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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



U.S. Citizenship
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Services

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FILE: [REDACTED]
LIN 07 031 51040

Office: NEBRASKA SERVICE CENTER

Date:

OCT 06 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).

UDeadndc
Perry Rhew
for 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 non-profit education and research institution. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a Research Scientist II. 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 asserts that the director failed to give sufficient weight to the statements provided by the petitioner's references. This office subsequently received additional evidence, including material from the U.S. Air Force's website and a new reference letter. For the reasons discussed below, we uphold the director's ultimate conclusion that the petitioner has not demonstrated 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 November 9, 2006 to classify the beneficiary as an outstanding researcher in the field of physics and engineering. 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 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 under 8 C.F.R. § 204.5(i)(3)(i).¹

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.

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. *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).

Initially, the beneficiary's supervisor at the petitioning institution, [REDACTED] asserts that the beneficiary "was an invaluable member of an extraordinary Ukrainian research team which received special recognition for their joint work, investigation and discovery of a new magneto-optical effect named 'Quadratic Magnetic Rotation.'" [REDACTED] states that this work "was submitted for competition and in 2004 won the highest scientific award of Ukraine, *The State Prize of Ukraine*."

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 support of [REDACTED] assertions, the petitioner submitted two letters from [REDACTED] the beneficiary's scientific advisor and supervisor at the B. Verkin Institute for Low Temperature Physics and Engineering, asserting that his joint work with the beneficiary resulted in the discovery and investigation of a new magneto-optical effect, named the Quadratic Magnetic Rotation, which was an integral part of a series of work that won the State Prize of Ukraine. [REDACTED] concludes that the beneficiary's achievements "made a substantial contribution to the matter of the scientific significance of the series and played an important role in the final outcome of the Prize competition."

The director requested a copy of the award and evidence of its significance. In response, the petitioner submitted a 2004 Diploma of Laureate of State Prize of Ukraine in the Field of Science and Technology issued to [REDACTED] for "New Optical and Magneto-Optical Properties of the Anti-Ferromagnetic Materials." The petitioner also submitted two new letters from [REDACTED] Dr. [REDACTED] asserts that a "team" of scientists from three institutes "was presented with the State Prize of Ukraine." While [REDACTED] states that the beneficiary's contribution to the project was "essential," because the regulations limit the number of "possible co-authors" and because the beneficiary had left the project to work for the petitioner, the team was unable to include the beneficiary's name with the rest of the team members. More specifically, [REDACTED] asserts that the beneficiary's published and

presented work was included as an integral part of the series that was ultimately awarded, made the scientific significance of the series substantially higher and “played an important role in the final outcome of the Prize competition.” Regarding the award itself, [REDACTED] asserts that it is awarded annually in 20 different areas of science and technology to those who have demonstrated outstanding achievements and accomplishments in these respective fields. [REDACTED] does not indicate how many awards are issued in each area of science.

The director concluded that the petitioner had not demonstrated that the beneficiary was the recipient of the State Prize of Ukraine or any other prize or award. On appeal, counsel asserts that the director erroneously discounted the letter from [REDACTED]

The regulation at 8 C.F.R. § 204.5(i)(3)(i)(A) clearly and unambiguously requires evidence of the beneficiary’s “receipt” of a qualifying prize or award. Thus, U.S. Citizenship and Immigration Services (USCIS) cannot accept attestations of the beneficiary’s contributions to an award-winning project in lieu of evidence that the beneficiary actually *received* the award. Whatever the reason for the beneficiary’s failure to be a named recipient of the award, it remains that the record in this matter lacks evidence of the beneficiary’s “receipt” of a qualifying award or prize. Thus, the petitioner has not submitted the initial required evidence for this criterion, set forth clearly and unambiguously at 8 C.F.R. § 204.5(i)(3)(i)(A). Moreover, evidence of the number of awards issued in each of the 20 areas of science would have bolstered [REDACTED] assertion that the State Prize of Ukraine is a major prize or award.

