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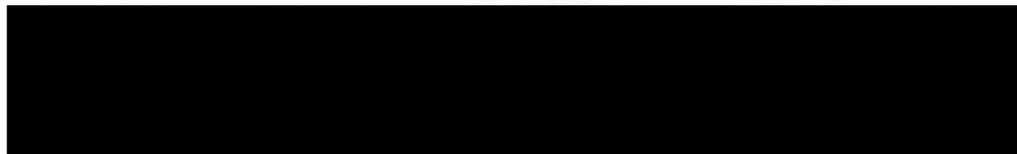
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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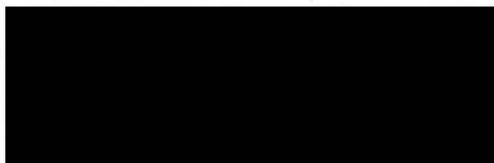
Petitioner:

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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, [REDACTED] 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 geological and engineering products and oil field services company. 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 Senior 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 information about peer review. 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.

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 20, 2009 to classify the beneficiary as an outstanding researcher in petroleum and mechanical engineering. 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 regulation at 8 C.F.R. § 204.5(i)(3)(i) states that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The regulation lists the following six criteria, of which the beneficiary must submit evidence qualifying under at least two.

- (A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;
- (B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;
- (C) Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;
- (D) Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field;
- (E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or
- (F) Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

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

The court stated that the AAO's evaluation rested on an improper understanding of the regulations.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,

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.

145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (recognizing the AAO's *de novo* authority).

II. Analysis

A. Evidentiary Criteria³

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

The petitioner submitted an April 27, 2007 letter from [REDACTED] The certified English language translation accompanying [REDACTED] letter states:

Included in the activities to be completed by this Unit during this year is the publication of the manuals submitted by the companies that won the competitions to deliver the training events scheduled for said effect, following a selection with regards to importance, clarity and utility of said manuals. With the aim of providing more personnel of the [REDACTED] System and its affiliates involved in this area with more access to information and facilitating their usage in their everyday activities.

For the foregoing reasons I kindly request that you arrange the respective authorization with the manual's author for its publication, as well as mailing the course's manual recorded on a CD in PDF format.

The awarded topic is:

[REDACTED]
delivered by [the beneficiary].

With regard to the submitted English language translation of [REDACTED] letter, the phrase "El tema seleccionado es el siguiente" is translated as "The *awarded* topic is." A more appropriate English language translation would be "The *selected* topic is."

Regarding the letter from [REDACTED] the director's decision stated:

The letter appears to indicate that the publication award was based on companies that were competing for training events and not specifically the beneficiary's outstanding achievement.... The Service notes that according to the beneficiary's curriculum vitae he worked for [REDACTED] from 2003 to 2005. [REDACTED] website indicates that [REDACTED] is a multinational network of management consultants that provides high value expertise to the

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

petroleum industry at competitive rates. We are a catalyst for transformation of the petroleum value chain acting as an intermediary among operating, technology, and 'knowledge' companies." The Service is unclear as to if the training manuals that were created by the beneficiary in 2003 and 2005 were created as a normal part of his job duties for [REDACTED]. . . . According to the evidence presented, the manuals appear to have been used for training localized to [REDACTED]. Therefore, these training manuals, while noteworthy, are not indicative of the beneficiary's outstanding achievement within the field as a whole.

On appeal, the petitioner does not specifically address the preceding observations of the director. We note that the petitioner's initial exhibit list identifies "[REDACTED]" as one of the beneficiary's scholarly articles "produced for [REDACTED] training course, 2005." While the April 27, 2007 letter from [REDACTED] indicates that the training manual authored by the beneficiary was selected for publication and distribution among the "personnel of the [REDACTED] System and its affiliates," there is no evidence establishing that the company's selection of the beneficiary's training manual equates to his receipt of a major award for outstanding achievement in the academic field. Even if the petitioner were to submit evidence showing that the beneficiary received an actual "prize" or an "award" from [REDACTED] recognizing his work for the company's training system, which the petitioner has not, such an award reflects internal recognition from a client rather than a major award for outstanding achievement in the academic field.

