

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

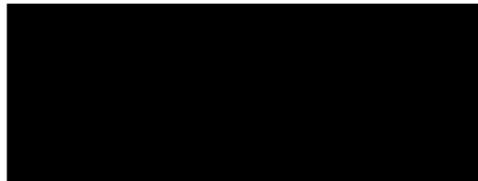
**PUBLIC COPY**

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] Office: TEXAS SERVICE CENTER Date: **AUG 03 2010**  
SRC 08 224 54709

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner is a manufacturer and seller of industrial chemicals. 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 and development engineer specialist. 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.

As will be explained below, the appeal will be rejected because it was not signed by the petitioner or the attorney of record as established by a properly filed Form G-28 Notice of Entry of Appearance as Attorney or Representative. Regardless, even if we did not reject the appeal, the petition is not approvable because it was not supported by the required job offer and because the petitioner has not demonstrated that the beneficiary enjoys the requisite international recognition as outstanding.

Upon review, both the Form I-290B Notice of Appeal and the Form I-140 visa petition were improperly filed. The forms are not signed by the petitioning employer, as required by regulation, but instead by attorneys purportedly on behalf of the petitioner. Significantly, the attorneys attempt to sign the visa petition under penalty of perjury on behalf of the petitioning employer. The record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative but this form is also devoid of any signature from the petitioning employer. Instead, an attorney signed this form on behalf of the petitioner. Finally, the introductory letter from the petitioner is also signed by an attorney purportedly on behalf of the petitioner. Thus, none of the required forms that relate to this individual beneficiary are signed by an official of the petitioning employer.

We acknowledge that the record contains a notarized document titled "Power of Attorney" dated March 3, 2008, signed by [REDACTED] the petitioner's International Relocation Partner. The document purports to authorize two attorneys "to sign on behalf of the Corporation all papers, documents, letters of support, and forms, to be submitted in connection with all filings with United States Citizenship and Immigration Services, United States Department of Labor, and United States Department of State (or the equivalent in the event of a name change and/or government reorganization) including, but not limited to, Form G-28, Form I-129 (with supplements), and Form I-140." On appeal, the petitioner submitted a similar notarized document signed by [REDACTED] U.S. Immigration Coordinator for the petitioner. This document provides template "signatures" for [REDACTED] by various attorneys. However, as will be discussed, these documents do not meet the signature requirements of any of the controlling U.S. Citizenship and Immigration Services (USCIS) regulations.

## I. Signatures on the Form I-290B and Form G-28

The appeal must be rejected because it was improperly filed. The regulation at 8 C.F.R. § 103.3(a)(2)(v) states:

*Improperly filed appeal -- (A) Appeal filed by person or entity not entitled to file it -- (1) Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

*(B) Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

An attorney for a petitioner may properly file an appeal on behalf of a petitioning entity in certain circumstances. However, the March 11, 2009 Form G-28 in this case does not establish that the attorney who filed the appeal represents the petitioner for the following two reasons: (1) it was not signed by the petitioner, and (2) it does not appear to have been signed by the attorney of record.

The regulation at 8 C.F.R. § 292.4(a) (1994) provides:

An appearance shall be filed on the appropriate form by the attorney or representative appearing in each case. During Immigration Judge or Board proceedings, withdrawal and/or substitution of counsel is permitted only in accordance with Sec. 3.16 and 3.36 respectively. During proceedings before the Service, substitution may be permitted upon the written withdrawal of the attorney or representative of record, or upon notification of the new attorney or representative. When an appearance is made by a person acting in a representative capacity, his or her personal appearance or signature shall constitute a representation that under the provisions of this chapter he or she is authorized and qualified to represent. Further proof of authority to act in a representative capacity may be required. *A notice of appearance entered in application or petition proceedings must be signed by the applicant or petitioner to authorize representation in order for the appearance to be recognized by the Service.*

(Emphasis added.) The regulation at 8 C.F.R. § 103.2(a)(3) provides that where a notice of representation on Form G-28 is “not properly signed, the application or petition will be processed as if the notice had not been submitted.”<sup>1</sup>

The Form G-28 accompanying the Form I-140 in this case was not signed by an employee of the petitioning entity. Instead, it appears to have been signed on behalf of the petitioning entity by a member of the law firm that submitted the Form I-140 and the appeal. However, the “Power of Attorney” document is not a properly executed Form G-28, and does not meet the requirements of the regulation at 8 C.F.R. § 292.4(a). The only properly executed Form G-28 in the record is one signed by the beneficiary. Thus, we can only recognize the attorney who filed the appeal as representing the beneficiary.

We acknowledge that the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2) provides the following with respect to appeals by attorneys without a proper Form G-28:

(i) *General.* If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is considered improperly filed. In such a case, any filing fee the Service has accepted will not be refunded regardless of the action taken.