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

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

Initially, the petitioner submitted 17 articles that cite the beneficiary’s various articles. Seven of these articles are self-citations by the beneficiary or coauthors. An additional article is authored by colleagues at the B. Verkin Institute for Low Temperature Physics and Engineering.

The director’s request for additional evidence advised that reference to the beneficiary’s work in footnotes could not serve to meet this criterion. In response, [REDACTED] asserts that the beneficiary has been cited more than 50 times, 40 times in scholarly books. [REDACTED] further asserts that in the beneficiary’s field, “the standard format for citations is a footnoted reference.” The petitioner submitted Google.Scholar results for the beneficiary’s last name and [REDACTED] which demonstrate a total of 19 citations, with no more than four citations of any one article. The petitioner also submitted Google.Scholar results for the beneficiary’s last name and “[REDACTED].” As the petitioner searched for any article containing both the beneficiary’s last name and [REDACTED]’s last name anywhere in the article, not all of the results represent articles authored by the beneficiary. Of the articles in the results authored by the petitioner, one has been cited once. The petitioner further submitted search

results for the beneficiary's last name and first two initials on The Web of Science reflecting another 19 citations, with no more than six citations of any one article. The record does not establish how many of the above citations are self-citations by the beneficiary or his coauthors. Also from this website, the petitioner submitted a list of 17 results from an unknown search. Of the 17 results, eight are articles by the beneficiary or [REDACTED]. Another three of these articles are by [REDACTED] who is one of [REDACTED] coauthors. Finally, the petitioner submitted the citing articles submitted previously, which appear to overlap with the lists of citations provided by the Internet searches. Even assuming that none of the citations overlap due to one article citing more than one of the beneficiary's articles, this evidence documents only 36 citations total, many of which appear to be self-citations by the petitioner or a coauthor.

The director concluded that citations cannot serve to meet this criterion as they are not published material about the beneficiary's work. On appeal, while counsel continues to assert that the beneficiary meets four criteria, counsel does not address this criterion specifically.

The regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) requires the submission of published material that is "about" the beneficiary's work. Reducing the definition of "published material" to a single sentence or footnote would render this criterion meaningless. Rather, the only rational interpretation is that the entire article constitutes the "published material." While we do not contest [REDACTED] assertion that it is standard to cite articles as footnotes, articles which merely reference the beneficiary's work in any format are primarily about the authors' own work or, in the case of review articles, recent trends in the field. Such articles cannot be credibly asserted to be "about" the beneficiary's work. The petitioner did not submit any published material that focuses primarily on the beneficiary's work.

In light of the above, the petitioner has not established that he 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 director acknowledged the letters but concluded that the record as a whole did not demonstrate that the beneficiary meets this criterion. On appeal, counsel asserts that the director reached a conclusion in contradiction of the opinions of experts in a field for which USCIS possess no expertise.

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 beneficiary 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 initial degree in physics from Kharkiv State University in 1982. The beneficiary then began working for the B. Verkin Institute for Low Temperature Physics and Engineering where he ultimately obtained his Kandidat Nauk in 2002. During this period he spent several months as a visiting researcher at the University of Witwatersrand in Johannesburg, South Africa. In February 2003, he accepted a postdoctoral fellowship at the petitioning institution and is currently employed there as a Research Scientist II. All but one of the beneficiary's letters come from colleagues at these institutions or the entities funding the beneficiary's research.

explains that the beneficiary's initial work at the B. Verkin Institute for Low Temperature Physics and Engineering involved an investigation of the behavior of the anti-ferromagnetic boundaries under certain physical conditions, such as mechanical anisotropic pressure, temperature and magnetic field. The results of this work led the team "to make [a] novel conclusion regarding [the] physical mechanisms of coercivity of the anti-ferromagnetic boundary." According to [REDACTED], this research was necessary due to "the lack of such knowledge" and the impending development of optical technology of recording and storage. [REDACTED] does not explain how that motivation differs from any other research. It can be presumed that all research is an attempt to discover new information, usually for practical purposes. As stated above, [REDACTED] asserts that the result of his joint work with the beneficiary was the discovery of Quadratic Magnetic Rotation, a new effect. Specifically, "[u]nlike Faraday effect in magneto-optics where directions of light propagation and magnetic field vector are coincided, we observed the rotation of the plane of light polarization of strictly perpendicular geometry." According to [REDACTED] the beneficiary produced similar results with cobalt, iron and manganese and calcium-manganese-germanium-garnet. [REDACTED] notes that the beneficiary's work was published and presented, but provides no examples of how this new effect has impacted the field of physics.