It is significant that the *proposed* regulation relating to this classification would have required evidence of a major *international* award. The final rule removed the requirement that the award be "international," but left the word "major." The commentary states: "The word "international" has been removed in order to accommodate the *possibility* that an alien might be recognized internationally as outstanding for having received a major award that is not international." (Emphasis added.) 56 Fed. Reg. 60897-01, 60899 (Nov. 29, 1991.)

Thus, the standard for this criterion is very high. The rule recognizes only the "possibility" that a *major* award that is not international would qualify. Significantly, even lesser international awards cannot serve to meet this criterion given the continued use of the word "major" in the final rule. *Compare* 8 C.F.R. § 204.5(h)(3)(i) (allowing for "lesser" nationally or internationally recognized awards for a separate classification than the one sought in this matter).

The petitioner also submitted the following:

1. "Author's Award in Recognition of Outstanding Service" (2006) presented to the beneficiary by the [REDACTED]
2. Certificate from the [REDACTED] presented to the beneficiary "For his professionalism, valuable experience, and shared knowledge as an INSTRUCTOR in the course of [REDACTED] delivered from the 11th to the 18th day of October, 2003, with a duration of 40 academic hours, sponsored by [REDACTED]."

3. Certificate from the [REDACTED] subsidiary of [REDACTED] the beneficiary's employer until 2003, stating: "The Best Program awards this recognition to [the beneficiary] and [REDACTED] for the entrepreneurial spirit demonstrated in the creation and implementation of the technology known as: [REDACTED] (2002);" and
4. An article in an unidentified publication stating that the beneficiary and several others were recognized by his employer [REDACTED] for "Exceptional Contributions to the Company" (1995).

With regard to item 2, there is no evidence showing that this certificate equates to a major prize or award for outstanding achievement in the academic field, rather than simply an acknowledgment of the beneficiary's participation as an instructor. The director found that the preceding honors were based on the beneficiary's merit as an employee, trainer, or consultant and that they reflected institutional honors rather than awards for outstanding achievement in the field in general. We affirm the director's finding. Items 1 – 4 equate to institutional honors from companies and a university which the beneficiary has directly served rather than major prizes or awards for outstanding achievement in the academic field. There is no documentary evidence demonstrating that the beneficiary's awards are recognized beyond the presenting bodies and therefore commensurate with "major" awards for outstanding achievement in the academic field. Accordingly, the petitioner has not established that the beneficiary meets this criterion.

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

The petitioner submitted the beneficiary's membership card for the [REDACTED] [REDACTED] reflecting an expiration date of December 2008. On September 16, 2009, the director requested documentation showing the "criteria for membership" in the [REDACTED]. The petitioner failed to submit the documentation requested by the director. There is no evidence (such as bylaws or rules of admission) showing that the [REDACTED] requires outstanding achievements of its members. Accordingly, the petitioner has not established that the beneficiary meets this criterion.

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 request for evidence, the petitioner submitted citation evidence from [REDACTED] reflecting one U.S. patent and two U.S. patent applications citing to the beneficiary's U.S. patent entitled [REDACTED]. Two of these citations were from the same research team. The petitioner also submitted evidence showing four citations to the beneficiary's [REDACTED] conference paper entitled [REDACTED]. Three out of the four citations were self-citations by the beneficiary's coauthor [REDACTED]. Nevertheless, 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. With regard to this criterion, a reference to the alien's work without evaluation is of minimal probative value.

