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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:  
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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).

9 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 state university. 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). According to the petition, the petitioner seeks to employ the beneficiary permanently in the United States as a research scientist. 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. The director further noted that the only actual job offer submitted was for a temporary postdoctoral appointment.

On appeal, counsel submits a brief and resubmits previously submitted documentation. For the reasons discussed below, we uphold the director's findings.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

\* \* \*

(B) Outstanding professors and researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if

the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

## **JOB OFFER**

The regulation at 8 C.F.R. § 204.5(i)(3)(iii) provides that a petition must be accompanied by:

An *offer* of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning *offering* the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning *offering* the alien a permanent research position in the alien's academic field; or

(C) A department, division, or institute of a private employer *offering* the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

(Emphasis added.) Black's Law Dictionary 1111 (7<sup>th</sup> ed. 1999) defines "offer" as "the act or an instance of presenting something for acceptance" or "a display of willingness to enter into a contract on specified terms, made in a way that would lead a reasonable person to understand that an acceptance, having been sought, will result in a binding contract." Black's Law Dictionary does not define "offeror" or "offeree." The online law dictionary by American Lawyer Media (ALM), available at [www.law.com](http://www.law.com), defines offer as "a specific proposal to enter into an agreement with another. An offer is essential to the formation of an enforceable contract. An offer and acceptance of the offer creates the contract." Significantly, the same dictionary defines offeree as "a person or entity *to whom an offer to enter into a contract is made* by another (the offeror)," and offeror as "a person or entity who makes a specific proposal *to another (the offeree)* to enter into a contract." (Emphasis added.)

In light of the above, we concur with the director that the ordinary meaning of an "offer" requires that it be made to the offeree, not a third party. As such, regulatory language requiring that the offer be made "to the beneficiary" would simply be redundant. Thus, a letter addressed to U.S. Citizenship and Immigration Services (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 letter from Anne Murray, Assistant University Counsel, addressed to USCIS, asserting that the petitioner “wishes to extend a permanent full-time position as a Research Scientist” to the beneficiary. This document does not constitute a job offer from the petitioner to the beneficiary. On April 9, 2008, the director requested “a complete copy of the actual letter and/or contract offering employment to the beneficiary (addressed to the beneficiary) issued at the time of hire by the appropriate university hiring authority.” The director advised that if the beneficiary had changed positions, the petitioner should submit the same type of documentation for each position.

In response, the petitioner submitted (1) a February 8, 2006 letter offering the beneficiary a postdoctoral fellow position not to exceed three years, (2) a March 26, 2008 letter from [REDACTED] addressed to no one explaining the justification for increasing the beneficiary’s salary as a research scientist effective on that date and (3) a May 16, 2008 joint letter from [REDACTED], Vice President of Human Resources, and [REDACTED], Senior Associate University Counsel, addressed to USCIS confirming an offer of regular, full-time employment to the beneficiary as a research scientist.

The director concluded that the only document constituting a job offer, the February 8, 2006 letter, was not an offer of a permanent position. On appeal, counsel asserts that the original letter submitted in support of the petition and the March 26, 2008 and May 16, 2008 letters meet the regulatory requirements for documenting a permanent job offer. Counsel mischaracterizes the director’s request for additional evidencing as requesting “any documentation” confirming changes of position by the beneficiary. In fact, the director requested the job contract or initial job offer *addressed to the beneficiary* and “documentation conforming with the above” for any position changes after that date.

The only job offer in the record is the February 8, 2006 letter. Confirmations after the fact are not evidence of eligibility as of the date of filing. *See generally* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l. Comm’r. 1971). 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 for the research scientist position does not exist or is unavailable. While we do not question the credibility of those who have confirmed the beneficiary’s employment, counsel has not sufficiently explained why we should accept attestations about the terms and conditions in a document in lieu of the document itself. Without the job offer, we cannot consider the petitioner’s explanations about the terms and conditions set forth in that job offer for the research scientist position. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

In light of the above, we affirm the director's conclusion that the record lacks a permanent job offer issued to the beneficiary.

