

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



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

U.S. Citizenship
and Immigration
Services

B3

FILE: [REDACTED]
SRC 07 800 25514

Office: TEXAS SERVICE CENTER Date:

MAY 08 2009

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, 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 non-profit medical research 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 physician engaged in medical research. 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, counsel's assertions are not persuasive or supported by the record. Specifically, much of the evidence submitted to meet the relevant regulatory criteria does not even relate to those criteria. Moreover, counsel frequently mischaracterizes the evidence submitted and the pertinent regulatory requirements. Ultimately, at the time of filing the beneficiary worked in an entry-level research position and had yet to publish a single research article in a peer-reviewed journal. The record contains no evidence of any recognition beyond the beneficiary's collaborators.

In addition to upholding the detailed and valid concerns raised by the director, we find that the record lacks evidence of a permanent job offer. Rather, the beneficiary appears to be employed as a postdoctoral researcher, typically an inherently temporary position. Finally, we find that the petitioner has not demonstrated that the beneficiary had, as of the date of filing, at least three years of qualifying research experience.

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):

(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 28, 2007 to classify the beneficiary as an outstanding researcher in the field of medical research. 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 petitioner submitted evidence that it has employed the beneficiary as a postdoctoral researcher since July 2005. This employment establishes only two years of qualifying research experience. Thus, the petitioner must establish an additional year of research predating the filing of the petition. Initially, counsel references the beneficiary's self-serving curriculum vitae as evidence of his research experience. In response to the director's request for letters from the beneficiary's employers confirming his three years of experience, the petitioner submitted the beneficiary's curriculum vitae highlighting his medical thesis at the Tehran University of Medical Sciences and a statement describing his research. The petitioner also resubmits a letter from [REDACTED] Director of the Sports Medicine Centre, National Olympic Academy of Iran, asserting that the beneficiary served as a team doctor in 2002 and "had an active participation in our scientific programs." [REDACTED] further asserts that the beneficiary is "a research oriented person." Nothing in this letter suggests that the beneficiary worked as a medical researcher for the National Olympic Academy of Iran. Finally, the petitioner submitted a letter from [REDACTED] of the Tehran University of Medical Sciences asserting that the beneficiary was a student in the school's Department of Pharmacology for six months in 1997 and worked on a research project. The beneficiary asserts that his research supervised by [REDACTED] was performed full-time from January 2002 through March 2003. He submits a copy of an unpublished thesis.

As quoted above, the regulation at 8 C.F.R. § 204.5(i)(3) only allows research performed while obtaining an advanced degree to qualify toward the necessary three years of experience if that research has been recognized within the academic field as outstanding. The record contains no evidence that the beneficiary's medical student research was published. There is no evidence that this study garnered any attention in any media at the national, international, or even local level. None of the letters from members of the beneficiary's field discuss the influence of this work. The record lacks any other type of evidence suggesting that the beneficiary's research while a medical student has been distributed let alone recognized as outstanding in his field beyond his own professor. Thus, the beneficiary's research while a medical student cannot count towards the requisite three years of experience.

The regulation at 8 C.F.R. § 204.5(g)(1) provides that evidence of experience must be in the form of letters from former employers. Thus, the beneficiary's own curriculum vitae and his statement are insufficient. The letter from [REDACTED] does not include sufficient information to allow us to conclude that the beneficiary's responsibilities at the National Olympic Academy of Iran involved any research responsibilities.

In light of the above, the petitioner has only documented that the beneficiary had two years of research experience as of the filing date of the petition. The petition may be denied on this basis alone.

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.

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).

The petitioner submitted a "Championship Award" issued to the beneficiary in 1995 "for obtaining first rank in ski competitions" among participants of an advanced training course. In response to the director's request for evidence of the origin, purpose, significance and scope of any awards issued to the beneficiary, counsel asserts for the first time that the beneficiary's associations with prestigious organization serves to meet this criterion. Specifically, counsel asserts that the beneficiary employment with the petitioner, admission to the Tehran University of Medical Science, scholarship to attend that university and professional memberships serve to meet this criterion.

