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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **AUG 20 2010**

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:

[REDACTED]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 medical 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 associate. The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher.

On appeal, counsel submits a brief and additional evidence. 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. Specifically, when we simply "count" the evidence submitted, the petitioner has submitted qualifying evidence under one of the regulatory criteria, scholarly articles pursuant to 8 C.F.R. §§ 204.5(i)(3)(i)(F), two of which are required for eligibility. Moreover, as explained in our final merits determination, the evidence that technically qualifies under this criterion reflects routine duties or accomplishments in the field that do not, as of the date of filing, set the beneficiary apart in the academic community through eminence and distinction based on international recognition, the purpose of the regulatory criteria.¹ *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)).

I. Law

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 --

¹ The legal authority for this two-step analysis will be discussed at length below.

(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 April 15, 2009 to classify the beneficiary as an outstanding researcher in the field of neuroscience. 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 petitioner obtained her Ph.D. on December 16, 2006, less than three years before the petition was filed. As such, the beneficiary must demonstrate that her research conducted while working on that degree has been recognized within the academic field as outstanding if that experience is to count towards the beneficiary's three years of experience.

The regulation at 8 C.F.R. § 204.5(i)(3)(i) states that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The regulation lists 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.² 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

² 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)).

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.³ 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 (9th Cir. 2003) (recognizing the AAO’s *de novo* authority).

II. Analysis

A. Evidentiary Criteria⁴

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

Initially, counsel discussed the beneficiary’s scholarship and pre-doctoral fellowship as evidence of the petitioner’s original research contributions pursuant to 8 C.F.R. § 204.5(i)(3)(i)(E). As counsel characterized them as “significant prizes and awards,” the director discussed them under 8 C.F.R. § 204.5(i)(3)(i)(A), concluding that awards limited to students are not “major prizes or awards for outstanding achievement.” Although counsel had never previously asserted that the scholarship and pre-doctoral fellowship were being submitted under 8 C.F.R. § 204.5(i)(3)(i)(A), counsel now asserts on appeal that the director erred in concluding that the evidence is insufficient under this regulatory criteria.

The petitioner submitted a March 31, 2004 letter from the Dean of Colorado State University’s College of Veterinary Medicine and Biomedical Sciences confirming that the beneficiary had been selected for a scholarship for the 2004-2005 academic year. The letter invites the beneficiary to a “Scholarship and Award Reception” to “honor” the beneficiary for her “achievements.” The petitioner also submitted a November 18, 2003 email from the American Heart Association (AHA) advising the beneficiary that the Pacific Mountain Affiliate has reviewed the beneficiary’s application and had ranked it sufficiently

³ 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.

⁴ The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

high to continue the application process. A second email dated November 22, 2005 advising that the Pacific Mountain Affiliate had approved "activation of a Predoctoral Fellowship" to fund a specific project. The email indicates the success rate for funding was 18 percent.

On appeal, counsel discusses only the predoctoral fellowship from the AHA. Counsel notes how highly the beneficiary's application was ranked and that only 18 percent of applicants receive funding. Counsel further asserts that Ph.D. students are already conducting highly advanced levels of research and notes that the regulation at 8 C.F.R. § 204.5(i)(3)(ii) expressly acknowledges that Ph.D. level research may be recognized as outstanding. Finally, counsel references the positive reviews of the beneficiary's proposal and notes that the work completed under this award had been accepted for publication.

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).

While the regulation contemplates that research performed while completing an advanced degree can be recognized as outstanding, the work must be so recognized "in the academic field" rather than at one particular institution. A scholarship from the school the beneficiary was attending is not a major award or prize as contemplated by 8 C.F.R. § 204.5(i)(3)(i)(A). At issue is not whether the beneficiary was a student when she won the award but the limited nature of the pool of competitors.

Regarding the beneficiary's research grant from the AHA, research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(A).