## **INTERNATIONAL RECOGNITION**

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 April 23, 2007 to classify the beneficiary as an outstanding researcher in the field of material science and optics. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching 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 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. 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>

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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.

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

Initially, counsel asserted that the beneficiary's Indian University Grants Commission junior research fellowship and scholarship from the Japanese government serve to meet this criterion. On appeal, counsel does not challenge the director's finding that no evidence was submitted to meet this criterion.

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).

Scholarships are generally based on past *academic* achievement, not for accomplishments in a field of endeavor. In addition, the beneficiary only competed against other students. Similarly, experienced experts do not compete for junior level fellowships. Moreover, a job offer, while taking into account past experience, is not designed to recognize past achievement but to support future work. Thus, they are not awards or prizes in the field and do not suggest that the beneficiary is internationally recognized.

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

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

The petitioner submitted evidence that the beneficiary is a member of the Institute of Electrical and Electronics Engineers (IEEE), the International Society for Optical Engineering (SPIE), the Materials Research Society (MRS) and the Optical Society of America (OSA). The petitioner submitted bylaws and other materials for these associations.

According to the bylaws for the IEEE, membership is limited to those with a three to five year university level or higher degree from an accredited institution or program in an IEEE designated field, a three to five year university level or higher degree from an accredited institution or program and three years of professional work experience in an IEEE designated field or six years of professional work

experience demonstrating competence in teaching, creating, developing, practicing or managing within an IEEE designated field.

The SPIE bylaws state that regular membership is open to “[a]ny person determined by the Board to be qualified through technical experience or training.” ██████████, Member Services Representative for MRS, asserts that members in the society “must be actively engaged in work relating to the research and development of advanced materials or materials processes.” The MRS bylaws, Article II, state that membership “shall be open to all persons interested in materials research and engineering.” The bylaws for OSA, Article I, state that regular membership is open to “[a]ny individual with appropriate training or experience in optics or related fields, as reasonably determined by the Board of Directors.”

In response to the director’s request for additional evidence, submits letters from officials of the above associations. ██████████, IEEE Member Services Associate, asserts that the membership in the institute is based on education or experience demonstrating “competence” in an IEEE designated field of interest. ██████████, SPIE Membership Services, asserts:

Selection for regular membership in the SPIE is predicated on an individual having the appropriate outstanding experience in optics or related fields, as reasonably determined by the Board of Directors. This determination is made based on a review of the applicant’s credentials and body of work. Key factors are the contribution of recognized outstanding research to the scientific society, as evinced by a proven research publication in internationally circulated and recognized peer-reviewed journals, and continued participation in the conferences.

██████████ does not reconcile his assertions with the bylaws of the society, which state that regular membership must demonstrate “technical experience or training,” not “appropriate outstanding experience.” Rather, the bylaws state that it is fellow membership that is restricted to those distinguished through “outstanding contributions.” Fellow membership is restricted to five percent of the voting membership. The record contains no evidence that the beneficiary was elected as a fellow member of SPIE.

██████████ reiterates her previous assertions regarding MRS membership. ██████████, Membership Director for OSA, asserts that the society is open to any “individual having the appropriate training or experience in optics or related fields as reasonably determined by the Board of Directors.”

The director concluded that the above associations were professional, and not limited to those with outstanding achievements. On appeal, counsel asserts that the letter from ██████████ confirms that SPIE does require outstanding achievements for regular members. Counsel further asserts that the remaining associations require publication in internationally circulated peer-reviewed journals.

The record does not support counsel’s assertions. The bylaws provide the official membership rules for SPIE and those bylaws make no mention of outstanding experience or achievements. ██████████

personal characterization of those requirements cannot overcome the unambiguous official information in the society's bylaws.

The documented membership requirements, education, experience and even publication are not outstanding achievements in the beneficiary's field. 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.*

On appeal, counsel does not challenge the director's conclusion that articles which cite the beneficiary's work cannot serve to meet this criterion as they are primarily about the author's own work, not the work of the beneficiary. We concur with the director's analysis and conclusion.