[REDACTED] of the Math, Physics and Chemistry Departments at the Polish Academy of Sciences, indicates that he has known the beneficiary since his first visit to the B. Verkin Institute for Low Temperature Physics and Engineering. [REDACTED] praises the beneficiary's ability to develop "ingenious solutions of difficult experimental problems." Dr. [REDACTED] explains that he collaborated with the [REDACTED] team and that the beneficiary's work "made possible a discovery and subsequent practical investigation of this new magneto-optic effect." [REDACTED] does not explain what practical investigations have been undertaken and the impact of this work.

[REDACTED] an associate staff scientist at the Weizmann Institute of Science in Israel, asserts that while previously working at the B. Verkin Institute for Low Temperature Physics and Engineering, he, along with the beneficiary, jointly investigated Quadratic Magnetic Rotation of Light Polarization, first discovered by the beneficiary. While [REDACTED] asserts that the beneficiary "made a significant contribution to the understanding of the physical causes of the antiferromagnetic domain formation, the mechanisms of their transformation, and the origin of the coercivity of the antiferromagnetic domain wall," he provides no examples of how the beneficiary's work has impacted the field.

[REDACTED] a senior lecturer at the University of the Witwatersrand, asserts that the beneficiary worked in [REDACTED] laboratory for several months in 2000. During this time, according to [REDACTED] the beneficiary "helped to establish [the laboratory's] CO₂ laser-heated DAC facility in a matter of several weeks," allowing the laboratory to attain high-pressures in the DAC with concurrent high temperatures of up to a few thousand degrees Celsius. [REDACTED] explains that the high pressure and high temperature were accomplished with a focused laser hot-spot in a pressurized sample cavity of the DAC. [REDACTED] asserts that the beneficiary

commissioned the station and performed all the necessary tests to demonstrate the feasibility of attaining the necessary conditions with only minor assistance from the National Laser Centre. [REDACTED] further states that the beneficiary also assisted in other research and development in [REDACTED] other laboratories. While it is clear that the beneficiary contributed to the goals of [REDACTED] laboratory, [REDACTED] does not explain how the beneficiary's work has impacted the field as a whole, such as examples of other independent laboratories adopting or otherwise utilizing the beneficiary's techniques or results. [REDACTED] notes in his initial letter that the beneficiary is now contributing to instability research specific to combustion processes, having published one article and presented his work in this area. In his second letter, however, [REDACTED] states that this record is only significant "relative to colleagues tackling a related but novel area in their field." At issue is not how the beneficiary's work compares with others changing their research focus but whether the beneficiary's original contributions are internationally recognized as outstanding.

[REDACTED] of the petitioner's Aerospace Engineering and School of Mechanical Engineering and the beneficiary's supervisor, discusses the beneficiary's work at the petitioning institution. Specifically, [REDACTED] states:

Since starting work [at the petitioning institution], [the beneficiary] has developed unique experimental setups and novel measurement techniques that permit us to obtain data that is critically needed for meeting our programs' objectives and improving our understanding of complex combustion processes. For example, [the beneficiary] has developed groundbreaking capabilities for taking high resolution, high speed movies of fuel jets breaking up into a spray in jet engines environments and a special probe that enables us to determine the manner in which the fuel spray changes as the combustor operator condition changes from sub to super critical, thus mimicking operating conditions in future rockets and military jet engines. This invaluable and critical research has already had a profound impact upon not only the crucial work being done at [the petitioning institution], but upon the field in general.