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

The petitioner initially submitted evidence that the beneficiary is a member of the Society for Neuroscience (SFN) and evidence that the American Epilepsy Society (AES) accepted the beneficiary's abstract as a poster presentation and that she registered for their conference. While the petitioner also submitted an open invitation to join AES on the society's website, the petitioner did not submit evidence of the beneficiary's membership in AES or her membership category. Counsel asserted that AES' acceptance of the beneficiary's abstract for a poster presentation demonstrates that "not only is the Beneficiary a member of this esteemed association; she also holds a distinct position within it as someone to whom the institution turns to when in need of an expert presenter."

In response to the director's request for the bylaws or constitutions documenting the membership criteria of the above societies, counsel reasserts that the beneficiary's membership "is not simply on par with other members" given that her "membership is distinct by virtue of the presentation of her original research and work." Counsel also references the beneficiary's "membership" in the petitioner's seminar series and her previous "membership" on Colorado State University's Department of Biological Science Seminar Committee. 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 record contains no evidence of the beneficiary's "membership" on seminar committees at Colorado State University or at the petitioning institution.

The petitioner submitted the bylaws for SFN reflecting that regular membership is open to any "person who has done research relating to the neurosciences." The petitioner also submitted the bylaws for AES as well as information from its website about membership. The bylaws state that active members "shall be elected from professional workers in epilepsy or closely related fields with an active interest in the objectives and work of the Society." The internet materials reflect that active membership is open to individuals "involved in clinical, research, or other professional aspects of epilepsy or closely related fields who have an active interest in the objectives and work of the Society."

The director concluded that the petitioner had not established that either SFN or AES requires outstanding achievements of its members. On appeal, counsel asserts:

The American Epilepsy Society admitted the Beneficiary to membership based on her strong recognition and groundbreaking contributions to her field. The AES seeks to acquire and disseminate research and knowledge from its numerous members, and the Beneficiary's unique accomplishments in this realm rendered her a desirable applicant. The Beneficiary gained membership based on her extensive and outstanding research in her field, which has earned her a reputation as one with a distinct grasp of the science behind epileptic problems.

Regarding the Beneficiary's membership in the Society for Neuroscience, USCIS states that because the Beneficiary is a Regular Member and the bylaws state that regular membership is open to those who have done research relating to the neurosciences, the

Beneficiary cannot be deemed outstanding on this basis. However, we respectfully request that such a requirement for membership does not exist in a vacuum. Rather, the neurosciences are a particularly complex and specialized field and experts such as the Beneficiary, once accepted as members, are continually selected to present their original and groundbreaking research. Indeed, as was evidenced in the original submission and RFE response, the Beneficiary has presented her original research at the Society for Neuroscience on multiple occasions. East presentation required an application and approval of the submission.

As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Counsel's implication that the membership requirements for SFN and AES are more stringent than they appear in the bylaws is unsupported.

The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B) requires membership in associations that require outstanding achievements of their members. USCIS may not unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *Kazarian*, 596 F.3d at 1221, citing *Love Korean Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir.2008). Thus, the beneficiary's opportunities and achievements as a member are irrelevant under 8 C.F.R. § 204.5(i)(3)(i)(B). We also need not address whether such evidence could be considered "comparable" as the regulation at 8 C.F.R. § 204.5(i)(3) does not permit the submission of "comparable" evidence. *Compare* 8 C.F.R. § 204.5(h)(4). Moreover, the beneficiary's academic field is biological sciences. Counsel's implication that the mere capability to perform research in the neurosciences is an outstanding achievement for a biological scientist is unsupported.

As stated above, the only issue is the membership requirements for SFN and AES. As such, the fact that these societies have accepted the beneficiary's abstracts for presentation is irrelevant.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B).

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

While neither the petitioner nor counsel has ever asserted that the petitioner was submitting evidence under 8 C.F.R. § 204.5(i)(3)(i)(C), we acknowledge the submission of evidence that researchers have cited the beneficiary's work. Articles that cite the beneficiary's work, however, are primarily about the author's own work or a general review of the field, not the beneficiary's work. As such, they cannot be considered published material about the beneficiary's work.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C).