(ii) *When favorable action warranted.* If the reviewing official decides favorable action is warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 to the official's office within 15 days of the request. If Form G-28 is not submitted within the time allowed, the official may, on his or her own motion, under Sec. 103.5(a)(5)(i) of this part, make a new decision favorable to the affected party without notifying the attorney or representative.

---

<sup>1</sup> Not only does the petitioner's signature on the Form G-28 authorize representation by an attorney or accredited representative in matters before USCIS, it serves as a consent to disclosure of information covered under the Privacy Act of 1974. The Immigration and Naturalization Service (legacy INS) first implemented the requirement that a petitioner or applicant sign the Form G-28 in the final rule “Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits” 59 Fed. Reg. 1455 (Jan. 11, 1994). In response to several commenters who suggested that the attorney need be the only signatory on the Form G-28, the agency explained that other commenters had properly noted that capture of the petitioner's signature on the Form G-28 “would address potential Privacy Act concerns.” The agency emphasized that the “petitioner must sign the Form G-28 to definitively indicate to the Service that he or she has authorized the person to represent him or her in the proceeding.” 59 Fed. Reg. 1455 (Jan. 11, 1994). A 2010 revision to the regulation at 8 C.F.R. § 292.4(a) retains the requirement that a petitioner or applicant sign the Form G-28. 75 Fed. Reg. 5225 (Feb. 2, 2010).

(iii) *When favorable action not warranted.* If the reviewing official decides favorable action is not warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 directly to the AAU. The official shall also forward the appeal and the relating record of proceeding to the AAU. The appeal may be considered properly filed as of its original filing date if the attorney or representative submits a properly executed Form G-28 entitling that person to file the appeal.

Requesting a proper Form G-28 signed by the petitioner in this matter, however, would serve no purpose as the underlying visa petition was not properly filed.

## **II. Signatures on the Form I-140 Visa Petition**

The Form I-140 petition identifies The Dow Chemical Company (Dow Chemical) as the employer and the petitioner. In this instance, no employee or officer of Dow Chemical signed the Form I-140 visa petition.

Based on a review of the record, including the signature template in the final "Power of Attorney," the only signatures on the visa petition are those of an individual who claims to represent the petitioner as counsel. As will be discussed, the record of proceeding contains multiple signature discrepancies which cast serious doubt on whether an attorney actually signed the Form I-140 and the accompanying Form G-28. Regardless, an individual other than an authorized official of Dow Chemical signed Part 8 of the Form I-140, in the block provided for "Petitioner's Signature," thereby seeking to file the petition on behalf of the actual United States employer. However, the regulations do not permit any individual who is not the petitioner to sign Form I-140 on behalf of a United States employer.

The regulation at 8 C.F.R. § 204.5(c) provides:

*Filing petition.* Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act. An alien, or any person in the alien's behalf, may file a petition for classification under section 203(b)(1)(A) or 203(b)(4) of the Act (as it relates to special immigrants under section 101(a)(27)(C) of the Act).

The regulation at 8 C.F.R. § 204.5(a)(1) provides that a petition is properly filed if it is accepted for processing under the provisions of 8 C.F.R. § 103. The regulation at 8 C.F.R. § 103.2(a)(2) provides:

*Signature.* An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the

time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an application or petition that is being filed with the BCIS is one that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.

An earlier version of the regulation at 8 C.F.R. § 204.1(d), as in effect in 1991, provided, in pertinent part:

Before the petition may be accepted and considered properly filed, the petitioner *or authorized representative* shall sign the visa petition (under penalty of perjury) in the block provided on the form.

(Emphasis added.) The regulation at 8 C.F.R. § 204.1(d) no longer includes language that would allow an authorized representative to sign a petition, although we acknowledge that this provision now relates only to immediate relative and family based petitions. In contrast, the filing requirements for employment-based immigrant petitions are now found at 8 C.F.R. § 204.5(a). The regulation at 8 C.F.R. § 204.5(a)(1) provides that such petitions must be accepted for processing under the provisions of 8 C.F.R. § 103. As stated above, the regulation at 8 C.F.R. § 103.2(a)(2) provides that the petitioner must sign the petition and does not include the “or authorized representative” language that previously applied to Forms I-140 up through 1991. Had legacy Immigration and Naturalization Service, now USCIS, intended to continue to allow authorized representatives to sign Form I-140 petitions, the language expressly allowing them to do so would not have been removed.

