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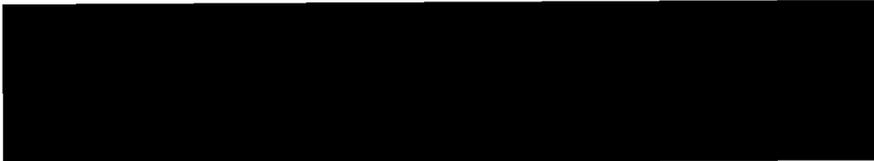
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: **MAY 21 2010**
SRC 08 136 51064

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a developer, manufacturer and marketer of prescription medicines. 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 health outcomes scientist. 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 discusses the legislative history of the Act as a whole, noting that it contemplated admitting "highly skilled" workers into the United States. We note, however, that the Act includes several classifications other than the one sought in this matter, including a classification for members of the professions holding advanced degrees pursuant to section 203(b)(2) of the Act. Counsel does not explain how the legislative history of the entire Act is relevant to the intent of Congress behind the specific provision at issue before us, section 203(b)(1)(B) of the Act. Nothing in the legislative history specific to section 203(b)(1)(B) of the Act, H.R. Rep. No. 101-723, 59-60 (Sept. 19, 1990), suggests that the classification sought in this matter encompasses all "highly skilled" workers. Rather, the legislative history reiterates the standard that the alien must be "recognized internationally as outstanding in a specific academic area." Counsel also discusses a proposed rule that was never enacted, asserting that it strayed from Congressional intent. That proposed rule, however, was never enacted and is irrelevant to this proceeding.

Counsel's assertions regarding the need to apply the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i) and her discussion of the merits of the director's specific conclusions will be addressed in detail below. For the reasons discussed below, we uphold the director's ultimate conclusion that the petitioner has not demonstrated that the beneficiary, a researcher who had yet to publish a single article in a peer-reviewed journal as of the date of filing, enjoys international recognition as outstanding. Moreover, the focus of the majority of the evidence is the beneficiary's research after obtaining his Ph.D. Without evidence that the beneficiary's research while pursuing his Ph.D. is recognized as outstanding, it cannot count towards the necessary three years of experience. Section 203(b)(1)(B)(ii) of the Act, 8 C.F.R. § 204.5(i)(3)(ii). As such, the petitioner cannot demonstrate the necessary three years of experience as of the date of filing the petition, the date as of which the petitioner must demonstrate the beneficiary's eligibility. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

Ultimately, we acknowledge that when we simply "count" the evidence submitted, the petitioner has submitted qualifying evidence under two of the regulatory criteria as required, 8 C.F.R. § 204.5(i)(3)(i)(C) and (D). As explained in our final merits determination,¹ however, much of the evidence that technically qualifies under both of those criteria falls far short of setting the beneficiary apart from his peers.

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

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 --

(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 March 21, 2008 to classify the beneficiary as an outstanding researcher in the field of health outcomes. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field as of that date, and that the beneficiary's work has been recognized internationally within the field as outstanding. The beneficiary received his Ph.D. in December 2005, less than three years before the petition was filed and must therefore rely on research performed while working on an advanced degree as part of his three years of experience. As such, the petitioner must document that the beneficiary's research while completing his advanced degree has been recognized within the field as outstanding. For the reasons discussed below, the record does not establish that the beneficiary's Ph.D. research in particular has been recognized as outstanding.

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

On appeal, counsel asserts that the director erred in evaluating the significance of the evidence submitted under the various criteria and implies that the mere submission of evidence relating to a given criterion must be accepted as meeting that criterion. Counsel further asserts that once the petitioner submits qualifying evidence under two criteria, eligibility is established.

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. 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.*

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 *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 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 *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (recognizing the AAO's *de novo* authority).

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)).

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.