[REDACTED] does not, however, provide specific examples of the beneficiary's impact upon the field in general, such as independent laboratories or engine manufacturers utilizing the beneficiary's work.

In response to the director's request for additional evidence, the petitioner submitted new letters from [REDACTED] and [REDACTED]. None of these letters provide information that did not appear in their initial letters. The petitioner also, however, submitted letters from entities funding or collaborating with the petitioning institution.

[REDACTED] of Advanced Combustor Engineering at General Electric (GE), asserts that he met the beneficiary while visiting Georgia Tech to review the progress being made under a GE University Strategic Alliance program. [REDACTED] asserts that he was "very impressed by [the beneficiary's] creativity and the diagnostics capabilities and approaches that he has developed at" the petitioning institution. More specifically, [REDACTED] asserts that the beneficiary

“led the development of an experimental technique for characterization of the boundary layer near fuel injection devices in modern jet engine combustor,” based on the principal of Laser Doppler Velocimetry (LDV). According to [REDACTED], the beneficiary’s modifications to classic LDV increased the high spatial resolution from 10 div per millimeter to 80 div per millimeter. [REDACTED] speculates that the use of the beneficiary’s measurement technique will allow the team to acquire data that will enable the improvement of “existing aircraft engines design tools.”

In addition, according to [REDACTED] the beneficiary developed a micro-imaging technique for visualization of fuel jet disintegration into a spray in a high pressure combustor. [REDACTED] asserts that this novel approach using a high resolution camera, telescopic lens and short pulse copper vapor laser, has produced images that “have greatly enhanced our understanding of the dominant processes responsible for spray formation in jet engines” in that these sprays are formed by “shearing” of small droplets from the surface of the fuel jet.

[REDACTED] for Science and Technology Applications, LLC (STA), explains that STA is working with the petitioning institution’s Combustion Laboratory. [REDACTED] asserts that he visited the petitioning institution to ensure that they had the requisite capability to serve as a subcontractor to STA and was impressed with the facility’s capabilities, many of which he learned that the beneficiary developed. Specifically, [REDACTED] discusses five systems that can analyze combustion processes such as the transition from sub- to super- critical operation, velocity distributions very near walls in fuel injectors, spray formation in actual engines, physical processes in small physical spaces such as liquid fuel break up and the reaction rate in a large combustion zone of an afterburner system. In addition, [REDACTED] mentions a fiber optic system for the beam transmitting from a single high output stationary laser to several test cells at different laboratory locations, allowing several research teams to take advantage of a single laser. While [REDACTED] asserts that the images and movies produced by these systems are either the best or compare with the best, he does not explain how these systems have already impacted the field.

On appeal, the petitioner submits a letter from [REDACTED] of the Aerospace Engineering Department at The Ohio State University. [REDACTED] asserts that he previously held senior technical and managerial positions at GE Aircraft Engineers and, thus, followed the work of the petitioning institution supported by GE. [REDACTED] asserts that the beneficiary “is leading ongoing efforts that aim to develop new diagnostics techniques for aircraft engines, rockets and low emissions combustion systems.” [REDACTED] describes that work as novel but does not provide examples of how it has already impacted the field.

The only independent letters in the record are two similar letters from [REDACTED] an assistant professor at the University of Florida. [REDACTED] asserts that he has followed the beneficiary’s work “since his arrival at [the petitioning institution].” [REDACTED] further asserts that he now observes that the beneficiary has “many outstanding accomplishments” in low-temperature magnetism and optics “prior to his work at [the petitioning institution].” [REDACTED] appears to rely

on the beneficiary's list of publications in reaching this conclusion, stating: "From his list of publications, one can see that [the beneficiary] has contributed to several prestigious physics journals." As stated above, the publication of scholarly articles is a separate criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(F), and we will not presume that evidence of publication alone is also sufficient to meet this separate criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(E). [REDACTED] also relies on the beneficiary's receipt of the State Prize of the Ukraine in reaching his conclusion that the beneficiary has contributed to his field. As discussed above, however, the beneficiary was not awarded this prize. [REDACTED] continues that the beneficiary's work in the field of experimental techniques and diagnostics is of "particular interest to me." [REDACTED] explains that the beneficiary "built several unique facilities," including a Ruby and Nd-YAG setup for laser holography and a CO₂ laser setup for machining stress-free optical quartz parts for liquid He optical cryostats. [REDACTED] does not, however, assert that he has relied on the beneficiary's work to build similar facilities or that he has utilized the beneficiary's facilities.