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

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 petitioner submitted evidence indicating that the beneficiary reviewed a single paper submitted to [REDACTED] in 2001. This evidence qualifies under the plain language of the criterion set forth at 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 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 a single research institution or employer such as the petitioner. According to the Department of Labor's Occupational Outlook Handbook (OOH) (accessed at www.bls.gov/oco on September 30, 2010 and incorporated into the record of proceedings), it is inherent to the position of mechanical engineer to research, design, develop, manufacture, and test tools, engines, machines, and other mechanical devices. See <http://www.bls.gov/oco/ocos027.htm>. Moreover, it is inherent to the position of a petroleum engineer to design equipment and processes to achieve the maximum profitable recovery of oil and gas. *Id.* If the regulation at 8 C.F.R. § 204.5(i)(3)(i)(F) is to have any meaning, it must be presumed that merely performing duties inherent to the academic field is not a contribution to the academic field as a whole.

The petitioner initially submitted letters of support limited to the beneficiary's coworkers and supervisors.

[REDACTED] states:

From February 2, 1987 until February 4, 2003 I worked for [REDACTED] a subsidiary of [REDACTED] the [REDACTED] located in [REDACTED] [The beneficiary] began his employment with [REDACTED] in 1990. I had the opportunity to work with him in many occasions throughout his career at [REDACTED]

Even before the beginning of his professional career, [the beneficiary] hinted at his future technical fortitude by conducting outstanding undergraduate work in two-phase flow through chokes. This work contributed to his recruitment by [redacted] where he started his career as a Research Engineer in 1990. His initial work in the [redacted] involved [redacted] and was very well received by the various Operating Affiliates of [redacted] due to its combination of high quality and applicability. As a result, he was assigned to work in what at the time was one of the largest [redacted] fields in the world [redacted] as a Production Engineer. His work in Production Optimization had great impact and was duly recognized by his various field supervisors.

[The beneficiary] was assigned . . . to conduct research at the [redacted] which had one of the leading Production Engineering Research Programs in the world. His research once again was recognized by its innovative nature and he obtained an M.S. Degree in 1999. Upon his return to [redacted] he continued his professional growth as Project Leader by orchestrating multidisciplinary teams of Engineers and Researchers in various multiyear integrated studies. For some of this highly innovative work, a U.S. Patent was awarded in 2001.

[redacted] does not provide any examples of how the beneficiary's original research findings are being applied by others in the academic field. With respect to a lesser classification under section 203(b)(2) of the Act, 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.* The beneficiary's U.S. patent entitled [redacted] (dated February 6, 2001) is assigned to [redacted]. We will consider the information in the letters of support in considering whether the beneficiary's patented innovation has contributed to the field as a whole. In this instance, [redacted] letter does not indicate the extent to which the beneficiary's patent was utilized. There is no indication that the beneficiary's U.S. patent has contributed to the academic field as a whole rather than merely serving as an innovation utilized by the beneficiary's former employer. The petitioner's response to the director's request for evidence included citation evidence from [redacted] reflecting one U.S. patent [redacted] and two U.S. patent applications citing to the beneficiary's U.S. patent entitled [redacted]. The U.S. patent by [redacted] bears a notation indicating that the beneficiary's U.S. patent was cited by the U.S. patent examiner rather than [redacted] and his co-inventors. Further, the remaining two U.S. patent applications which cite to the beneficiary's patent were by the same research team [redacted]. The minimal level of citation to the beneficiary's U.S. patent by others in the field is not indicative of a contribution to the academic field as whole.

[redacted] states:

I have known [the beneficiary] for the past 8 years. He has taught several courses on Production Optimization, Integrated Reservoir Analysis and Portfolio Analysis at [redacted]

[REDACTED] which formed part of Industrial Reliability Program curriculum. Also, I had the opportunity to follow the research work of [the beneficiary] during several research activities performed between [REDACTED] research institute (2000, 2003).