II. Analysis

A. Evidentiary Criteria

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

The petitioner submitted evidence that it issued the beneficiary two bronze awards as part of its research and development recognition program. The award included a \$300 bonus. The petitioner also submitted a U.S. Pharmaceuticals "Spirit Award" issued to the beneficiary on the petitioner's stationery. This award recognizes "exhibiting the [petitioner's] Spirit of Enthusiasm of Entrepreneurs, Search for Innovation, Performance with Integrity and Contributing with Passion and a Sense of Urgency." The petitioner also asserts that the beneficiary was a finalist in the poster presentation session at the International Society of Pharmacoeconomics and Outcomes Research (ISPOR). The record contains no evidence that the beneficiary actually received this award.

The director's notice of intent to deny the petition concluded that the above awards were not "of national or international recognition." In response, counsel reiterates the awards listed above and discusses ISPOR's significance and the number of presentations the petitioner has made at ISPOR conferences. The director concluded that the petitioner had not submitted qualifying evidence under 8 C.F.R. § 204.5(i)(3)(i)(A).

On appeal, counsel asserts that "any" major prizes or awards are qualifying and that the director erred in excluding employer recognition because they are not open to competition from top level professionals in the field. Counsel asserts that the petitioner's employer recognition certificates "are bestowed to a select few worldwide and among 100,000 researchers within a reputable organization that hires only the best and most notable researchers in their respective fields." Counsel further asserts that the director erred in rejecting the ISPOR "award" because it derives from a conclusion that not all major prizes or awards qualify under 8 C.F.R. § 204.5(i)(3)(i)(A).

It is significant that, as acknowledged by counsel on appeal, 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).

We are not persuaded that the petitioner can generate its own qualifying evidence by issuing the beneficiary an award of undocumented significance. The record contains no evidence regarding how many of the petitioner's employees receive similar recognition and bonuses every year. The record also lacks evidence that the field as a whole recognizes such employee recognition as a major prize or award, such as, for example, coverage in the national trade media of the award selections.

Finally, as stated above, the record contains no evidence that the beneficiary actually received an award from ISPOR. Nothing in the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(A) suggests that evidence of finalist status can serve as qualifying evidence under this criterion. Moreover, it is the petitioner's burden to demonstrate that any prize or award is considered "major" within the field. The record contains no evidence that poster presentation awards are recognized in the field as "major," such as, but not limited to, coverage in national trade media of the selection of the awardees.

In light of the above, the petitioner has not documented that any of the beneficiary's awards or finalist status are "major" prizes or awards as required under the plain language of 8 C.F.R. § 204.5(i)(3)(i). Thus, the petitioner has not submitted qualifying evidence that meets the requirements of that provision. Moreover, the alleged 2004 finalist status is not an actual prize or award and, in fact, is not documented in the record. Thus, none of the evidence submitted relates to the beneficiary's Ph.D. research, which must be recognized in the academic field as outstanding if it is to count towards the beneficiary's three years of experience.

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

The petitioner submitted evidence that the beneficiary is a member of ISPOR. Initially, the petitioner acknowledges that the membership is not "honorary" but stated that ISPOR has a distinguished reputation in the beneficiary's field. In the director's notice of intent to deny, the director noted that the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B) requires evidence that the association requires outstanding achievements of its members rather than evidence of the association's overall prestige.

In response, counsel discusses ISPOR's mission and asserts that it has more than 7,000 members. Counsel also notes that the petitioner is active with ISPOR, presenting his work at their conferences. Counsel does not address the association's membership requirements.

The director concluded that the petitioner had not documented ISPOR's membership requirements. Counsel does not contest this conclusion on appeal. We concur with the director that the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B) requires evidence of the association's membership requirements. As the petitioner has not submitted the required initial evidence mandated by this regulation, ISPOR's membership requirements, the petitioner has not submitted qualifying evidence that the beneficiary meets this criterion. Moreover, the beneficiary purchased his ISPOR membership in 2007, after obtaining his Ph.D. Thus, it could not reflect any recognition of his Ph.D. research as outstanding, necessary if the beneficiary is to include that experience among his three years of qualifying experience.

