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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 and Immigration Services

B3

FILE: Office: TEXAS SERVICE CENTER Date: DEC 21 2010

IN RE: Petitioner:
Beneficiary:

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:

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 $630. 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,

Marc Johnson

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 dismissed.

The petitioner is a manufacturer. 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 laser applications research engineer. 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 established the beneficiary's eligibility for the classification sought.

At the outset, we acknowledge that the beneficiary is also the beneficiary of two approved Form I-140 petitions filed pursuant to section 203(b)(2) of the Act, a lesser classification than the one at issue in this matter. This decision is without prejudice to those other petitions.

**I. Law**

Section 203(b)(1) 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 October 16, 2008 to classify the beneficiary as an outstanding researcher in the field of laser testing, micro-machining and processing. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching and/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 beneficiary received his Ph.D. on December 11, 2006, less than three years before the petitioner filed the petition on October 16, 2008. According to the petitioner's job offer to the beneficiary, the beneficiary began working for the petitioner on September 5, 2006, 25 months before the petition was filed. Even if we considered the beneficiary's employment with the petitioner prior to December 2006 when the beneficiary received his Ph.D., the petitioner must establish another 11 months of qualifying research or teaching experience. 8 C.F.R. § 204.5(i)(3)(ii).

The beneficiary indicated on his self-serving curriculum vitae that he worked as a research scientist for [redacted] from September 2000 through July 2003. 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)). Moreover, the regulations at 8 C.F.R. §§ 204.5(g)(1) and 204.5(i)(3)(ii) provide that evidence of experience shall be in the form of letters from current or former employers. The petitioner submitted a letter from [redacted] of the School of Mechanical Engineering at Jiangsu

University, asserting that the beneficiary "joined our department as a lecturer and research scientist upon completing his graduate study." does not, however, provide the beneficiary's dates of employment. Thus, the record does not establish that the beneficiary gained at least 11 months of experience at that institution.

In light of the above, the petitioner has not submitted the required initial evidence to establish that the beneficiary has the necessary three years experience outside his pursuit of an advanced degree. If the petitioner intends to include the beneficiary's Ph.D. research as qualifying research experience, it must establish that this work has been recognized within the academic field as outstanding. 8 C.F.R. § 204.5(i)(3)(ii). According to that regulation, the inclusion of research while pursuing an advanced degree as qualifying research experience is the exception, not the rule.

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;
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> (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.

On appeal, counsel asserts that the director erred in evaluating the significance of the evidence submitted under the various criteria beyond the plain language of those criteria. 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.[1] 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.[2] 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).

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[1] 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)).

[2] 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.

## II. Analysis

*A. Evidentiary Criteria*[3]

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

The petitioner submitted a First Prize Certificate listing the beneficiary as a key contributor to an award-winning project. The certificate bears the seal of the China Mechanical Engineering Society. The petitioner submitted evidence that the China Mechanical Engineering Society, along with the China Machinery Industry Association, established the China Machinery Industry Science and Technology Award, a national and comprehensive award in the machinery industry. According to the materials submitted, the organizers issue the award annually and announce the awards "in the Machinery Industry's Bulletin, in the news media and on the websites of the China Machinery Industry Association and the China Mechanical Engineering Society." The materials also reflect that 445 projects competed for the 2004 award. The materials list Jiangsu University as the "Research Group/Individual" responsible for the project listed on the beneficiary's certificate. Finally, the materials state that the organizers may issue 15 first place awards. On appeal, the petitioner submitted evidence purportedly from the "China Machinery Net" website indicating that the organizers issued 15 first place prizes, 81 second place prizes and 136 third place prizes, for a total of 232 awards. While the website lists the project to which the beneficiary contributed as one of the first place winners, the translation does not suggest that the beneficiary's name appears on this website.

The petitioner also submitted the beneficiary's [redacted] Evaluation Committee of Jiangsu Province Science and Technology Development Award. The petitioner did not submit any evidence of the significance of this award and it appears to be a provincial award.

On appeal, counsel asserts that the director erred by requiring evidence of an award only granted to those at the very top of their field and presented by an international panel. As noted by counsel, 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, while counsel is correct that the regulation recognizes the possibility that a national award could meet this criterion, the standard for this criterion remains very high. Significantly, even lesser international awards cannot serve to meet this criterion given the continued use of the word "major" in

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

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).