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

The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(E) does not require that the beneficiary's contributions themselves be internationally recognized as outstanding. That said, the plain language of the regulation does not simply require original research, but an original "research contribution." Had the regulation contemplated merely the submission of original research, it would have said so, and not have included the extra word "contribution." In addition, as we review the evidence submitted under 8 C.F.R. § 204.5(i)(3)(i)(E), we must keep in mind that, because the beneficiary had not acquired three years of postdoctoral experience as of the date of filing, the petitioner must demonstrate that her doctoral research has been recognized in the academic field as outstanding.

Moreover, the plain language of the regulation requires that the contribution be "to the academic field" rather than an individual laboratory or institution. We simply note that the regulations include a separate criterion for scholarly articles at 8 C.F.R. § 204.5(i)(3)(i)(F). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly articles.

As of the date of filing, the beneficiary had authored five published articles. Counsel references the beneficiary's self-serving curriculum vitae and email correspondence as evidence of the beneficiary's six poster presentations as well as a book chapter. 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)). The record contains emails accepting the beneficiary's abstracts for poster presentations at an AES conferences in 2008 and the Conference on Mechanisms of Epilepsy and Neuronal Synchronization in 2008. The record does not document the remaining poster presentations listed on the beneficiary's curriculum vitae or the book chapter. Regardless, while the emails confirm that the conference chair approves poster presentations, the record contains no evidence that poster presentations are so prestigious as to be presumed to be contributions to the field as a whole. Far more persuasive would be evidence of how these presentations have impacted the field after being displayed at the various conferences.

The petitioner initially submitted evidence that three of the beneficiary's articles had been minimally cited. We acknowledge that the number of citations has grown since the petition was filed. The petitioner, however, must establish that the beneficiary's work had contributed to the field as a whole as of the date of filing the petition. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). All of the case law on this issue focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l. Comm'r. 1977); *Matter of Katigbak*, 14 I&N Dec. at 49; see also *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Comm'r. 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that we cannot "consider facts that come into being only subsequent to the filing of a petition.")

Consistent with these decisions, a petitioner cannot secure a priority date in the hope that the beneficiary's recently published and minimally cited research will subsequently prove influential. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008). Moreover, a review of the citing articles provided in response to the director's request for additional evidence reveals that at least half of the other articles citing the beneficiary's most frequently cited article prior to the date of filing were self-citations by coauthors, leaving an even smaller number of independent citations. While self-citation is a normal and expected process, it cannot demonstrate the beneficiary's influence beyond her immediate circle of colleagues.

On appeal, counsel asserts that, absent statutory or regulatory guidance on the matter, no minimum number of citations can "satisfactorily be established as the magic tipping point at which an author is internationally recognized as outstanding." Counsel is correct that neither the statute nor the regulations require the submission of citations. As stated above, USCIS may not unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *Kazarian*, 596 F.3d at 1221, citing *Love Korean Church*, 549 F.3d at 758. Thus, USCIS cannot require the submission of citations, let alone a specific number of citations. Moreover, requiring a specific number of citations would not be helpful as articles in some fields may routinely garner a large number of citations while articles in other fields may rarely garner even moderate citation.⁵

Nevertheless, it is the petitioner's burden to submit evidence establishing that the beneficiary's original research constitutes a contribution to the field as a whole. While such evidence is not limited to citations, citations often provide a useful window into the field's unsolicited response to the beneficiary's work. The minimal number of independent citations as of the date of filing, while not precluding a finding that the beneficiary has contributed to the field as a whole, is not persuasive evidence of such contributions. Moreover, the petitioner has not submitted evidence that the citations themselves are particularly notable, such as by submitting representative samples of pages from the independent articles citing the beneficiary's work.⁶ Once again, the lack of copies of a representative sample of the citation pages does not preclude eligibility. We merely note the lack of one more type of evidence that could establish how the beneficiary's work is being applied if, in fact, it is.