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

In response to the director's notice of intent to deny, the petitioner submits citations of the beneficiary's work, including two unpublished dissertations and another unpublished manuscript. By definition, unpublished dissertations and manuscripts are not "published material" that can serve as qualifying evidence under 8 C.F.R. § 204.5(i)(3)(i)(C). The published research articles citing the beneficiary's work all postdate the filing of the petition. Thus, they cannot be considered evidence of the beneficiary's eligibility as of that date. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Moreover, 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.

Finally, the petitioner submitted evidence that one of the beneficiary's presentations at the American College of Allergy, Asthma & Immunology meeting in 2007 was discussed on www.medpagetoday.com. The title, date and author are included in this material. As this Internet page is a professional publication, this evidence is qualifying evidence that meets the requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C). We note, however, that it relates to research performed after the beneficiary received his Ph.D. and, thus, does not reflect any recognition of his Ph.D. research as outstanding as required if the beneficiary is to include that research among his three years of research.

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

According to an unsigned letter purportedly from [REDACTED] one of the beneficiary's professors at the University of Louisiana at Monroe, the beneficiary "critically reviewed several class projects and presented graduate seminars that assisted his fellow graduate students." As the letter is unsigned, however, it has no evidentiary value.

[REDACTED], the beneficiary's manager at the petitioning company, states:

[The beneficiary] has served on [the] global communication team (GCT) as part of an internal [system at the petitioning company] for reviewing clinical, epidemiological, and health outcomes research presented in the form of abstracts, posters, podium presentations and manuscripts. Here he has reviewed and commented on several pieces of research and contributed to [the petitioner's] cause of integrity and rigor in research.

In response to the director's notice of intent to deny, the petitioner submitted an email request from [REDACTED] a collaborator at the Lovelace Clinic Foundation, to review a manuscript. The petitioner also submitted an email acknowledgement of the beneficiary's willingness to review manuscripts from Terri Metules, U.S. Deputy Managing Editor of *Current Medical Research and*

Opinion and the *Journal of Medical Economics*. Both emails postdate the filing of the petition and cannot be considered evidence of the beneficiary's eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. In addition, [REDACTED] Director of the Pulmonary Epidemiology Research Laboratory at the University of Kentucky, asserts that he has asked the beneficiary to "serve as a peer-reviewer for publications, which he has expertly and competently done." [REDACTED] does not indicate whether the beneficiary performed any reviews prior to the date of filing.

The director concluded that the beneficiary's judging duties were all internal or routine in the field. On appeal, counsel asserts that while the peer review process is routine, selection to serve as a reviewer is not. Counsel notes that a proposed rule would have required evidence of judging "other professors, researchers and Ph.D. candidates in the alien's academic field." While counsel acknowledges that this rule was never finalized, counsel concludes that peer review fulfills this requirement. 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 that any of the journals for which the beneficiary has served as a reviewer boast a small number of credited elite reviewers.

As stated above, [REDACTED] letter is unsigned and, thus, has no evidentiary value. The journal reviews appear to postdate the filing of the petition and, thus, cannot be considered. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. [REDACTED] letter attesting to internal review responsibilities with the petitioner, however, is qualifying evidence that meets the requirements set forth in the regulation at 8 C.F.R. § 204.5(i)(3)(D). That said, it is noted that these review responsibilities, however, postdate the beneficiary's time as a Ph.D. student and are not indicative of any recognition of that work as outstanding in the academic field.

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

As noted by counsel on appeal, 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. The plain language of the regulation, however, 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." 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.

The beneficiary received his Ph.D. from the University of Louisiana at Monroe in December 2005. The beneficiary worked for Bristol-Myers Squibb before joining the petitioner in April 2006. In order to demonstrate a contribution "to the academic field," in this case health outcomes research, the petitioner

must demonstrate that the beneficiary has influenced members of his field, health outcomes research, beyond the institutions with which he has been affiliated.