[The beneficiary] has performed as an outstanding teacher combining in class the practical knowledge obtained in the oil production fields and the academic knowledge on reliability. Through his extensive research activities, [the beneficiary] has become an internationally reputed expert on artificial lift methods. He has published numerous papers in this area, also he has patented methods and ingenious apparatus for gas lift oil production, which have contributed significantly to optimized the production in the oil fields.

* * *

His contributions to the industry have been outstanding in the past, and I am confident that these will continue in the future.

[REDACTED] asserts that the beneficiary has “patented methods and ingenious apparatus for gas lift oil production, which have contributed significantly to optimized the production in the oil fields,” but there is no evidence showing that the beneficiary’s methodologies and apparatuses have been implemented anywhere other than his employers. Once again, a contribution to the beneficiary’s employer is not necessarily an original contribution to the academic field as a whole.

[REDACTED] states:

[The beneficiary’s] work has been instrumental evolution of the science of integrated reservoir and completion analysis. I have worked with [the beneficiary] for three years. His knowledge of commercial reservoir simulators, production optimization, mathematical modeling, artificial lift, and current industry practices is most beneficial to the development of this expertise.

* * *

I first collaborated with [the beneficiary] on the development of a high fidelity mathematical model of gravel packed inflow control devices. [The beneficiary’s] efforts extended the project beyond the basic idea into a much more descriptive and useful model. Our second collaboration was the development of techniques to incorporate integrated reservoir and completion modeling into the [REDACTED] process. [The beneficiary’s] research into the current industry practices for the [REDACTED] market, as well as his existing knowledge of the [REDACTED] heavy oil extraction processes, allowed [REDACTED] to develop and sell solutions to the [REDACTED] market. [The beneficiary] is currently the industry leading expert on the topic implementing integrated reservoir and completion analysis into commercially available reservoir simulators. [The beneficiary] created these original techniques that are a great asset to [REDACTED]

does not provide specific examples of how the beneficiary's original techniques are being applied by others in the field beyond his projects for . There is no evidence showing that the beneficiary's high fidelity mathematical model of gravel packed inflow control devices and techniques to incorporate integrated reservoir and completion modeling into the process are frequently cited by independent researchers or otherwise equate to original research contributions to the academic field as a whole.

states:

I have obtained knowledge of [the beneficiary's] work since I was working as High Pressure/ High Temperature Deep Wells Specialist for from 1993 to 1996 [The beneficiary] was working for being one of the high potential researchers and technology managers for and After hav[ing] been hired by in 2004 as a Senior Applications Engineer working for the Worldwide Technical Support Team, he has been involved, with excellent outcomes, in several production optimization projects in

[The beneficiary's] main role in particular production optimization projects has been the analysis of wells and oil & gas fields' performance to define or develop and implement the methodology or right technology to enhance wells' productivity and maximize hydrocarbons reserves recovery.

[The beneficiary's] contributions have actually help[ed] to change, with a lot of success, its traditional approach to oil & gas market, bringing more revenue, market share and profit to the company in the U.S. and the rest of the countries where he has worked supporting local teams.

discusses how the beneficiary's work has improved oil and gas business, but he does not explain how the beneficiary's work constitutes an original contribution to the academic field at large

states:

I had the opportunity of working and also being supervisor of [the beneficiary] in

* * *

[The beneficiary] was an important player in the development of Artificial Lift Technologies at . In fact, he participated in several projects, such as:

1. Leader and, principal creator for the designed and developed of an optimization program for 1999.

2. Contributor in Field scale research on [REDACTED] lift, 1996-1998.
3. Leader and, principal creator for Developed optimization technology for continuous gas lift wells through the measuring, analysis and control of the wellhead temperature, 1994.

His excellent performance was a high contribution to achieve the project's goals. All the results of these [REDACTED] projects are supported by patents or/and international publications.