As discussed above, the beneficiary was awarded a competitive predoctoral research grant from the AHA. While this grant establishes the quality of her proposal and the promising nature of her research, it cannot establish that the funded research, once completed, had already contributed to the field as a

⁵ In this case, the record contains citation evidence for several articles not authored by the beneficiary, with some of those articles garnering 40 to 60 citations. While these articles have had more time to accrue citations, they demonstrate that the beneficiary's field can generate a large number of citations.

⁶ For example, citations confirming the use of the beneficiary's model by independent research teams would be more persuasive than a citation that cites the beneficiary's work as one of several articles in support of background propositions.

whole as of the date of filing, the date as of which the petitioner must establish the beneficiary's eligibility. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Finally, we acknowledge that the petitioner submitted several reference letters supporting the petition. Dr. [REDACTED] the beneficiary's Ph.D. advisor at Colorado State University, discusses her work there. Specifically, Dr. [REDACTED] asserts that the beneficiary "helped to generate an animal model for perinatal hypoxicischemic injury that develops chronic epilepsy" by "tremendously" extending the previous work of other researchers. He speculates that the beneficiary's three major projects "will have significant impact." As explained by Dr. [REDACTED] the beneficiary's first project involved an analysis of neurological tissue and showed that the animal model "displays many of the histopathological characteristics seen in human neonates with hypoxic-ischemic encephalopathy." Dr. [REDACTED] does not discuss the specific impact of this work individually.

Dr. [REDACTED] continues that the beneficiary's second project tracked the seizure history of rats for five months after a hypoxic-ischemic "insult," establishing this procedure as "an outstanding model of pediatric epilepsy with a low seizure rate, similar to what is seen in humans, yet the model is progressive with seizures occurring predominantly in clusters, which is also very similar to what is seen in humans." Dr. [REDACTED] predicts that this model "should allow researchers, including [the beneficiary], to begin to develop new therapies to prevent epilepsy after neonatal brain injury." Dr. [REDACTED] provides no examples of independent researchers using or adapting the beneficiary's model for their own work.

Next, Dr. [REDACTED] states that the beneficiary's "third project was aimed at analyzing the electrophysiological mechanism underlying epileptogenesis in neocortical slices." Dr. [REDACTED] opines that this work "will represent a major contribution to our understanding of one of the primary forms of pediatric epilepsy and mental retardation, and will encompass histopathological changes, chronic electrophysiological studies, and the analysis of cellular mechanisms of epileptogenesis in vitro." While we do not question Dr. [REDACTED]'s sincerity or expertise, his informed opinion as to the future impact of the beneficiary's work cannot establish that this work is already a contribution to the field as a whole.

Finally, Dr. [REDACTED] explains that, as of the date of his letter, the beneficiary had only published articles regarding her first project but he predicts that once all of this work is published, it "will have an enormous impact on the field, and will lead to new therapies." The beneficiary's work must constitute a contribution to the field as a whole as of the date of filing the petition. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Dr. [REDACTED] does not explain or provide examples of the beneficiary's influence as of that date. While her work may hold great promise, we cannot conclude, without other evidence of widespread dissemination, that research that has yet to be published can already be a contribution to the field.

Dr. [REDACTED], a member of the beneficiary's graduate advisory committee, provides similar information. Specifically, he asserts that the beneficiary's model "is now established as an excellent one to utilize pharmacological approaches to inhibit seizures" and predicts that her work "has great potential for developing drugs to improve the health of American's [*sic*] who have suffered perinatal

brain injury due to oxygen deprivation during fetal development.” Once again, attestations as to the potential of the beneficiary’s work is insufficient.