There is no regulatory provision that waives the signature requirement for a petitioning U.S. employer or that permits a petitioning U.S. employer to designate an attorney or accredited representative to sign the petition on behalf of the U.S. employer. The petition has not been properly filed because the petitioning U.S. employer, Dow Chemical, did not sign the petition. Pursuant to 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition. While the Service Center did not reject the petition, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at \*3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

USCIS and legacy INS have required that an authorized employee of the U.S. petitioning employer must sign the Form I-140 petition on behalf of the petitioning employer since 1991 when legacy INS removed the “or authorized representative” language. As will be discussed in more detail below, the requirement for a signature *under penalty of perjury* cannot be met by a “Power of Attorney” authorized signature. Practically, the signature requirement reflects a genuine Form I-140 program concern regarding the validity of the permanent job offers contained in Form I-140 petitions. To this end, the employer’s signature serves as certification under penalty of perjury that the petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.

The signature line on the Form I-140 for the petitioner provides that the petitioner is certifying, “under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct.” To be valid, 28 U.S.C. § 1746 requires that declarations be “subscribed” by the declarant “as true under penalty of perjury.” *Id.* In pertinent part, 18 U.S.C. § 1621, which governs liability for perjury under federal law, mandates that: “Whoever in any declaration under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true is guilty of perjury.” 18 U.S.C. § 1621.

The probative force of a declaration subscribed under penalty of perjury derives from the signature of the declarant; one may not sign a declaration “for” another. Without the petitioner’s actual signature as declarant, the declaration is completely robbed of any evidentiary force. *See In re Rivera*, 342 B.R. 435, 459 (D. N.J. 2006); *Blumberg v. Gates*, No. CV 00-05607, 2003 WL 22002739 (C.D.Cal.) (not selected for publication).

The AAO notes that an entirely separate line exists for the signature of the preparer declaring that the form is “based on all information of which [the preparer has] knowledge.” Thus, the form I-140 itself acknowledges that a preparer who is not the petitioner cannot attest to the contents of the petition and supporting evidence. Rather, the preparer may only declare that the information provided is all the information of which he or she has knowledge. Moreover, we note that the unsupported assertions of an attorney do not constitute evidence. *Matter of Obaigbena*, 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). Thus, an attorney’s unsupported assertions on the petition and the job offer have no evidentiary value.

The AAO notes that the integrity of the immigration process depends on the actual employer signing the official immigration forms under penalty of perjury. Allowing an attorney to sign all petitions, notices of appearance (for the same attorney), appeals, and all employment offers on behalf of the petitioner based on a broad assignment of authorization would leave the immigration system open to fraudulent filings. While we do not allege any malfeasance in this matter, we note prior examples where attorneys have been convicted of various charges, including money laundering and immigration fraud, after signing immigration forms of which the alien or employer had no knowledge. *United States v. O’Connor*, 158 F.Supp.2d 697, 710 (E.D. Va. 2001); *United States v. Kooritzky*, Case No. 1:02CR00502 (E.D. Va. December 11, 2002).

Finally, the AAO notes that the signature of the attorney of record does not appear to be authentic. A review of the record reveals that the required signatures of the attorney of record on the July 7, 2008 Form G-28 and the related July 14, 2008 Form I-140 are visibly different from her signature on a subsequent Form G-28 dated June 9, 2009. The two versions of the signature are completely unlike. The instructions to the Form G-28 provide that an attorney or representative’s signature on the Form G-28 “shall constitute a representation that under the provisions of this chapter he is authorized and

qualified to represent.” *See also* 8 C.F.R. § 1003.102(j)(1) (“The signature of a practitioner on any filing . . . or other document constitutes certification by the signer that the signer has read the filing . . . and that, to the best of the signer’s knowledge, information, and belief, . . . the document is well-grounded in fact . . . .”)

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* It is unclear which of the attorney signatures, if any, is valid. If one or both are not the signature of the attorney of record, it is also unclear who actually signed. There is no provision that would allow an attorney or representative to delegate his or her signature authority.

### III. Merits of the Petition

#### A. 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 1113 (8<sup>th</sup> ed. 2004) 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.

Part 6 of the petition, which was not signed by the petitioner, indicates that the proposed employment was a permanent position. The petitioner submitted a letter purportedly from [REDACTED] but signed by an attorney pursuant to a “Power of Attorney” agreement. This letter, addressed to USCIS, expressing a “wish to offer” the beneficiary a permanent position. This document does not constitute a job offer from the petitioner to the beneficiary. On February 13, 2009, the director requested “an offer of employment in the form of an original, signed letter from: the petitioner to the beneficiary offering the beneficiary a permanent research position in the beneficiary’s research field.”

In response, the petitioner submitted a March 12, 2009 letter purportedly from [REDACTED] but actually signed by an attorney pursuant to a “Power of Attorney” agreement. The letter is once again addressed to USCIS and purports to confirm that the petitioner “continues to offer” the beneficiary a regular full-time position.