There is no evidence showing that the beneficiary's patents and publications are frequently cited by independent researchers or otherwise equate to original research contributions to the academic field at large. For instance, the petitioner's response to the director's request for evidence included citation evidence from [REDACTED] showing four citations to the beneficiary's [REDACTED] conference paper entitled [REDACTED]

As previously discussed, three out of four of these citations were self-citations by the beneficiary's coauthor Ali Hernandez. Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent engineering researchers. The single independent cite to the beneficiary's [REDACTED] conference paper is not indicative of a demonstrable influence in the academic field as whole.

While the beneficiary's engineering research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the academic or business community. Any master's thesis or doctoral research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every mechanical or petroleum engineer who performs original research that adds to the general pool of knowledge has inherently made an original contribution to the academic field as a whole. Further, we note that the preceding letters are all from the beneficiary's coworkers and supervisors. While such letters are important in providing details about the beneficiary's role in various projects, they cannot by themselves establish that his work is recognized beyond his immediate employers at a level consistent with a contribution to the academic field as a whole.

In response to the director's request, the petitioner submitted an additional letter of support from [REDACTED] stating:

I have been requested to write this letter on behalf of [the beneficiary]

* * *

Based on my review of [the beneficiary's] professional achievements and contributions to production technologies, I can state confidently that he is an outstanding researcher working in petroleum and mechanical engineering.

[REDACTED] does not indicate that he was aware of the beneficiary's original contributions to the academic field prior to the request that he review the beneficiary's professional achievements. An

opinion from an expert who was not previously aware of the beneficiary's work, and is simply reviewing a resume or list of accomplishments, cannot by itself establish that the beneficiary's work is recognized for contributions to the academic field as a whole.

further states:

[The beneficiary] is truly an expert in . He is one of a handful of researchers with the ability to use sophisticated equipment and technology in order to improve wellbore stability and enhance drilling efficiency. Specifically, [the beneficiary] uses his expertise in petroleum and mechanical engineering to analyze and determine the best applications to use at a particular site to minimize sand movement. These tools include custom designed software, horizontal gravel packing design, and analysis, among other things. . . . In this area, [the beneficiary] has demonstrated a remarkable ability to apply his scientific knowledge to technical industry practicalities, producing significant contributions to the field.

The beneficiary's training in and utilization of advanced technology developed by others, or his unusual engineering knowledge, do not equate to original research contributions to the academic field. There is no evidence showing that the beneficiary has originated equipment and technologies that have notably influenced the academic field at large.

continues:

[The beneficiary] has specifically worked to provide high-level research and development insight for technology. is a cutting-edge technology which eliminates the conventional perforating and gravel packing to improve reservoir productivity and formation protection. In support of the development, implementation and marketing of among other things, [the beneficiary] specifically developed critical analytical description models which are used to quantify the productivity and other factors related to performance of . Moreover, [the beneficiary] studied and helped establish optimum operational parameters for use in each type of well completion, important information which allows and their clients optimize their efforts. [The beneficiary's] advancements in this area are promising and will be a boon to the industry.

opines that the beneficiary's advancements are "promising and will be a boon to the industry," but there is no evidence that this work has already significantly impacted the academic field as of the date of filing. A petitioner must establish the beneficiary's eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). A petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *Id.* at 49. Nevertheless, does not state that the beneficiary was the original inventor of technology or provide specific examples of how the beneficiary's work is already impacting others in the industry.

further states:

Also for [redacted] [the beneficiary] worked on a flow regulation system named [redacted] is another novel [redacted] technology for use in horizontal wells developed by [redacted] via the efforts of [the beneficiary]. . . . For [the beneficiary] provided significant and valuable design support, including developing a system for applying optimum application of [redacted] to wells with low and high viscous fluid. Again, [the beneficiary's] work is strong, sophisticated, and holds significant promise. But the benefits of [the beneficiary's] research on [redacted] are not likely to be confined solely to [redacted] and its clients. As with many advances in the oil and gas industry, this work – to the extent that it increases our understanding of [redacted] – holds the promise of innovation in other energy areas.

