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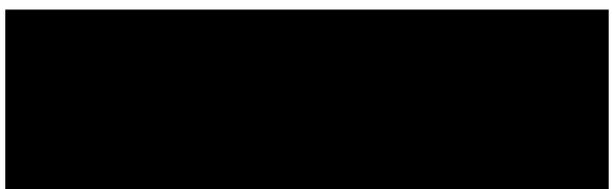
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: MAY 19 2010  
SRC 08 279 50583

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, Texas Service Center, denied the employment-based immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter back to the director for further action and consideration. The director denied the petition again and certified the decision to the AAO pursuant to 8 C.F.R. § 103.4. The director's decision will be affirmed.

The petitioner is a biopharmaceutical research and development firm. 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 scientist. The director initially determined that the petitioner had not established that the beneficiary has the necessary three years of experience because the beneficiary had received his Ph.D. less than three years before the petition was filed. On May 21, 2009, the AAO remanded the matter to the director for consideration as to whether the beneficiary's work towards his degree has been recognized within the academic field as outstanding.

On February 2, 2010, the director denied the petition a second time, concluding that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher. Pursuant to 8 C.F.R. § 103.4, the director advised the petitioner that it had 30 days in which to provide a brief or written statement to the AAO. As of this date, more than two months later, this office has received nothing further. Thus, the petitioner has not responded to the director's concerns. For the reasons discussed below, we affirm the director's decision based on the record before him.

Specifically, when we simply "count" the evidence submitted, the petitioner has submitted qualifying evidence under two of the regulatory criteria as required, judging the work of others and scholarly articles pursuant to 8 C.F.R. §§ 204.5(i)(3)(i)(D) and (F). As explained in our final merits determination,<sup>1</sup> however, much of the evidence that technically qualifies under these criteria 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. *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)). Ultimately, the beneficiary's most notable achievement, a single article that garnered initial attention on two websites but has not been widely cited, cannot, by itself, demonstrate the beneficiary's international recognition as outstanding.

## 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):

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

\* \* \*

(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 September 17, 2008 to classify the beneficiary as an outstanding researcher in the field of medical pharmacology. 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. As noted by the director in

his initial decision, the beneficiary did not have three years of postdoctoral experience as of the date of filing. According to 8 C.F.R. § 204.5(i)(3)(ii), however, the beneficiary's research while working on her Ph.D. can be considered if that research has been recognized within the academic field as outstanding. Moreover, the beneficiary received her medical degree in 1996 and then spent more than four years as an assistant professor at Shandong Medical University. Thus, at issue is whether the beneficiary's research has been recognized internationally as outstanding in her academic field.

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*, 2010 WL 725317 (9th Cir. March 4, 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.<sup>2</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while 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.*

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

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. 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 \*6 (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 \*3.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under two<sup>3</sup> criteria, considered in the context of a final merits determination. 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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO reviews appeals on a *de novo* basis).

## II. Analysis

### A. Evidentiary Criteria<sup>4</sup>

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

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

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

Counsel initially asserted that the beneficiary's membership in the Society for Neuroscience constitutes qualifying evidence under 8 C.F.R. § 204.5(i)(3)(i)(B) because new members must be nominated. Counsel no longer asserted that the beneficiary's membership in this society qualifies in response to the director's request for additional evidence. As the record contains no evidence that the society requires outstanding achievements of its members, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(i)(3)(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*

The petitioner relies on citations of the beneficiary's work as qualifying evidence under 8 C.F.R. § 204.5(i)(3)(i)(C). According to the plain language of this regulation, the published material must be "about" the alien's work. It is absurd to suggest that a single sentence or paragraph constitutes the entire published material; thus, the beneficiary's work must be the subject of the article itself. Articles which cite the beneficiary's work are primarily about the author's own work, not the beneficiary's work. As such, citing articles cannot be considered published material about the beneficiary. Thus, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(i)(3)(i)(C).

*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*

The beneficiary has reviewed manuscripts submitted for publication in *Life Sciences*. This evidence qualifies under the plain language of 8 C.F.R. § 204.5(i)(3)(i)(D).

*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 evidence of original research, it would have said so, and not have included the extra word "contribution." Moreover, the requirement that the petitioner submit qualifying evidence under at least two regulatory criteria would be rendered meaningless if the mere publication of scholarly articles, which are, as a rule original, served as qualifying evidence under both 8 C.F.R. § 204.5(i)(3)(i)(E) and 8 C.F.R. § 204.5(i)(3)(i)(F). Finally, the plain language of the regulation requires that the contribution be "to the academic field" rather than to an individual laboratory, institution or local government agency.