The petitioner has not submitted the primary required initial evidence, the original job offer predating the filing date of the petition. 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. 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 does not exist or is unavailable. The petitioner has not sufficiently explained why we should accept attestations purportedly from the petitioner but signed by an attorney about the terms and conditions in a document in lieu of the document itself. Even if we recognized the attorney signing the letter as the attorney of record, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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).

The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Thus, the petitioner's failure to submit the requested job offer is alone grounds for denial of the petition.

*B. International Recognition as Outstanding*

Eligibility for classification under section 203(b)(1)(B) of the Act is limited to aliens recognized internationally as outstanding in a specific academic area. Section 203(b)(1)(B)(i) of the Act.

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 the following six criteria, of which the beneficiary must submit evidence qualifying under at least two.

- (A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;
- (B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;
- (C) 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;
- (D) 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;
- (E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or
- (F) Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under a similar classification set forth at section 203(b)(1)(A) of the Act. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion. With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while U.S. Citizenship and Immigration Services (USCIS) may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent “final merits determination.” *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations.<sup>2</sup> Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

*Id.* at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination.<sup>3</sup> While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court's reasoning persuasive to the classification sought in this matter. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See 8 C.F.R. § 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003) (recognizing the AAO's *de novo* authority).

The petitioner submitted published material about the alien's work in the form of press releases, patents, letters discussing the beneficiary's original research in the field, scholarly articles and citations of those articles.

A final merits determination would have to take into account that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria

---

<sup>2</sup> Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) (comparable to 8 C.F.R. § 204.5(i)(3)(i)(D)) and 8 C.F.R. § 204.5(h)(3)(vi) (comparable to 8 C.F.R. § 204.5(i)(3)(i)(F)).

<sup>3</sup> The classification at issue in *Kazarian*, section 203(b)(1)(A) of the Act, requires qualifying evidence under three criteria whereas the classification at issue in this matter, section 203(b)(1)(B) of the Act, requires qualifying evidence under only two 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)).

While about the beneficiary's work, the press releases do not mention the beneficiary by name other than to list him as a postdoctoral associate who participated in the work at the end of the release. Moreover, press releases are promotional in nature and carry less weight than independent journalistic coverage of the beneficiary's work.

Regarding the beneficiary's original research, it does not appear to rise to the level of a contribution to the academic field as a whole. The petitioner submitted published materials about a collaboration between [REDACTED] where the beneficiary obtained his Ph.D., but the beneficiary's patents are all with collaborators at Rice University. While the beneficiary has been moderately cited, a review of the citations themselves reveals that the citations primarily reference his work as one of several studies in the area and only those citations from collaborators purport to rely on his work. The independent references acknowledge a familiarity with the beneficiary's work, but not a reliance on it. While the letters as a whole attest to the beneficiary's outstanding abilities, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.<sup>4</sup>

Even if the beneficiary's work amounted to original research contributions, the beneficiary is a chemical engineer. The Department of Labor's Occupational Outlook Handbook, available online at [www.bls.gov/oco](http://www.bls.gov/oco), states that chemical engineers "design equipment and processes for large-scale chemical manufacturing." See <http://www.bls.gov/oco/ocos027.htm#nature>, accessed July 29, 2010 and incorporated into the record of proceeding. Merely demonstrating that the beneficiary performed the type of original designs inherent to the field does not set him apart from others in his field based on his eminence and distinction. Similarly, demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research is not useful in setting the beneficiary apart in the academic community through eminence and distinction based on international recognition. 56 Fed. Reg. at 30705. Research work that is unoriginal would be unlikely to secure the beneficiary a master's degree, let alone classification as an outstanding researcher. 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."

Finally, while the beneficiary has authored scholarly articles, the beneficiary's citation history is a relevant consideration as to whether an alien's publication record is indicative of his recognition beyond his own circle of collaborators. See *Kazarian*, 596 F. 3d at 1122. The citations of record do

---

<sup>4</sup> *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

not rise to a level consistent with international recognition as outstanding. Significantly, the record contains evidence that the beneficiary's field is amenable to becoming widely cited. Specifically, in response to the director's request for additional evidence, the petitioner submitted evidence of two articles citing the beneficiary's work that in turn were cited 84 and 50 times, far more than the beneficiary's individual articles had been cited as of the date of filing.

In light of the above, the evidence, considered in the aggregate, does not establish that the beneficiary enjoys international recognition as outstanding.

#### **IV. Conclusion**

The appeal has not been filed by the petitioner, or by any entity with legal standing in the proceeding, but instead appears to have been signed by an attorney who represents the beneficiary. Therefore, the appeal has not been properly filed, and must be rejected. Moreover, the underlying petition also was not properly filed. Thus, further action on the petition cannot be pursued.

**ORDER:** The appeal is rejected.