[redacted] asserts that the beneficiary's work pertaining to the [redacted] technology holds "promise," but he does not provide examples of how the beneficiary's original applications are already being implemented in the field beyond his employer's projects. Further, [redacted] does not specify the "other energy areas" that have been impacted by the beneficiary's work as of the date of filing. As previously discussed, a petitioner must establish the beneficiary's eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *Id.* at 49.

[redacted] continues:

[The beneficiary's] major contributions to the field of petroleum and mechanical engineering have been published in a number of original scholarly research articles in peer-reviewed journals with international circulation. The impeccable scientific quality of his methods is evinced by the rigorous peer-review process that publications of this nature undergo. His articles have appeared in such well-known journals as the [redacted] among others. In my opinion, these publications are significant journals with international reputations and circulation. The inclusion of articles for publication in these journals is evidence, in its own right, of the significant nature of the research, and of its practical implications.

While the petitioner has submitted evidence indicating that the beneficiary prepared two papers for [redacted] "conferences," there is no evidence to support [redacted] claim that the beneficiary's "articles have appeared in such well-known journals as the [redacted] In fact, there is no evidence that the beneficiary's work has been published in any of the [redacted] seven peer-reviewed technical "journals." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter*

⁴ According to its internet site, the [redacted] publishes seven peer-reviewed technical journals." The [redacted] internet site identifies [redacted] *Journal* among the seven technical journals listed, but there is no [redacted] as claimed by [redacted] accessed on October 1, 2010, copy incorporated into the record of proceeding.

of *Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, despite [redacted] assertion that the “impeccable scientific quality of [the beneficiary’s] methods is evinced by the rigorous peer-review process that publications of this nature undergo,” both of the beneficiary’s [redacted] conference papers include a disclaimer at the beginning stating: “Contents of the paper, as presented, have not been reviewed by the [redacted]”

Regarding the inconsistencies in [redacted] statements with the evidence of record, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We further 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. To hold otherwise would render meaningless the regulatory requirement that a beneficiary meet at least two separate criteria.

further states:

In addition to the publication of scholarly publications included in prestigious journals, [the beneficiary] has also been asked to present his work at the most notable conferences relating to petroleum and mechanical engineering, such as the [redacted] [redacted] among others. . . . It is worth highlighting that the conferences noted above are very important sources of information about significant leading edge advancements in the oil and gas industry. I often refer to them in my work as a way of remaining current with technical advancements and how they are being applied to improve well production. Such conferences are selective and gather the most significant new research being done in the field, which naturally forms the basis for further research investigations, including my own, and ultimately has a beneficial impact on industry practices.

Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, is not necessarily an original research contribution the academic field at large. There is no evidence showing that the beneficiary’s conference presentations have been frequently cited by independent researchers or have otherwise notably influenced the academic field. [redacted] does not state that he has cited to any of the beneficiary’s conference presentations in his own work and provides no specific examples of any independent researchers and engineers who have applied the beneficiary’s original technologies in their work.

[redacted] concludes by stating:

Most importantly, [the beneficiary's] innovative work in petroleum and mechanical engineering has led to the receipt of a U.S. patent. . . . For work to be considered patent-worthy, it must reach a high threshold of originality and potential value. The fact that [the beneficiary] has contributed such a level of work is a remarkable distinction that sets him apart and demonstrates his highly exceptional ability.

The grant of a patent demonstrates only that an invention is original. As previously discussed, 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. at 221 n. 7. Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* There is no evidence showing the extent to which the beneficiary's patented innovation has been utilized in the industry. Moreover, as previously discussed, the minimal level of citation to the beneficiary's U.S. patent by others is not indicative of a contribution to the academic field as whole.

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. at 165. For example, [redacted] claim that the beneficiary's "articles have appeared in such well-known journals as the [redacted] is not corroborated by the evidence of record.