As of the date of filing, the petitioner had filed a patent application for one of the beneficiary's innovations relating to the delivery of RNAi construct to Oligodendrocyte. The petitioner filed a second application for one of the beneficiary's innovations after the date of filing, but this evidence

cannot be considered as evidence of the beneficiary's eligibility as of the date the petition was filed. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). See also *Matter of Izummi*, 22 I&N Dec. 169, 176 (Comm'r. 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981)). A patent application reflects the filer's assumption that the innovation is "original" but does not establish that the innovation is an original contribution to an academic field. This office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. See *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm'r. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* We will consider the discussions of the importance of the beneficiary's innovation regarding RNAi construct below.

The beneficiary has also authored articles and presented her work at conferences. As stated above, scholarly articles fall under an entirely separate category of evidence under 8 C.F.R. § 204.5(i)(3)(i)(F). While we do not contest that a given scholarly article might represent an original contribution to an academic field, it is the petitioner's burden to demonstrate that the beneficiary's articles represent recognized contributions to her academic field. The beneficiary's article on dynorphin was highlighted on the website [www.stke.org](http://www.stke.org)<sup>5</sup> as part of "This Week in Signal Transduction." According to the email sent to the beneficiary's coauthor (the first listed author), editors "scan the newly published literature to find the hottest new papers and provide short, insightful summaries that help you stay on top of the latest advances." The record does not establish how many articles are issued in the field of signal transduction every week or how many of those articles are summarized on this webpage. The same article was selected for evaluation by Faculty of 1000 Medicine and Faculty of 1000 Biology on the Faculty of 1000 website. The evaluations conclude that the article "sheds light" on a "long standing mystery" and that the article is important, "exciting" and "quite surprising." Thus, the record establishes that the initial reaction to this article, which the beneficiary coauthored under the direction of her Ph.D. advisor and for which she was not the first listed author, was very positive. In order to constitute a contribution to the field, however, the petitioner must demonstrate that the article has actually had some type of impact. We cannot ignore that the record lacks evidence that this article has been widely cited as might be expected of a contribution to the academic field.

██████████ a professor at ██████████ University School of Medicine, discusses the beneficiary's research at that institution from 1998 through 2001. Specifically, ██████████ asserts that the beneficiary "studied the survival and differentiations of neural cells using rat stem cells and cell culture and histology staining techniques." While ██████████ discusses the importance of this area of research as it relates to neurological disorders such as Parkinson's disease, stroke and spinal chord injury, he does not suggest that the beneficiary contributed to this field.

██████████ the beneficiary's Ph.D. advisor at the University of Arizona, discusses her work at that institution. Specifically, the petitioner's research there focused on the development of new drugs for the treatment of neurological diseases such as Chronic Pain and Huntington's disease. According

<sup>5</sup> This website is operated by the journal formerly titled *Science STKE*, now titled *Science Signaling*. See <http://stke.sciencemag.org/about> (accessed April 22, 2010 and incorporated into the record of proceeding).

to [REDACTED] the beneficiary was "responsible for evaluating the activities of new drugs in animals or animal models that mimic the human diseases, which is a critical and required step by [the U.S. Food and Drug Administration (FDA)] in the preclinical drug discovery process before a new drug is released to the public." [REDACTED] explains that scientists have long been interested in the molecular mechanism of dynorphin-induced abnormal pain under chronic pain conditions but had previously made few breakthrough conclusions in this area. [REDACTED] further explains the beneficiary's work in this area as follows:

One of her significant findings is that she was able to discover unexpected actions of dynorphin, which is its interaction with a class of receptor called Bradykinin receptor. This is a groundbreaking discovery because it not only revealed a novel mechanism of the pronociceptive actions of the endogenous opioid peptide dynorphin in experimental neuropathy, but also provides new avenues for potential pain therapeutic drug design. Furthermore, [the beneficiary] was the first researcher who identified this unexpected interaction of dynorphin with bradykinin receptor in chronic visceral pain and chronic inflammatory pain. These significant research findings have led to four papers including one review.

While [REDACTED] asserts that this work has been recognized worldwide and subsequently claims that the petitioner's work is "highly cited," the record contains evidence of only a limited number of citations as of the date of filing.