*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.*

Initially, the petitioner submitted evidence that the beneficiary had refereed a manuscript for *Optical Engineering*. In response to the director's request for additional evidence, the petitioner submitted letters confirming that the beneficiary participates as a referee for the *Journal of Optics Express* and *Nanotechnology*. [REDACTED], associate editor of the *Journal Optics Express* asserts that the beneficiary was selected to review manuscripts for the journal based on his outstanding research. We note, however, that [REDACTED] is a professor at the petitioning university. Thus, his selection of the beneficiary to perform reviews is only indicative of the beneficiary's reputation at that university. Moreover, neither of the new letters reflects that the beneficiary performed any reviews for these journals as of the filing date. Rather, the letter from *Nanotechnology* explicitly states that the beneficiary began reviewing manuscripts in January 2008. The petitioner also submitted a letter from [REDACTED] Commissioning Editor of Physical Sciences at John Wiley & Sons, Ltd., confirming that the beneficiary served as a referee for the proposed new edition of *Quantum Wells, Wires and Dots: Theoretical and Computational Physics of Semiconductor Nanostructures*. [REDACTED] asserts that referees for books are "carefully selected from the top names in the international research community" but does not indicate whether or not this work took place prior to the filing of the petition.

The director concluded that the evidence of manuscript review does not set the beneficiary apart from other members of the field due to the nature of peer-review. On appeal, counsel references the letters discussed above.

As stated above, the record does not establish that the beneficiary reviewed the book prior to the filing of the petition. 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. While [REDACTED] asserts that the beneficiary was selected to review journal manuscripts based on his outstanding research, [REDACTED]

does not support that assertion with objective information, such as data showing that the journal boasts a small group of elite referees. Moreover, [REDACTED] would be familiar with the beneficiary's work through their common employment for the petitioning university. Finally, 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. We concur with the director that the petitioner cannot demonstrate that the beneficiary meets this criterion without evidence that sets the beneficiary apart from others in his field as of the date of filing, 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.

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

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

The director acknowledged reference letters from the beneficiary's peers and colleagues but determined that they could not overcome the lack of evidence of the beneficiary's impact in the field. On appeal, counsel reviews the reference letters and notes that the beneficiary has published several articles and conferences. Finally counsel asserts that the beneficiary is regularly cited. 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). As will be discussed below, the record only reveals that the beneficiary is minimally cited.

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. 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 Ph.D. from the University of Delhi in New Delhi, India and after three months working for that university as a research fellow, spent two years as a research fellow at Osaka University in Japan. The beneficiary then went to work for the petitioner where he has been working since March 2006.

██████████, a Federation Fellow and professor at the Australian National University, asserts that he met the beneficiary in 2002 while lecturing at the University of Delhi and has kept in touch with him since that time. ██████████ asserts that the beneficiary's dissertation was published in two journals in 2001 and 2006. ██████████ explains that this work "emphasized the important significance of AgSbTe material for the design and production of optical sensing devices" and that this work "provided significant steps to improve the performance of the semiconductor devices." ██████████ concludes that other research groups have used the beneficiary's concepts to deliver additional applications in photodetectors and amplifiers but does not identify any of these groups. The record does not reflect that the beneficiary's 2001 and 2006 articles have ever been cited.

██████████, a professor at Osaka University, discusses the beneficiary's work in ██████████'s laboratory. ██████████ explains that the beneficiary "investigated the impurity-induced quantum well disordering process in GaInP quantum well structures" and "worked on impurity-free disordering and fabrication of integrated GaInP Distributed Feedback Lasers." ██████████ asserts that after the beneficiary completed his work on impurity-induced disordering, "this process was used for fabrication of GaInP Distributed Bragg Reflectors (DBR) lasers." ██████████ further notes that the beneficiary published two papers on his work at Osaka University. ██████████ does not identify any independent research laboratory that used the beneficiary's results to fabricate GaInP DBR lasers and the record does not include any letters from academia or industry confirming their use of the beneficiary's research to fabricate such lasers. While the beneficiary published two articles while at Osaka University, the record contains no evidence that either article has been cited.