It is difficult to equate a first place award where the awarding authority issues 15 such awards to an award where the awarding authority issues no more than three awards total (consisting of a single first, second and third place award). If an awarding authority that awards 15 first-place prizes were limited to awarding only three total awards, the majority of the 15 so-called first place winners would receive no award at all. Thus, where an awarding authority issues multiple first, second and third place awards, it is the petitioner's burden to establish that the high number of awards does not diminish the significance of winning the award.

In this case, the petitioner submitted the organizers' promotional materials and reference letters concluding that the award is significant. USCIS need not rely on self-promotional material.[4] Moreover, USCIS need not accept primarily conclusory assertions.[5]

While we acknowledge that the award need not be international, the award must still be "major." The commentary to the regulation makes clear that a "major" award is one consistent with international recognition. The publicity submitted does not mention the beneficiary by name and, thus, does not suggest that the award garnered him any recognition anywhere. Moreover, we reiterate that "first-place" awards issued to 15 unrelated projects are not consistent with a "major" award.

Moreover, the regulation at 8 C.F.R. § 204.5(i)(3)(i)(A) requires evidence of prizes or awards in the plural. Significantly, not all of the criteria at 8 C.F.R. § 204.5(i)(3)(i) are worded in the plural. Specifically, the regulation at 8 C.F.R. § 204.5(i)(3)(i)(D) only requires service on a single judging panel. Thus, we can infer that the plural in the remaining regulatory criteria has meaning. We further note that when the regulation at 8 C.F.R. § 204.5(i)(3) wishes to include the singular within the plural, it expressly does so. For example, as quoted above, the regulation at 8 C.F.R. § 204.5(i)(3)(i) requires "letter(s)" from "employer(s)" as evidence of qualifying experience. Finally, in a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.[6] Thus, the petitioner must demonstrate that the beneficiary received more than one qualifying award. The remaining award in the record is provincial and does not meet the requirements of 8 C.F.R. § 204.5(i)(3)(i)(A) as explained in the commentary to the regulation.

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[4] *See Braga v. Poulos,* No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

[5] *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

[6] See *Maramjaya v. USCIS,* Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff,* 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

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*

Counsel initially asserted that the beneficiary's membership in Sigma Xi and the Optical Society of America serve to meet the requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B). The director concluded that neither association requires outstanding achievements of its members. Counsel does not challenge this conclusion on appeal.

Sigma Xi allows potential members to demonstrate the required "noteworthy achievement" through publication of two articles, patents, written reports or a thesis or dissertation. A thesis or dissertation is a requirement for most advanced degrees. Thus, we concur with the director that Sigma Xi does not require outstanding achievements of its members.

Moreover, the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B) requires qualifying membership in the plural. The petitioner submitted materials about the Optical Society of America, but these materials do not list the society's requirements for membership. Thus, the petitioner has not submitted the initial required evidence for this society.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth 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*

Counsel asserts for the first time on appeal that the beneficiary's work "has been reported in professional media." Counsel notes that the promotional material for the beneficiary's award indicates that the awards are reported in the media. The only actual media submitted, however, is the list of awardees posted on the website of China Machinery Net. The petitioner submitted no evidence that this website constitutes a "professional publication." Moreover, the materials merely list all 232 awardees with no discussion of each award-winning project. As such, the materials cannot be considered to be "about" the beneficiary's work.

The record also contains articles that cite the beneficiary's work in addition to several other articles. Articles which cite the beneficiary's work are primarily about the author's own work, 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 set forth 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 original "research contributions." Had the regulation contemplated merely the submission of original research, it would have said so, and not have included the extra word "contributions." Moreover, the plain language of the regulation requires that the contributions be "to the academic field" rather than an individual laboratory or institution.

The petitioner submitted evidence that the beneficiary has authored scholarly articles. The regulations, however, 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.

The petitioner must establish the beneficiary's eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). In this matter, that means that the petitioner must demonstrate the beneficiary's contributions to the field as a whole as of that date. 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 his 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).