In addition to this work, [REDACTED] states that the beneficiary also worked on a project exploring the action site of Lidocaine, an ion channel blocker. [REDACTED] further asserts that the beneficiary also determined the potential effectiveness of "many new compounds for treating pain including norepinephrine/serotonin reuptake inhibitor (milnacipran), new local anesthetics, and a glial cell line-derived neurotrophic factoring using animal pain models." [REDACTED] concludes that this work "will assist with and expedite the process of progressing new compounds through preclinical drug development into clinical trials." While [REDACTED] asserts that this work was well recognized by the beneficiary's collaborators, he does not explain how it has already impacted the beneficiary's academic field beyond those collaborators.

Finally, [REDACTED] asserts that the beneficiary "developed a very difficult loop microdialysis catheter method" for collecting samples from an animal's spinal cord. [REDACTED] notes that this development allowed his laboratory to "carry on" with this project. As stated above, a qualifying contribution must be to the academic field rather than an individual laboratory.

The record contains letters from other members of the beneficiary's academic field praising her work, especially her results with dynorphin. Some of these references are independent of the beneficiary, but most either worked directly with the beneficiary, collaborated with [REDACTED] laboratory or have colleagues who worked with the beneficiary. While they all assert that her work is important

with the potential to impact the field, none of the authors claim to be utilizing the beneficiary's research in their own work.

Finally, several references attest to the potential of the beneficiary's work at the petitioning company with RNAi to treat chronic pain. The record, however, lacks evidence that this work, while promising, has already produced results that are considered a contribution to the beneficiary's academic field.

In light of the above, the petitioner has not submitted qualifying evidence under 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 several articles authored by the beneficiary, at least one of which has been well received initially if not subsequently well cited. 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 submitted evidence that qualifies under at least two evidentiary categories, 8 C.F.R. §§ 204.5(i)(3)(i)(D) and (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 at 8 C.F.R. § 204.5(i)(3)(i) is to establish international recognition, and any evidence submitted under this regulation 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. 56 Fed. Reg. at 30705. The regulation at issue provides categories of evidence to be used in evaluating whether a professor or researcher is deemed outstanding. *Id.*

The nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond her own circle of collaborators. *See Kazarian*, 2010 WL 725317 at \*5. We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. The record does not establish that the beneficiary has reviewed manuscripts for a journal that credits a small, elite group of referees, received independent requests from a substantial number of journals, served in an editorial position for a distinguished journal or provided similar judging services that might set her apart from her peers with eminence and distinction.

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."

While the beneficiary has published articles, the Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at [www.bls.gov/oco](http://www.bls.gov/oco) on April 15, 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](http://www.bls.gov/oco/ocos066.htm). The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field. As discussed above, while one of the beneficiary's articles was initially well received, its ultimate impact has not been demonstrated as it was not well cited. Moreover, a single well-received article is not persuasive evidence of international recognition as outstanding.

Finally, we acknowledge that the petitioner submitted several reference letters supporting the petition. The opinions of experts in the field are not without weight and have been considered above. U.S. Citizenship and Immigration Services (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. 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 already influenced the field. As stated above, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.<sup>6</sup> The petitioner also failed to submit sufficient

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<sup>6</sup> *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41; *Ayvr Associates, Inc.*, 1997 WL 188942 at \*5. Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. Attorney General of the United States*, 745 F. Supp. 9, 15 (D.D.C. 1990).

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, our final merits determination reveals that the beneficiary's qualifying evidence, participating in the widespread peer review process and publishing articles that have not garnered a significant number of citations despite one of those articles receiving some attention upon publication, does not set the beneficiary apart in the academic community through eminence and distinction based on international recognition. 56 Fed. Reg. at 30705. While the petitioner secured letters from independent sources, those references do not claim to have been influenced by the beneficiary's work and do not provide examples of any independent research team that is utilizing the beneficiary's methods or devices.

In summary, while the evidence shows that the beneficiary has published one article that initially garnered attention in the field, that evidence, by itself, cannot establish eligibility for the classification sought, which requires qualifying evidence in more than one category. 8 C.F.R. § 204.5(i)(3)(i). The remaining evidence does not set the beneficiary apart from her peers.

### **III. Conclusion**

The petitioner has shown that the beneficiary is a talented and prolific researcher, who has won the respect of her collaborators, employers, and mentors, while securing some degree of international exposure for her 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 decision of the director denying the petition will be affirmed.

**ORDER:** The decision of the director is affirmed. The petition is denied.