Dr. [REDACTED] an associate professor at Colorado State University, states generally that the beneficiary’s work on epilepsy “has gained her both national and international recognition in the medical and neuroscience communities.” Merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof.⁷ Similarly, USCIS need not accept primarily conclusory assertions.⁸ Dr. [REDACTED] provides no examples of the beneficiary’s work being utilized or otherwise applied in the field beyond her immediate circle of colleagues.

While we will next consider the letters discussing the beneficiary’s postdoctoral work, the above letters do not establish that the beneficiary’s Ph.D. research is recognized in her academic field as outstanding. Rather, her close colleagues merely express their opinions as to its future impact. As such, the petitioner has not demonstrated that the beneficiary has the necessary three years of qualifying experience.

Dr. [REDACTED] an associate professor at the petitioning institution, discusses the beneficiary’s work with a neonatal mouse stroke model and on Sturge-Weber syndrome at the petitioning institution in Dr. [REDACTED]’s laboratory. While Dr. [REDACTED] praises the beneficiary’s publication history, professionalism, and the uniqueness of her credentials, Dr. [REDACTED] does not provide examples of contributions to the field as a whole. Rather, she concludes that the beneficiary “is trained [and poised] to make important future discoveries to guide future biomedical research in the field of pediatric epilepsy.” Regarding the beneficiary’s unique credentials, the issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *New York State Dep’t of Transp.*, 22 I&N Dec. 215, 221 (Comm’r. 1998).

Dr. [REDACTED] an associate professor at Johns Hopkins university, discusses the importance of the beneficiary’s area of research and her unique background. As stated above, the availability of similarly-trained workers in the United States is under the jurisdiction of the Department of Labor. *Id.* Dr. [REDACTED] also discusses the beneficiary’s current goal of “setting up a rodent EEG laboratory for short-term and chronic recordings in the immature rodent brains.” While Dr. [REDACTED] concludes that the project will be an asset to the petitioning institution and will help address important questions, he does not explain how it is already a contribution to the field as a whole.

Dr. [REDACTED] Chair for Pediatric Neurology at the petitioning institution, asserts that the beneficiary brought her expertise in rat epilepsy models to the petitioning institution and, given the petitioner’s status as one of the world’s leading clinical and research institutions for children with brain disorders, the beneficiary is in a “unique position to become a world leader in this area.” He further asserts that the beneficiary has “markedly accelerated progress” in Dr. [REDACTED]’s laboratory and

⁷ *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.).

⁸ *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

“directly contributed” to a successful grant application. While this testimony once again stresses the promising nature of the beneficiary’s work, Dr. ██████████ does not explain how the beneficiary has already contributed to the field as a whole.

On appeal, the petitioner submits a letter from Dr. ██████████, President and Chief Executive Officer of the petitioning institution. Dr. ██████████ discusses the importance of the beneficiary’s field and expectations for the beneficiary’s future results. As examples of the beneficiary’s past contributions, Dr. ██████████ notes that the beneficiary has presented abstracts at conferences and notes the articles listed in her curriculum vitae. He does not explain, however, how the research reported in the abstracts and articles is being applied in the field beyond the institutions where the beneficiary has worked. Dr. ██████████ then discusses the peer reviews of the beneficiary’s scholarly articles. Every article published in a peer-reviewed journal presumably receives a positive review if it is eventually published. As discussed above, the authorship of scholarly articles is a separate evidentiary category of evidence set forth at 8 C.F.R. § 204.5(i)(3)(i)(F) and cannot, by itself, also serve as qualifying evidence under 8 C.F.R. § (i)(3)(i)(E). While positive peer reviews may demonstrate the promising nature of the research, they do not establish the ultimate contribution to the field resulting from the research.

The opinions of experts in the field are not without weight and have been considered above. 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, as we have done above, evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). 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)).

