a manuscript with the beneficiary, submitted with the initial petition. Thus, [REDACTED] is one of the beneficiary's collaborators. [REDACTED] asserts that the beneficiary's work with response-adaptive randomization methodologies is a "breakthrough" that "will greatly increase the chance for patients to obtain a better therapy and have a significant impact on clinical trial practice."

[REDACTED] an associate professor at the University of Virginia who has coauthored a book with Dr. [REDACTED], provides similar information to that discussed above.

[REDACTED] Chair of the Master's Program in Biostatistics at the Universiteit Hasselt in Belgium, discusses the importance of response adaptive randomization design in clinical trials in general, noting that all major conferences dedicate sessions to this topic. [REDACTED] explains that the beneficiary's 2006 article "provides an explicit formula that is used to evaluate different designs, including a new one proposed" by the beneficiary that expands the methodology from clinical trials with binary outcomes to those with continuous outcomes. [REDACTED] then discusses the beneficiary's work published after the date of filing. The petitioner, however, must demonstrate 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. at 49. Thus, we will not consider work published after that date. The petitioner provided similar letters from [REDACTED] a professor at Johns Hopkins University, [REDACTED] a professor at the University of Cape Town, South Africa and [REDACTED], Chair of the Statistics Department at the University of Wisconsin-Madison.

[REDACTED], a research fellow at Johnson and Johnson, Inc., asserts that all of the beneficiary's publications have been cited but that the beneficiary's 2006 article in *Biometrics* stands out, in part because it was "recently included in the most advanced book in this field." This book, however, was authored by the beneficiary's own Ph.D. advisor and coauthor of the 2006 article. The record contains no evidence that this book was a widely used textbook as of the date of filing.

The petitioner also provides a letter from [REDACTED] Deputy Director of the Division of Biometrics VI at the Center for Drug Evaluation and Research (CDER), U.S. Food and Drug Administration (USFDA). [REDACTED] notes that in 2004, the FDA launched the Critical Path

Initiative, through which the FDA is working with academic and industry researchers to identify solutions to scientific hurdles. As part of this program, the CDER has issued five policy guidelines for statistical contributions, including guidelines on “Adaptive Study Design.” [REDACTED] asserts that the beneficiary’s research work “has provided new tools and approaches to adaptive designs and was very instrumental in the formulation of our policy guidelines on the subject.” [REDACTED] does not, however, explain how the beneficiary influenced these guidelines. For example, [REDACTED] does not assert that the beneficiary served an official role on an advisory committee or that his work is cited within the guidelines. The petitioner did not submit the guidelines themselves; thus, the petitioner has not demonstrated that the beneficiary is officially credited, acknowledged or cited within those guidelines. Without additional information, we cannot determine the significance of the beneficiary’s contributions to the CDER guidelines.

[REDACTED] further asserts that the beneficiary’s previous research on graph factorization “is widely used in statistics to obtain efficient experimental designs with nice properties.” While we acknowledge that this work has been moderately cited in China, the record contains no explanation from the authors of the citing articles or others relying on this work explaining how it is being applied. As most of the citations are in Chinese, we cannot determine the context of the citations. The English citation by [REDACTED], cites the beneficiary’s articles on graph factors as three of twelve articles referenced for “further information on the connections between network flows and graph factors, as well as fractional (g, f)- factors.” [REDACTED] does not single out the beneficiary’s work.

[REDACTED], former Chief of the Biostatistics Department at WRAIR/NMRC, discusses the beneficiary’s work reviewing animal and clinical trial protocols at that institution. [REDACTED] states:

[The beneficiary] was instrumental in executing statistical design studies, randomization procedures, and appropriate methods for analysis. [The beneficiary] conducted statistical analyses, designed graphical displays and provided expert opinion in the interpretation of results on a number of key research projects. [The beneficiary] used his outstanding skills as a statistician to program and run simulations in order to obtain accurate sample size estimates for evaluating vaccine efficacy in clinical trials. He provided a practical application of advanced biostatistical methods to an animal study designed to evaluate the efficacy of pharmacological interventions to protect divers from decompression sickness.

While [REDACTED] asserts that the beneficiary’s role on this project was “acknowledged,” he does not suggest that the beneficiary’s role was deemed sufficient for authorship credit. Finally, [REDACTED] asserts that the beneficiary “developed a sequential design method and derivation for the expansion and analysis of a pilot study conducted to evaluate evidence of a treatment effect.”

██████████ asserts that the beneficiary's research at WRAIR "showed that the optimal design for a mixture is an addition of two separate designs," which was "very helpful when designing an experiment for testing different mosquito repellants in Kenya sponsored by WRAIR."

At the petitioning biotechnology company, the beneficiary works under the direct supervision of Dr. ██████████, Director of the petitioner's Biostatistics Department. ██████████ provides an example of "one instance among many cases where [the beneficiary] has developed novel statistical methodology to solve challenging drug R&D problems." Specifically, whereas previous methods for evaluating the potency of a drug, or bioassay, were insufficient especially where the potency behaves in a non-linear fashion, the beneficiary "suggested a theoretical remedy," which he presented at a conference in August 2006, approximately six months before the petition was filed. While ██████████ asserts that the presentation "caught the attention" of professors from UMBC and another institution, we reiterate that the beneficiary graduated from UMBC and, thus, had already collaborated with that institution. ██████████ concludes that this theoretical solution "will greatly change scientists' thinking in the development of analytical assays for determination of drug potency." ██████████ provides no examples of how the field's thinking has already changed.

The record also contains evidence of the beneficiary's publication record. We acknowledge that the beneficiary has published his findings and that two of these articles (reporting the beneficiary's previous work on factors of graphs) had been moderately cited as of the date of filing. Significantly, the articles reporting the beneficiary's work that is the focus of the above letters were only minimally cited as of the date of filing. On appeal, counsel notes that it can take time for an article to be cited but that, as of the date of appeal, the beneficiary's 2006 article has been cited four times. The petitioner may not secure a priority date for the beneficiary in the hope that, during the proceedings, the beneficiary will accumulate additional citations. Rather, the beneficiary must be eligible as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. At best, counsel is implying that the petition was filed prematurely, before the full extent of the beneficiary's impact on response-adaptive statistical analysis and bioassay statistical analysis could be gauged.

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 work has been recognized internationally as outstanding. For example, the record lacks evidence of clinical trials performed with the beneficiary's statistical methods or FDA recommendations to consider the beneficiary's methods when designing a clinical trial. Rather, the references predict that the beneficiary's work will have a future impact on biomedical research.

Without evidence that the beneficiary's research has already impacted the field, we cannot conclude that he meets this criterion.

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

The petitioner submitted evidence that the beneficiary has published a number of articles and has presented his work at conferences. The Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at [www.bls.gov/oco](http://www.bls.gov/oco) on May 28, 2009 and incorporated into the record of proceedings), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See [www.bls.gov/oco/ocos066.htm](http://www.bls.gov/oco/ocos066.htm). The handbook expressly states that faculty members are encouraged to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field.

We acknowledge that the record does contain evidence of moderate citation of at least two of the beneficiary's articles as of the date of filing. Thus, we find that the beneficiary does meet this single criterion. We emphasize that while a widely cited scholarly article can also be *considered* as evidence relating to the previous criterion, set forth at 8 C.F.R. § 204.5(i)(3)(i)(E), that criterion is a separate criterion with different considerations. A presumption that an alien who meets this criterion must also meet the previous criterion would render meaningless the regulatory requirement that the beneficiary meet at least two criteria. For the reasons discussed above, the petitioner has only established that the beneficiary meets this one criterion.

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

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.