The petitioner submitted letters accepting three abstracts by the beneficiary for poster presentation at an ACAAI meeting in Dallas and a letter allotting the beneficiary 10 minutes to present his abstract at the same meeting. While the beneficiary lists other presentations on his self-serving curriculum vitae, 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 petitioner has not established that poster presentations undergo the same type of rigorous peer review afforded published articles. Notably, the discussion of the beneficiary's poster presentation on www.medpagetoday.com contains the following qualification: "The data and conclusions should be considered to be preliminary until published in a peer-reviewed publication." While the beneficiary's oral presentation, peer reviewed according to [REDACTED], may demonstrate that the beneficiary's work is original in that it did not duplicate former research, the petitioner must demonstrate that the work has proven influential in the field if it is to be considered a contribution to the field as a whole.

Initially, the petitioner asserts that in 2004, the beneficiary was a finalist in the poster presentation session at an ISPOR symposium. Counsel has also advanced this claim. As stated above, 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Similarly, 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. The record contains no evidence of this finalist status. Regardless, the record is absent evidence that finalist status for, or even winning, recognition for a poster presentation is indicative of that poster presentation's influence in the field as opposed to a determination that the work has the potential to be significant in the field.

As discussed above, the beneficiary is a member of ISPOR. This membership, however, does not appear indicative of a contribution to the field of health outcomes.

As will be discussed below, while some of the beneficiary's manuscripts had been accepted for publication, none of them had actually been published in a peer reviewed journal as of the date of filing. We reiterate that the petitioner must demonstrate the beneficiary's eligibility as of that date. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Without evidence that the beneficiary's manuscripts had been disseminated in the field through publication as of the date of filing, we cannot consider these manuscripts as potential evidence towards a finding that beneficiary has contributed to the field as a whole.

The remaining evidence submitted to support the claim that the beneficiary has contributed to the field consists of reference letters. [REDACTED], an associate professor of Pharmacy Administration at the University of Louisiana at Monroe, discusses the beneficiary's work at that institution in general terms. Specifically, [REDACTED] asserts that the beneficiary "performed outstandingly" during his summer internships with [REDACTED]. [REDACTED] further notes that he

mentored the beneficiary's projects including: (1) health care resource use and costs for Hepatitis in the Louisiana Medicaid population, (2) retrospective database analysis using the Medical Expenditure panel survey (MEPS), (3) the National Ambulatory Medical Care Survey (NAMCS), and (3) questionnaire development using a scaling methodology and cost effectiveness analysis. [REDACTED] explains that the beneficiary was also involved in other projects including studying patients' education in asthma as a literature survey and the incremental costs of allergic rhinitis to comorbid asthma patients.

According to [REDACTED] the beneficiary's dissertation focused on the association of asthma risk and severity to physicians' treatment decisions in ambulatory care. More specifically, [REDACTED] asserts that the beneficiary developed risk and severity models using NAMCS data and physician input and analyzed their association with health care utilization. [REDACTED] opines that the beneficiary's dissertation was "quite novel and outstanding." [REDACTED] does not explain, however, how the beneficiary's dissertation or any other project while studying for his Ph.D., none of which had been published as of the date of filing, constitute a contribution to the field of health care outcomes as a whole.

[REDACTED] Department of Allergy at Kaiser Permanente and a professor at the University of California, San Diego (UC San Diego) who has collaborated with the beneficiary, asserts that he is familiar with the beneficiary's dissertation and speculates that once it is published, "this will be a very good resource for health outcomes researchers to build upon." As of the date of filing the petition, however, the beneficiary's dissertation had not been published.

The above evidence does not suggest that the beneficiary's Ph.D. research is recognized in the wider health outcomes research academic field as outstanding.