██████████ asserts that the beneficiary's work at Osaka University demonstrated use of lasers for biomolecular sensing, which is significant "for the development of many diagnostic medical instruments that are faster, cheaper and more portable than current instruments." ██████████ does not identify any medical instrument manufacturer that is utilizing the beneficiary's work. More expansively, ██████████ asserts that the beneficiary was the first to use semiconductor lasers for biosensing and "was able to construct a very sophisticated, lighter, cheaper apparatus that has greater applicability in a wide variety of applications." While ██████████ asserts that the beneficiary reported these results at a distinguished conference, he does not provide examples of the beneficiary's work being applied. The record contains no evidence that the beneficiary's conference presentation has been cited. Finally, ██████████ speculates as to the possible future applications of the beneficiary's work at Osaka University. ██████████ does not suggest that these applications are already being realized.

The petitioner submitted several letters from the petitioning university discussing the beneficiary's work at the petitioner's Center for High Technology Materials (CHTM). ██████████, Director of CHTM, discusses the focus of the beneficiary's work there investigating nanoscale quantum dots and antimonide-based heterostructures, processing of semiconductor detectors and focal plane arrays and Detector Characterization using rapid scan Fourier transform infrared spectrometer. ██████████ asserts that the beneficiary "demonstrated both a MWIR GaSb SLS camera based on a 320x256 focal plane arrays and a QDIP-based 320x256 focal plane array camera," but does not explain how that work has already impacted the field.

██████████, an associate professor at the petitioning university, explains that the beneficiary is researching "the fabrication of next generation infrared sensors using nanoscale semiconductors." ██████████ does not explain the impact of this work. Rather, ██████████ asserts that the beneficiary's publications have been cited "on several occasions." In fact, the record contains only two citations as of the date of filing, both by the same authors, and these articles cite the beneficiary's 1995 conference presentation.

██████████, a senior research physicist with the U.S. Air Force Research Laboratory (AFRL), asserts that AFRL has requested that CHTM perform semiconductor processing for AFRL. ██████████ expresses AFRL's preference that the beneficiary be a lawful permanent resident before the AFRL fully utilizes the beneficiary's research. While we do not question ██████████ sincerity, at issue for the classification sought, and it is not the only classification available to advanced degree researchers, is whether the beneficiary is internationally recognized as outstanding. ██████████ asserts that the beneficiary's publication and presentation record "is a testament to the validity and outstanding nature of his research and is extraordinary for an individual who has only been in this field for a few years." As stated above, the pertinent regulations include a separate criterion for published articles set forth at 8 C.F.R. § 204.5(i)(3)(i)(F). We will not presume that the mere act of publishing one's results also serves to meet this criterion, set forth at 8 C.F.R. § 204.5(i)(3)(i)(E). Finally, ██████████ asserts that the beneficiary's contributions "have had an unquestionable impact." As an example, ██████████ asserts that the beneficiary "demonstrated quantum dot detectors with very good performance in the mid-infrared frequency." ██████████ does not provide examples of the application of these detectors. Rather, he speculates that they "will have application in optical remote sensing." As a second example, ██████████ asserts that the beneficiary developed and demonstrated a method of dot growth that leads to increased uniformity in the dot sizes. While Dr. ██████████ asserts that this work is important for tactical and strategic surveillance and target identification, he does not explain how AFRL is already utilizing these results. We note that the beneficiary's articles in these two areas had not been cited as of the date of filing.

██████████ a senior project leader for Advanced Micro Devices (AMD), asserts that he served as Symposium Chair at a 2002 SPIE symposium where the beneficiary presented his work. ██████████ asserts that the presentation was impressive. ██████████ then discusses the peer-review process for accepting presentations at SPIE symposia. We will not presume the impact of a presentation from the conference where it was presented. Rather, the petitioner must demonstrate the impact of the beneficiary's individual presentation. ██████████ praises the beneficiary's quantity and quality of work but provides no examples of its application either at AMD or in the field generally.