As of the date of filing, no more than four independent research teams had cited any one of the beneficiary's articles. This low citation rate, while not determinative, cannot by itself establish that the beneficiary's original work has influenced the field at a level consistent with a contribution to the field as a whole.

asserts that he was the beneficiary's Master of Science advisor at Jiangsu University and subsequently supervised the beneficiary's work as a research scientist at that university. explains that the beneficiary's research focused on the measurement of interface strength by laser spallation technique. The goal of the beneficiary's project was to develop a laser spallation system to

determine interface strength and characterize interface structure between a substrate and a coating. According to the beneficiary "was the first to perform finite element analysis of stress wave propagations and coating removal process induced by a high power laser." asserts that in conducting this research, the beneficiary "used the laser pulse as a directed input instead of the measurements of the free surface velocity commonly used in existing methods of analysis." states that the beneficiary discovered the characteristics of interface stress and demonstrated "that the critical debonding state was determined by the time-shift."

continues that the beneficiary and coworkers "built a laser spallation system that incorporates several experimental sub-systems." explains that the system is a "workable and systemic quantitative measurement system on interface strength." compares the beneficiary's system favorably to "existing techniques" and asserts that it "is a useful tool for researchers to understand bonding mechanisms on interface."

notes that the beneficiary's spallation system is the project for which the beneficiary received his award from the China Mechanical Engineering Society. For the reasons discussed above, this award was insufficient to meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(A). We are not persuaded that evidence insufficient to meet the criterion to which it directly relates can be considered sufficient to meet a criterion to which it only indirectly relates. Nevertheless we acknowledge that the award warrants some consideration under 8 C.F.R. § 204.204.5(i)(3)(i)(E).

The petitioner provided the submission criteria for the China Machinery Industry Science and Technology Award. Submitted inventions are limited to those that have not been published or used nationally and internationally but have been tested for more than one year and have generated good results. The China Mechanical Engineering Society limits first prize to projects that contribute significantly to the scientific and technological development in mechanical industry and have proven to be of substantial economic and social benefits through practical applications. The award appears limited to projects that, while tested, have not been widely applied. While the award may be indicative of the potential of the beneficiary's system, it does not demonstrate the system's ultimate influence in the field.

goes on to assert that researchers in Taiwan "drew upon [the beneficiary's] finite element analysis on the stress history to deduct transient behavior of structural and the associated innovatory microscopic spallation mechanism at the solid-state interface." seriously mischaracterizes the citation to the beneficiary's work in this article, which the petitioner submitted. Specifically, the Taiwanese researchers cite the beneficiary's method and then state: "but in the present work measurement of the quasi-static interfacial strength still cannot be carried out by these methods." The researchers then cite the beneficiary's work in addition to two other papers and state: "Their reports offer important information to infer the properties of microstructures and to predict the films fracture. However, the theoretical analysis, by having a key problem about the inter-coupling mechanisms of

realistic physical quantities is complicated to handle." Thus, it is clear that the researchers did not rely on the beneficiary's work in their own work.

mentions two other research papers that reference the beneficiary's work. One merely cites the beneficiary's work for the proposition: "Finite element simulations have also been used to study the film spallation process induced by the pulsed laser peening." The other article cites the beneficiary's article as one of two articles for the proposition: "Use of a pulsed laser beam to generate shock loading that produce spallation of a think coating from a substrate has been developed as a definitive method for measuring the tensile strength of such biomaterial interfaces." The other article cited for this proposition predates the beneficiary's work by several years. Contrary to assertions, these citations do not reflect that the beneficiary's work is being applied in the field.

next discusses the beneficiary's work on a project titled: k by the Laser Shock Processing (LSP)." explains that the goal of this project was "to develop a shock peening approach for automobile engine crank and establish a database system for controlling processing parameters during laser shock processing (LSP) on the real time." asserts that the beneficiary proposed an alternative to "existing methods" by using "an artificial neural network concept for controlling the effect of LSP." further states that the beneficiary "also built a multilayer neural network controlling system and demonstrated that the application of neural networks can dramatically improved the qualified rate after laser shock processing on aluminum alloy." notes that the beneficiary published this work and that two dissertations cite to the beneficiary's article. The citation of the beneficiary's work in two unpublished dissertations cannot demonstrate his influence in the field as a whole. Moreover, the record does not contain the dissertations. Given mischaracterization of the citation by the researchers in Taiwan, his characterization of the dissertations has little evidentiary value.