As evidence of the prestige of the petitioner and the Tehran University of Medical Sciences, the petitioner relies on entries posted on the Internet site www.wikipedia.org.

Reliance on "Wikipedia" is not favored by federal courts. *See Badasa v. Mukasey*, 540 F. 3d 909 (8th Cir. 2008).² We acknowledge, however, that the petitioner also submitted evidence from the

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.

² Online content from "Wikipedia" is subject to the following general disclaimer:

petitioner's own website and that of the Tehran University of Medical Sciences. The petitioner did not, however, submit evidence of the beneficiary's alleged scholarship from the National Organization for Development of Exceptional Talents (NODET) and the only evidence relating to that organization is downloaded from "Wikipedia."

The director concluded that the only award in the record was the Championship Award and that the petitioner had not demonstrated that it was a nationally or internationally recognized award in the beneficiary's field of endeavor.

On appeal, counsel no longer asserts that the Championship Award meets this criterion. Counsel also no longer asserts that the beneficiary's professional memberships meet this criterion. Rather, counsel asserts that the beneficiary's employment with the petitioner and scholarship serve the meet this criterion.

First, the record contains no evidence that the beneficiary actually received a scholarship. Even if we accepted the "Wikipedia" information about NODET, the materials do not address scholarships but admission to NODET schools. Admission is based on grade point average and exam scores. Nothing in the record suggests that the Tehran University of Medical Sciences is a NODET school. Even if it is, as stated above, admission would still be based on grade point average and exam scores.

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 school admission and 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 grade point average, are insufficient. In addition, while the Tehran University of Medical Sciences may be one of the top universities in Iran, it remains that the beneficiary only competed against other students for admission and any scholarships granted. Scholarships are simply not evidence of international recognition in the field. Rather, they represent high academic achievements in comparison with the beneficiary's fellow students.

Similar to scholarships, experienced experts in the field do not compete for fellowships and competitive postdoctoral appointments. Thus, they do not suggest that a beneficiary is

Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on April 23, 2009.

internationally recognized, even if the beneficiary is selected for a postdoctoral appointment with a prestigious research center.

Counsel has also asserted in relation to this criterion that the beneficiary's research has been funded by the National Institutes of Health. The record contains no evidence that the beneficiary was listed as a principal investigator for any grant. Regardless, research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement.

In light of the above, the only award in the record is a skiing award. This award is not within the beneficiary's academic field even if he competed against other medical professionals. The fact that the beneficiary has been "associated" with distinguished entities as a student and employee simply cannot meet the plain language of the regulation, which requires evidence of an award or prize. Finally, even if the petitioner had submitted evidence of the beneficiary's alleged scholarship, a scholarship for which the beneficiary would have only competed against other students cannot be considered a "major" award as required under 8 C.F.R. § 204.5(i)(3)(i)(A). Thus, the evidence, which does not consist of scientific awards or prizes, falls far short of establishing 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.

According to the plain language at 8 C.F.R. § 204.5(i)(3)(i)(B), the petitioner must establish that the beneficiary is a member of an association and must establish, through the submission of the association's formal membership requirements, that the association's membership is limited to those with outstanding achievements. The failure to submit evidence of the membership requirements precludes a favorable finding under this criterion, regardless of the association's overall prestige.