The letters considered above primarily contain speculation as to how the beneficiary’s research might impact the field in the future without providing specific examples of how those contributions have already influenced the field. The petitioner submitted no independent letters or other evidence establishing that the beneficiary’s research is being applied beyond the institutions where she has studied or worked. Ultimately, the evidence demonstrates that the beneficiary’s work has promise and potential, but had yet to rise to the level of contributions to the field as a whole as of the date of filing the petition.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(E).

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

As stated above, the petitioner submitted five articles authored by the beneficiary published prior to the date of filing, the date as of which the petitioner must establish the beneficiary's eligibility. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Thus, the beneficiary has submitted evidence that qualifies under 8 C.F.R. § 204.5(i)(3)(F).

In light of the above, the petitioner has not submitted evidence that meets two of the criteria that must be satisfied to establish the minimum eligibility requirements for this classification. Specifically the only qualifying evidence relates to 8 C.F.R. § 204.5(i)(3)(i)(F). Nevertheless, we will conduct a final merits determination that considers whether the evidence is consistent with the statutory standard in this matter, international recognition as outstanding. Section 203(b)(1)(B)(i) of the Act.

B. Final Merits Determination

It is important to note at the outset 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 beneficiary's scholarship and research grant demonstrate that the beneficiary excelled academically and prepared a quality research proposal with promise. While this evidence may set the beneficiary apart from other doctoral students, it does not establish that she enjoys international recognition, especially as the scholarship was awarded by her school and the research grant was awarded by a regional affiliate of the AHA.

The beneficiary's professional memberships are commensurate with her occupation. While the beneficiary may work in a complex field, her professional memberships do not set her apart from other members of her field through eminence and distinction based on international recognition, the purpose of the regulatory criteria. 56 Fed. Reg. at 30705.

Regarding the beneficiary's original research, as stated above, it does not appear to rise to the level of a contribution to the academic field as a whole. 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, the purpose of the regulatory criteria. 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."

While the beneficiary has published articles, the Department of Labor's Occupational Outlook Handbook (OOH), 2008-2009 (accessed at www.bls.gov/oco on August 12, 2010 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. 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.* Moreover, the OOH states specifically with respect to the biological sciences that a "solid record of published research is essential in obtaining a permanent position performing basic research, especially for those seeking a permanent college or university faculty position." See www.bls.gov/oco/ocos047.htm. 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 and, in fact, is a necessary precursor to obtaining such a position.

Moreover, the beneficiary's citation history is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond her own circle of collaborators. See *Kazarian*, 596 F.3d at 1122. The record contains no evidence that the beneficiary's articles had been even moderately cited as of the date of filing the petition or other comparable evidence that demonstrates the beneficiary's publication record is consistent with international recognition.

Finally, counsel's assertion on appeal that the petitioner's distinguished reputation alone demonstrates that the beneficiary must be internationally recognized as outstanding or it would not have hired her is not persuasive. The regulation at 8 C.F.R. § 204.5(i)(3) does not include a category of evidence regarding the reputation of the petitioner. As stated above, the regulation does not permit the submission of "comparable" evidence. Thus, we cannot infer eligibility from affiliation with an internationally recognized employer in the absence of qualifying evidence that meets the plain language of at least two regulatory categories of evidence and, through a final merits determination, is indicative of or consistent with international recognition as outstanding. For the reasons discussed above, the petitioner has not submitted such evidence.

In light of the above, our final merits determination reveals that the beneficiary's qualifying evidence, publishing articles and an alleged book chapter that had not garnered even a moderate number of citations as of the date of filing or other response in the academic field, does not set the beneficiary apart in the academic community through eminence and distinction based on international recognition, the purpose of the regulatory criteria. 56 Fed. Reg. at 30705. Indeed, the record lacks evidence that members of the academic field outside of the beneficiary's immediate circle of colleagues are even aware of her work.

III. Conclusion

The petitioner has shown that the beneficiary is a talented researcher, who has won the respect of her collaborators, employers, and mentors. The record, however, stops short of elevating the beneficiary to

the level of an alien who is internationally recognized as an outstanding researcher. 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.