[REDACTED] of the Health Economics and Outcomes Research at [REDACTED], asserts that worked with the beneficiary at [REDACTED] [REDACTED] asserts that the beneficiary worked on [REDACTED] while at [REDACTED] using the same concept and algorithm from his dissertation. [REDACTED] concludes that the beneficiary's work, which helped convince payers that the drug was worth the cost, "resulted [in a] huge win in giving patients [with head and neck cancer] another viable treatment option." [REDACTED] does not explain, however, how this work is significant in the field of health outcomes research. For example, [REDACTED] does not assert that other health outcomes researchers have adopted the beneficiary's concept and algorithm developed for his dissertation and applied when studying Erbitux®.

Another former colleague at [REDACTED], [REDACTED] currently Director of Global Health Economics - Oncology Therapeutics, at [REDACTED] supports the petition. [REDACTED] asserts that the beneficiary "is well respected in his field and has added to the body of knowledge by presenting his finding at major meeting [sic] and submitting articles for publication in peer reviewed journals." [REDACTED] does not explain how the mere submission of articles for publication is significant. Rather, she opines: "I am sure given time for publication; his work will duly appear in respective journals related to his current field of respiratory research." Ultimately, [REDACTED]

█ does not provide examples of the beneficiary's algorithms being used by independent sources.

█ asserts that under his guidance, the beneficiary "initiated and designed a retrospective observational claims data analysis examining the burden and economic impact of allergic rhinitis in managed care." While █ asserts that the study is complete and has been submitted to *Annals of Allergy, Asthma and Immunology*, he acknowledges that the manuscript was returned with comments that are being addressed. Thus, it does not appear that this study could have already contributed to the field as it has yet to be disseminated.

█ further discusses the beneficiary's budget impact model and a physician and patient prospective survey and developed data to launch Veramyst. █ acknowledges, however, that the surveys are only in the process of being written up as manuscripts for future submission to a peer-reviewed journal.

█ asserts that the beneficiary "helped develop a patient completed questionnaire to assess rhinitis control." █ explains that the questionnaire was developed in collaboration with "some of the top opinion leaders in the field of allergy." While █ acknowledges that the manuscript has yet to be published, he notes that it was presented as "poster presentations" at scientific meetings and conferences. We acknowledge that the questionnaire was the basis of one of the beneficiary's bronze employee recognition certificates issued by the petitioner. This recognition within the petitioning company, however, does not demonstrate that the beneficiary's questionnaire is recognized in the wider field as a contribution to health outcome research as a whole.

In addition, █ explains that the beneficiary is working on several retrospective databases relating to chronic obstructive pulmonary disease (COPD) as well as having developed an economic model examining the cost effectiveness for a COPD drug using various data sources. █ acknowledges that this work has yet to be presented or published.

█ a professor at UC San Diego (and thus a colleague of █), asserts that he is familiar with the beneficiary's work, having reviewed it at a conference. █ further asserts that he uses the beneficiary's data in his own presentations. █ also discusses his interaction with the beneficiary at another symposium where the beneficiary presented the results from a survey that was done among physicians who agreed to evaluate management of rhinitis as well as its burden from the physicians' perspective. █ concludes that the results of this survey aids in understanding how rhinitis is perceived by physicians and promotes improving the patient-physician dialogue.

█ letter confirms that the beneficiary's survey produced useful data for the healthcare community for which it was prepared. At issue is whether the beneficiary's work is a contribution to the field of health outcomes research. █ does not suggest that the beneficiary's work is notable for its health outcomes research methodology. For example █ does not suggest that he has presented the beneficiary's work to other health outcomes researchers as an example of notable methodology.

In response to the director's notice of intent to deny, the petitioner submitted new letters. [REDACTED] discusses his collaboration with the beneficiary "during the first six months of 2008." As the petition was filed in March 2008, this work cannot be considered to have already contributed to the field as of that date. The remaining two letters are from the beneficiary's collaborators on developing his Lung Function Questionnaire designed to identify patients who have undiagnosed COPD. As discussed above, however, [REDACTED] indicates that this work was still ongoing as of the date of filing. Thus, these letters are not evidence of the beneficiary's original research 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.