Initially, counsel asserted that the beneficiary's "Presidential Award for Membership" in NODET and membership in the Iranian Medical Council and the Iranian Sport Physician Association serve to meet this criterion. The unsupported assertions of counsel do not constitute evidence. *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). Counsel referenced the beneficiary's self-serving curriculum vitae as evidence of these memberships. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 response to the director's request for evidence of the membership requirements for any associations of which the beneficiary is a member, counsel asserted that the beneficiary is a member of the

American College of Physicians, an internationally focused association that has chapters in several countries, and the Northern California Society of Clinical Gastroenterology, “a society of high status in the subfield.” Counsel also referenced the beneficiary’s pending membership in the American Association for the Study of Liver Diseases, which counsel describes as “almost a given.” As stated above, however, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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 petitioner submitted evidence of his associate membership in the American College of Physicians as of December 2007, after the date of filing. While the petitioner submitted evidence about the association’s publications and leadership, the petitioner submitted no evidence establishing the association’s membership requirements. The petitioner also submitted evidence that in 2008, after the date of filing, the beneficiary was accepted as a member in the Northern California Society of Clinical Gastroenterology. The petitioner did not submit the actual membership requirements or any other materials about this society. The materials submitted about the American Association for the Study of Liver Disease indicate that the association’s membership “encompasses ALL professionals” dedicated to the field.

The director concluded that the petitioner had not established that the beneficiary was a member of an association that required outstanding achievements of its members. On appeal, counsel once again notes that the beneficiary is employed by the petitioner, a distinguished research center, and discusses NODET. Even assuming that the beneficiary attended a NODET school and received a NODET scholarship, neither achievement constitutes a membership in an association. Thus, the beneficiary’s employment and education cannot serve to meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B).

Counsel further asserts that the American Association for the Study of Liver Diseases is a “leading organization of scientists and health care professionals” and, thus, “selects leaders to be members.” First, the petitioner did not document the beneficiary’s membership in the American Association for the Study of Liver Diseases. As stated above, the materials submitted reveal that the membership encompasses all professionals dedicated to the field. We will not presume that a “leading organization” necessarily only admits those with outstanding achievements. A large, non-exclusive organization can still have prestige as an association due to its publications and size, which affords an opportunity for networking and organizing conferences. Such prestige, however, does not suggest that all members had to demonstrate outstanding achievements for admission as a member.

The memberships documented in the record postdate the filing of the petition. The petitioner must demonstrate that the beneficiary was eligible for the benefit sought 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). Regardless, the

petitioner has not demonstrated that any of the organizations of which the beneficiary is a member require outstanding achievements of their members.³

In light of the above, the petitioner has not submitted the necessary evidence required to establish that an alien meets this criterion. Thus, 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, counsel asserted that the beneficiary "is widely cited by scientists and medical practitioners in his field of expertise. He teaches and leads a team of researchers at the Research Institute." As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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. As evidence to support the above claim, counsel references evidence that the beneficiary is named on a list of the petitioner's postdoctoral researchers on the petitioner's own website. This list includes all of the petitioner's postdoctoral researchers and does not discuss the beneficiary's work. The list does not suggest that the beneficiary is "widely cited" or that he leads a team of researchers. In fact, as will be discussed below, it does not even appear that the beneficiary

³ The American College of Physicians, according to their website at www.acponline.org/membership/types/associate/ (accessed April 23, 2009 and incorporated into the record of proceeding), requires that associate members have been accepted for or are currently training in an accredited postgraduate program of internal medicine, an accredited postgraduate program of medicine pediatrics or a fellowship program in a subspecialty of internal medicine. None of these are outstanding achievements.

The American Society for the Study of Liver Disease, according to a membership application available for download at <http://www.aasld.org/about/join/Pages/CategoriesofMembership.aspx> (accessed April 23, 2009 and incorporated into the record of proceeding) provides that regular members must demonstrate completion of a doctoral level training program or equivalent and at least one of the remaining three criteria for membership: at least two publications (including accepted/presented abstracts) on experimental or clinical hepatology or hepatobiliary surgery, an academic faculty position or in a service function to an academic department or prior attendance at two society annual meetings. None of these are outstanding achievements.