the beneficiary's Ph.D. advisor at the University of Central Florida, discusses the beneficiary's doctoral research. notes that Laser Fare, Inc. supported the beneficiary's doctoral research under a Small Business Innovation Research Phase II project on laser drilling. Most, if not all, research receives funding from some source. It does not follow that every funded research project constitutes a contribution to the field as a whole. According to the beneficiary investigated optical trepanning, a "new method of laser drilling that provides a novel way of supplying energy to the workpiece along the circumference of the annular beam and enables large-area drilling without melting an/or vaporizing the entire material in the volume of the hole." explains that the beneficiary developed the first complete two-dimensional model for melting and vaporization that describes the whole physical process and quantifies the drilling performance of optical trepanning. continues:

> Based on this model, [the beneficiary] discovered that the effects of annular beam radius are significant in most cases and have great impact on the drilling hole qualities due to the widening of the melt layer in the radial direction. He also proposed, for the first time, an analytic expression for the temperature distribution to examine the effects

> of annular laser beam heating of three types of intensity distribution in optical trepanning. Moreover, he found that the heating of the material around the center of the annular laser spot on the surface of the substrate is minimal and that the uniform pulse shapes produce less tapered and deeper melt boundary than triangular pulses. These findings on optical trepanning demonstrate how annular beams can be used to effectively improve drilling speed, limit heat affection zone and recast layer and modify drilling geometry.

notes that the beneficiary published this research in the *Journal of Applied Physics* and the *Journal of Laser Applications* in 2005. As noted above, however, scholarly articles fall under a separate criterion, 8 C.F.R. § 204.5(i)(3)(i)(F). We will not presume that scholarly articles are also presumptive evidence to meet the contributions criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(E). As of the date of filing in October 2008, only one independent author had cited the beneficiary's article on his two-dimensional model in the *Journal of Applied Physics* and only two independent authors had cited the beneficiary's article on temperature distribution due to annular beam heating in the *Journal of Laser Applications*. The citations themselves reveal that the authors only cited the beneficiary's work as an example of recent work with axicons. This citation record does not suggest that the beneficiary's model is utilized in the field at a level consistent with a contribution to the field as a whole.

then discusses the beneficiary's development of "an axicon refractive system and a vaxicon refractive system to transform a Gaussian laser beam into a collimated annular beam with different intensity." In this work, the beneficiary "pioneered the use of laser beam shaping technique to perform annular beam shaping to obtain inner half Gaussian, full Gaussian and out half Gaussian annular beams." continues that the beneficiary also "conducted a detailed geometrical and physical optics analysis on annular shaping system and demonstrated for the first time how diffraction patterns of the annular beam are generated and how multi-ring patterns and Arago's spot are eliminated." further asserts that the beneficiary "discovered that by minimizing the diffractive effects, optical trepanning can allow flexibility in improving the hole quality, reducing the loss of laser energy due to conduction in the workpiece, and increasing the drilling speed." Once again, notes that the beneficiary published this work. The record contains evidence of a single independent citation of this work. The independent authors published the citing article in the same month that the petitioner filed the petition.

Finally, discusses the beneficiary's design of a "comprehensive optical trepanning system, which consists of a beam splitter system, an air flow system and an optics transform system" that incorporated two novel concepts. Specifically, explains that the beneficiary proposed and incorporated an optics transformation system that allows an annular beam with a different intensity and a single laser source with an optical beamsplitter. notes that this work appeared in and that the beneficiary or a coauthor presented this work at an International Congress on Applications of Lasers and Electro-Optics (ICALEO) conference. The record contains no evidence of citations of the beneficiary's article or presentation.

The petitioner submitted letters from independent researchers reiterating the information discussed above. For the most part, these letters simply repeat the specifics of the beneficiary's work and attest to the originality and significance of this work without providing concrete examples of how the beneficiary's models and techniques are influencing the field. More specifically, these references explain how the beneficiary's research can be used but not how it is being used. , a professor at the Joining and Welding Research Institute at Osaka University in Japan, asserts that the significance of the beneficiary's research is evidence from the citations of his work. As discussed above, however, the citation evidence is not persuasive by itself.