Regarding the beneficiary's work at Georgia Tech, [REDACTED] asserts that he has "noticed that [the beneficiary] has been involved with [REDACTED] and coworkers in the area of combustion instability control." [REDACTED] praises the beneficiary's conference presentations that [REDACTED] has attended and concludes that the beneficiary has continued to perform "cutting edge research" at the petitioning institution. [REDACTED] does not claim that his own work has been impacted by the beneficiary's work or provide examples of the beneficiary's impact in the field.

On appeal, the petitioner submitted an online article on the U.S. Air Force's website dated October 31, 2008, after the date the petition was filed. The article reports that [REDACTED] team "may be closer to preventing" combustion instability from unstable sound waves. The article explains that previously researchers were unable to replicate the conditions in the laboratory that give rise to the spinning, destructive acoustic waves that encircle the combustion chamber. The article states that the team, with the beneficiary's help, used smart injectors to excite these acoustic waves in a laboratory combustor and used a high speed camera and fiber optics probe to capture the formation and movement of the sound waves within the engine. The articles notes that this technology showed the sound waves spinning around the engine. [REDACTED] asserts that *if* this method shows a means to prevent the phenomena from occurring, it could save the Air Force many millions of dollars. Similarly, an Air Force Office of Scientific Research manager stresses the importance of the research because it "could" result in the tools necessary to design instability-free rockets. This article postdates the filing of the petition and cannot demonstrate the impact of the beneficiary's contributions as of that date. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 4 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Moreover, this article focuses more on the potential impact of this work rather than how it has already impacted the field.

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.

According to the Department of Labor's Occupational Outlook Handbook, available on the Internet at <http://www.bls.gov/oco/ocos052.htm#nature> (accessed September 10, 2009 and incorporated into the record of proceeding), it is inherent to the field of physics to develop new devices and processes and even design research equipment. While the beneficiary has clearly contributed to the research and technology being performed and developed at the various institutions where he has worked, the record contains little evidence demonstrating his recognition and impact outside of his immediate circle of colleagues such as but not limited to independent references who provide detailed information about the impact of the beneficiary's work, evidence of frequent and wide citation or media coverage of the discovery of the quadratic magnetic rotation or the new devices developed in laboratory.

In light of the above, the record does not establish 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.

The Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at www.bls.gov/oco on September 10, 2009 and incorporated into the record of proceeding), 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. 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.

The director acknowledged the beneficiary's publication and citation record but concluded that while it represented a successful career, it was not consistent with international recognition as outstanding. On appeal, counsel asserts that the beneficiary has "published extensively in a series of highly respected international journals." We will not presume the influence of a given article from the reputation of the journal in which it appears. Rather, it is the petitioner's burden to demonstrate the impact of the individual article. While the beneficiary has accumulated a moderate number of citations in the aggregate, he has been publishing his work since the 1980's.² As discussed above, none of his articles, including those published as early as 1983, have garnered more than six citations individually, and many of those citations are self-citations by the beneficiary or his coauthors. Thus, we concur with the director that while the beneficiary's publication is consistent with an experienced researcher, it is not indicative of or consistent with international recognition as outstanding. Even if we were to conclude that the beneficiary meets the plain language of this criterion, and we do not, he would meet only one of the regulatory criteria, of which he must meet at least two.

² While experience alone can demonstrate exceptional ability under the lesser classification set forth at section 203(b)(2) of the Act, 8 C.F.R. § 204.5(k)(3)(ii)(B), extensive experience beyond the requisite three years is not a factor for outstanding researchers pursuant to section 203(b)(1)(B) of the Act.

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.