We were unable to locate a website for the Northern California Society of Clinical Gastroenterology. Regardless, it is the petitioner's burden to establish that the society requires outstanding achievements of its members.

had authored a single full-length research article as of the date of filing. As such, it is not clear how the beneficiary's work could be "widely cited" as of that date.⁴

Counsel no longer asserted that the beneficiary meets this criterion in response to the director's request for additional evidence. The director concluded that the record lacked published material about the beneficiary's work in professional publications. Counsel does not challenge this conclusion on appeal and we concur with the director that the beneficiary does not meet this criterion.

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

Initially, counsel asserted that the beneficiary's original research contributions were detailed in the beneficiary's self-serving curriculum vitae. Counsel further asserted that the beneficiary's "most outstanding" research was conducted at the petitioning institution. The director requested evidence as to the significance of the beneficiary's research and testimony from experts in the field.

In response, counsel referenced abstracts accepted for presentation at presentations and publication postdating the filing of the petition. The petitioner also submitted four reference letters.

The director concluded that 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. The director noted that the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher. Thus, 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." The director further concluded that the acceptance of the beneficiary's abstracts or manuscript for upcoming presentation or publication does not set the beneficiary apart from others in the field. The director also noted that the reference letters were all from close collaborators of the beneficiary.

On appeal, counsel asserts that the beneficiary's abstracts accepted for presentation "reflect groundbreaking discoveries." We reiterate that the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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. Counsel further asserts that the references came from institutions that are "completely independent" of the petitioning institution, ignoring the fact that the authors of these letters all attest to close collaborations with the beneficiary.

⁴ Even if the record did demonstrate that the beneficiary was widely cited in other research articles, articles which cite the beneficiary's work are primarily about the author's own work, not the beneficiary. As such, they cannot be considered published material about the beneficiary.

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, mere authorship of scholarly articles cannot serve as presumptive evidence to meet this criterion. Similarly, conference presentations also fall under 8 C.F.R. § 204.5(i)(3)(i)(F) and are not presumptive evidence to meet this separate criterion. To hold otherwise would render the regulatory requirement that a beneficiary meet at least two criteria meaningless.

As acknowledged above, the petitioner submits four 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

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.

██████████, a scientist with the petitioning institution, asserts that he has directly worked with the beneficiary on various research projects. ██████████ characterizes the beneficiary as "dedicated, intelligent and talented" and concludes that he is "a researcher with outstanding *potential*." (Emphasis added.) While ██████████ asserts broadly that the beneficiary "has a history of impressive medicine-related scholastic accomplishments" the only example he provides is that the beneficiary's recent work has been accepted for presentation at a conference. As this work had not

even been presented at the conference as of the date of filing, we cannot conclude that the beneficiary had even enjoyed international exposure of his work as of that date, let alone international recognition.

██████████, an associate professor and director of the Pediatric Diabetes Outpatients Services at the University of California, San Francisco, asserts that he has “worked very closely with” the beneficiary in ██████████ laboratory and that he continues “to have a close professional relationship.” We note that ██████████ previously provided a letter on the petitioner’s letterhead confirming the beneficiary’s employment in ██████████ laboratory. Thus, while ██████████ may no longer work for the petitioner, he is clearly the beneficiary’s former supervisor. ██████████ confirms that the beneficiary has “shown exceptional talents” and is committed to his career. ██████████ speculates that the beneficiary “will successfully complete his medical special training and go on to an academic position as a prominent researcher.” Nothing in ██████████ letter suggests that the beneficiary already enjoys international recognition for his contributions to the field.

██████████, an associate professor at the University of California, San Francisco, asserts that she is “actively working with [the beneficiary] on various important and groundbreaking research projects, including ‘MRI and NAFLD,’ ‘HCV HIV co-infected patients and liver and visceral fat.” She affirms that these projects “are providing new guidance into dealing with fatty liver and related diseases” and “could not be completed without the valuable contribution and research expertise” of the beneficiary. She does not explain what “new guidance” has derived from this work or identify any independent hospital or clinic utilizing this work. She further asserts that the beneficiary’s “published materials (including those in process), original research projects, scholarships and top research positions obtained are all utterly impressive and should be taken into consideration when deciding his case.”