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. 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 vague claims of contributions without specifically identifying contributions to the field of health outcomes research and providing specific examples of how those contributions have influenced the field of health outcomes research. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.⁴ 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, while the beneficiary's research may be original in that it did not duplicate studies conducted by other health outcomes researchers, the record lacks evidence that this work can properly be considered to be a contribution to the field of health outcomes research. Thus, the petitioner has not submitted qualifying evidence that meets the requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(E).

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

We note that the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(F) requires evidence of "books or articles." As noted by counsel, USCIS may not deviate from the plain language of the

⁴ *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); *Ayvr 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, 18 (D.C. Dist. 1990).

regulations. Moreover, the regulation at 8 C.F.R. § 204.5(i)(3)(i) does not permit the submission of comparable evidence. Compare 8 C.F.R. § 204.5(h)(4). Thus, we will not consider conference presentations under 8 C.F.R. § 204.5(i)(3)(i)(F).

Initially, the petitioner submitted evidence that three of the beneficiary's articles had been accepted for publication. The petitioner did not submit evidence that the beneficiary's articles had actually appeared in qualifying journals as of the date of filing. We will not consider the evidence that these articles did appear in qualifying journals after that date. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Thus, the beneficiary has not 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 meets two of the criteria that must be satisfied to establish the minimum eligibility requirements for this classification. Specifically the petitioner submitted evidence to meet the criterion set forth at 8 C.F.R. §§ 204.5(i)(3)(i)(C) and (D). The next step 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)).

The nature of the review responsibilities is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. See *Kazarian*, 2010 WL 725317 at *5. Even accepting [REDACTED] unsigned letter, the only review that predates the filing of the petition is the beneficiary's review of his classmates' projects and his internal review for the petitioning company. The fact that the alien's review duties were internal to the institution where the beneficiary was studying and the company where he was working is a relevant consideration when making the final merits determination. *Id.* We are not persuaded that reviewing class projects in his own class and other research at the company where he works are indicative of international recognition.

Even if we were to assume that [REDACTED] is referencing peer review that took place prior to the date of filing, such duties are not persuasive. On appeal, counsel asserts that USCIS has no expertise in what is routine in the alien's field. We cannot ignore, however, that a large number of scientific journals are peer reviewed and rely on numerous scientists to review submitted articles. Moreover, [REDACTED] has known the petitioner for two years as the petitioner's questionnaire was field tested at the University of Kentucky where [REDACTED] is a professor. Thus, an invitation to review manuscripts from [REDACTED] is not indicative of the beneficiary's international recognition.

Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed manuscripts for a journal that credits a small, elite group of referees, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the beneficiary's judging experience is indicative of or consistent with international recognition.

The published material at www.medpagetoday.com, while technically "about" the beneficiary's work, does not quote him. Rather, several other researchers are quoted, including an oral presenter. The only reference to the beneficiary by name is the identification of his poster presentation as the source of the article. In addition, the website appears to have covered the entire meeting rather than singled out the beneficiary's work. Moreover, the article contains the following qualification: "The data and conclusions should be considered to be preliminary until published in a peer-reviewed publication." The context of the published material is a valid consideration at the final merits stage. For example, it would be absurd to suggest that negative coverage could serve as evidence of international recognition as outstanding. While the material submitted in this case is not negative, it notes that the work has yet to be peer reviewed and is not indicative of or consistent with international recognition as outstanding.

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."

In light of the above, our final merits determination reveals that the beneficiary's qualifying evidence, a citation on www.medpagetoday.com, and review responsibilities for his employer, even in the context of the remaining evidence, does not set the beneficiary apart in the academic community through eminence and distinction based on international recognition. 56 Fed. Reg. at 30705. Indeed, the record lacks evidence that the beneficiary is known among members of his own academic field (health outcomes research) outside of the geographic regions where the beneficiary's immediate circle of collaborators work.

III. Conclusion

The petitioner has shown that the beneficiary is a talented researcher, who has won the respect of his collaborators, employers, and mentors, while securing a very limited level of international exposure for his work. The record stops far 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.