One independent reference does claim to have personally relied on the beneficiary's work. s states that the beneficiary's work "has benefited my own research." continues: "In particular, his finite element analysis on stress history has provided me with new ideas and has expedited the research activities of my lab." Even this statement, however, is extremely vague. Moreover, we are not persuaded that any research on which one other researcher relies rises to the level of a contribution to the field as a whole. Any Ph.D. thesis or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge.

, the petitioner's , discusses the beneficiary's work for the petitioner developing advanced laser manufacturing technology for medical devices. Specifically, the beneficiary developed novel technology for manufacturing embolic protection devices that alleviate vessel blockage. These devices require a filtering medium more flexible than metal mesh. According to the beneficiary developed a fast-drilling process for generating holes in the filters and a laser micro-binding technology for attaching the filter materials to the deployment mechanism. further explains that the beneficiary was the first to "propose a new concept of excimer cool bonding" and designed "a vacuum excimer welding system." concludes that the beneficiary's work allows for a reduction in manufacturing cost and increased speed and bonding reliability by combining the processing steps in one laser system.

further discusses the beneficiary's proposed method for laser stripping of coated cables for endocardial defibrillation leads. explains that the beneficiary applied a selective ablation's concept to modify the petitioner's current laser cutting and skiving process for catheter leads, solving discoloration and debris problems in the petitioner's current process and reducing machining time and cost.

Finally, asserts that the beneficiary discovered that not enough light was passing through the kerf in the petitioner's high-resolution scintillation detectors. The beneficiary "added a virtual image and physically extended the focus depth by designing an aperture stop and a field lens with negative focal length so that the laser light can freely penetrate to the bottom of the kerf without vignetting." concludes that the beneficiary's technique "dramatically increased processing speed."

explains that the beneficiary's work for the petitioner is proprietary and, thus, is not published. The record, however, contains no patents or patent applications listing the beneficiary as an inventor. discusses work that, while original and valuable to the petitioner, does not appear to be a contribution to the field as a whole.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

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 bare assertions of widespread recognition and vague claims of contributions without providing specific examples of how those contributions have influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[7] The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

In light of the above, the petitioner has not submitted qualifying evidence that meet 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.*

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[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.). 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).

As stated above, the petitioner submitted evidence that the beneficiary has authored several articles. Thus, the petitioner has submitted evidence that qualifies under 8 C.F.R. § 204.5(i)(3)(i)(F).

In light of the above, the petitioner has submitted evidence that meets only one of the criteria, two of which must be satisfied to establish the minimum eligibility requirements for this classification. Specifically the petitioner submitted evidence to meet the criteria set forth at 8 C.F.R. §§ 204.5(i)(3)(i)(F). The next step, however, is 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)).

Even if we were to consider the beneficiary's award, the number of first-place awards issued and the limitation to ideas that had yet to be applied in the field reveal that the award is not indicative of the beneficiary's international recognition in the field.

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. 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."

According to the Department of Labor's Occupational Outlook Handbook (OOH):

> Engineers apply the principles of science and mathematics to develop economical solutions to technical problems. Their work is the link between scientific discoveries and the commercial applications that meet societal and consumer needs.
>
> Many engineers develop new products. During the process, they consider several factors. For example, in developing an industrial robot, engineers specify the functional requirements precisely; design and test the robot's components; integrate

> the components to produce the final design; and evaluate the design's overall effectiveness, cost, reliability, and safety. This process applies to the development of many different products, such as chemicals, computers, powerplants, helicopters, and toys.

*See* http://www.bls.gov/oco/ocos027.htm#nature (accessed November 24, 2010 and incorporated into the record of proceeding. Thus, original designs that solve technical problems are part of the inherent job duties of an engineer and do not necessarily set that engineer apart from other engineers through eminence and distinction.

While the beneficiary has published articles, OOH 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 (accessed November 24, 2010 and incorporated into the record of proceedings). 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.

Moreover, the beneficiary's citation history is a relevant consideration as to whether the beneficiary's publication record is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. The beneficiary's citation record is not consistent with international recognition.

In light of the above, our final merits determination reveals that the beneficiary's qualifying evidence, published articles that have not garnered significant citations 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.

**III. Conclusion**

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.