As will be discussed in more detail below, the beneficiary had yet to publish any scholarly research articles prior to the date of filing. The petitioner must establish the beneficiary’s eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. The record does not establish that the beneficiary’s “original research projects” were otherwise internationally disseminated and recognized as of the date of filing. Further, as discussed above, scholarships at best only set the beneficiary apart from other students. Finally, while the petitioner may have a distinguished reputation, the beneficiary was only employed there as a postdoctoral researcher as of the date of filing. We are not persuaded that this position was a “top research position.” Regardless, we will not presume undocumented and unidentified contributions from the nature of the beneficiary’s position.

Finally, ██████████ an assistant professor at the University of California, San Francisco, asserts that his own projects “involve working closely with” the beneficiary. While ██████████ asserts that the beneficiary is working on important topics, he does not explain how the beneficiary’s work has already influenced the field. Rather, he refers generally to the “buzz” about the beneficiary’s work.

The above letters, all from the beneficiary’s collaborators at the petitioner, a California based institution, and the University of California, San Francisco, cannot establish the beneficiary’s recognition outside of California. While the beneficiary also provided letters from his colleagues in

Iran, these letters are also from close colleagues and merely attest to his experience rather than the significance of his research contributions.

While the beneficiary's research may be in an important area, 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. Thus, the petitioner has not established that the beneficiary meets this criterion.

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

Initially, counsel asserted:

[The beneficiary's] scholarly medical research articles have appeared in the widely acclaimed *Dard Medical Journal*. [The beneficiary] consistently publishes his Research findings in top scientific journals, and presents these publications at international scientific conferences and medical seminars, and at university and medical school classes.

As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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. As evidence to support these assertions, counsel references the beneficiary's self-serving curriculum vitae. We reiterate that going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

In response to the director's request for additional evidence, the petitioner submitted evidence that the beneficiary's work had been accepted for presentation at conferences postdating the filing of the petition and for publication after that date. The petitioner also submitted a foreign language publication containing the beneficiary's three brief responses to medical questions. The petitioner did not submit any evidence that this publication has an international circulation as required by the regulation at 8 C.F.R. § 204.5(i)(3)(i)(F). Moreover, it appears that these responses to medical questions are informational for patients, providing information widely available to if not commonly known by doctors. These brief responses do not appear to provide scholarly insights or analysis.

The director concluded that the petitioner has failed to submit any evidence relating to this criterion. Counsel does not specifically challenge this conclusion on appeal and we concur with the director.

The petitioner has shown that the beneficiary is a researcher who has won the respect of his collaborators, employers, and mentors but who had yet to secure any degree of international recognition or even exposure for his work as of the date of filing. Ultimately, the record stops far 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.

In addition, 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 USCIS *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 June 1, 2007 letter from [REDACTED], the petitioner's recruitment specialist, addressed to USCIS, asserting that the petitioner was offering the beneficiary full-time employment as a researcher. This document does not constitute a job offer from the petitioner to the beneficiary. The petitioner also submitted a letter from [REDACTED] dated October 17, 2005, confirming that the beneficiary's employment was being extended for one year. Finally, the petitioner submitted an August 19, 2005 letter from [REDACTED], the petitioner's Employment Specialist/Recruiter, confirming that the beneficiary was working as a postdoctoral fellow/researcher.

The petitioner has not submitted the primary required initial evidence, the original job offer predating the filing date of the petition. The petitioner has not complied with the regulation at 8 C.F.R. § 103.2(b)(2) regarding the submission of secondary evidence. Specifically, the petitioner has not demonstrated that the original job offer does not exist or is unavailable. While we do not question the credibility of those who have confirmed the beneficiary's employment, we need not accept attestations about the terms and conditions in a document in lieu of the document itself. Without the initial job offer, we cannot consider the petitioner's explanations about the terms and conditions set forth in that job offer. Regardless, [REDACTED] does not affirm that the position is permanent.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved. 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.