██████████ a professor at the University of Sheffield, asserts that his collaboration with ██████████ at the petitioning university introduced him to the beneficiary's work. ██████████ asserts that ██████████'s group was the first to demonstrate a camera based on quantum dots, increasingly important for a wide range of night vision and military thermal imaging in the United States and Europe. The technology involved challenges in manufacturing the focal plane arrays, for which the beneficiary was the key researcher. ██████████ asserts that he spent a month as a visiting professor at the petitioning university during which time he learned of the focal plan arrays' manufacturing complexities from the beneficiary. ██████████ does not identify any academic or private manufacturer utilizing the beneficiary's work and the record contains no evidence that the beneficiary's research on focal plane arrays has been cited or that he is the author of patented technology. Even if the beneficiary was listed as an inventor on a patent, he would need to demonstrate the significance of

the patented technology by, for example, demonstrating widespread interest in licensing the technology.

In response to the director's request for additional evidence, the petitioner submitted a letter from [REDACTED]. Dr. [REDACTED] provides similar information to that discussed above and implies that he is aware of the beneficiary's work through his editorial position for *Optics Express*. As noted above, however, [REDACTED] is a professor at the petitioning university. Thus, his knowledge of the beneficiary's work does not demonstrate international recognition.

We will also consider the beneficiary's publication record as of the date of filing. Significantly, 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. While the beneficiary has published several articles and presented his work at several conferences, his work is not well cited. Specifically, while counsel and several references attest to several citations of the beneficiary's work, the record includes only two as of the date of filing. Counsel relies on the results of a search of the beneficiary's name on <http://scitation.aip.org>. The search produced a list of 11 articles by the beneficiary. Search engine results for articles by a specific author do not constitute "citations" of each listed article. Rather, citations are footnoted references to an author's work by researchers relying on the author's work. In contrast, the search engine results merely confirm that the beneficiary has authored the articles, which is already documented in the record. Even in response to the director's request for additional evidence, the petitioner provides only two additional citations. Thus, the beneficiary's publication record is only indicative of international exposure of the beneficiary's results, not international recognition of the beneficiary's contributions as outstanding.

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.

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

Initially, the petitioner submitted evidence of the beneficiary's three conference presentations and 20 published articles. In addition, as stated above, the petitioner submitted evidence that the beneficiary's 1995 presentation had been cited twice by the same author. In response to the director's request for additional evidence, the petitioner submitted evidence of two additional citations and additional articles published after the date of filing. We need not consider the citations and articles that postdate the filing of the petition. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The director concluded that publication is part of a researcher's duties and that the petitioner had not demonstrated that the beneficiary's articles had been internationally recognized. On appeal, counsel asserts that the beneficiary has "an extensive list of citations to his credit." Counsel further asserts that the reference letters and distinguished nature of the journals publishing the beneficiary's work demonstrates that his articles are internationally recognized.

The Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at [www.bls.gov/oco](http://www.bls.gov/oco) on April 30, 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 pressured 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. Thus, we concur with the director that there mere act of publication cannot serve to meet this criterion, the petitioner must demonstrate that the beneficiary's publication record sets him apart from other members of the field.

As discussed above, counsel mischaracterizes the beneficiary's citation record as "extensive." In fact, the beneficiary had been cited only twice by the same author as of the date of filing and only an additional two times as of the response to the request for additional evidence. We acknowledge that some of the beneficiary's references affirm that the number of articles in top journals is impressive for the beneficiary's amount of experience. Even if we agreed that the number of publications, without any evidence of their influence, could serve to meet this criterion, and we are reluctant to reach that conclusion, the beneficiary would meet only one criterion. For the reasons discussed above, the evidence falls far short of establishing that the beneficiary meets any other criteria.

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.