The letters considered above contain bare assertions of widespread recognition and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions have influenced the academic field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.⁵ The petitioner submitted only a single independent letter from [redacted] and this letter does not suggest that he has applied or cited to the beneficiary's work. Moreover, the beneficiary's minimal citation record submitted in response to the director's request for evidence is not indicative of a contribution to the field as whole.

⁵ *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, 15 (D.C. Dist. 1990).

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

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

The petitioner submitted evidence of the beneficiary's authorship of conference presentations, conference papers, training manuals prepared for ██████████ thesis. However, there is no evidence showing that the beneficiary has authored articles published "in scholarly journals with international circulation." Further, the beneficiary's training manuals with limited distribution to "personnel of the ██████████ System and its affiliates" do not equate to scholarly books in the academic field. Accordingly, 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)(F).

In light of the above, the petitioner has submitted evidence that meets only one of the criteria that must be satisfied to establish the minimum eligibility requirements for this classification. Specifically the petitioner submitted evidence that the beneficiary meets the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(D). Nevertheless, 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 at 8 C.F.R. § 204.5(i)(3)(i) 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 beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of his recognition beyond his own circle of collaborators. *See Kazarian*, 596 F.3d at 1122. Regarding the beneficiary's review of a single paper for ██████████ ██████████ in 2001, the director's decision stated: "Peer review is a common practice and many scientists/researchers are routinely called upon to perform such duties." On appeal, the petitioner submits information about peer review from *Wikipedia*, an online encyclopedia. Regarding information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.⁶ *See Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir.

⁶ Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to

2008). Nevertheless, the information from *Wikipedia* appears to support the director's conclusion. The submitted information states that peer review is "considered essential to academic quality," that publications which "have not undergone peer review are likely to be regarded with suspicion by scholars and professionals," that "it is normal for manuscripts . . . to be sent to one or more external reviewers for comment," and that the ultimate "decision whether or not to publish a scholarly article . . . lies with the editor of the journal to which the manuscript has been submitted."

The petitioner's appellate submission also includes the [REDACTED] [REDACTED] The submitted manual, however, describes the peer-review process "for programs conducted by government agencies" rather than for [REDACTED] journals such as [REDACTED] The "Introduction" to the [REDACTED] states:

The purpose of this manual is to describe the peer-review process developed by the [REDACTED] [REDACTED] for programs conducted by government agencies.

* * *

In preparation of this manual, it was recognized that the traditional peer review (*as performed routinely* by all professional societies for their technical publications) must be modified to accommodate the unique needs of government agencies.

[Emphasis added.]

The evidence submitted on appeal indicates that scientific journals are "routinely" peer reviewed and rely on multiple professionals to review submitted articles. Normally a journal's editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication to ask multiple reviewers to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Thus, peer review is routine in the field and not every peer reviewer is internationally recognized as outstanding. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed manuscripts for a substantial number of distinguished journals or served in an editorial position for a distinguished

develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on October 1, 2010, copy incorporated into the record of proceeding.

journal, we cannot conclude that the beneficiary's judging experience is indicative of or consistent with international recognition.

Regarding the beneficiary's original research, as stated above, it does not appear to rise to the level of contributions 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." Notably, the Department of Labor's OOH (accessed at www.bls.gov/oco on September 30, 2010 and incorporated into the record of proceedings), contains the following information on mechanical engineers and petroleum engineers:

Mechanical engineers research, design, develop, manufacture, and test tools, engines, machines, and other mechanical devices. Mechanical engineering is one of the broadest engineering disciplines. Engineers in this discipline work on power-producing machines such as electric generators, internal combustion engines, and steam and gas turbines. They also work on power-using machines such as refrigeration and air-conditioning equipment, machine tools, material-handling systems, elevators and escalators, industrial production equipment, and robots used in manufacturing. Some mechanical engineers design tools that other engineers need for their work. In addition, mechanical engineers work in manufacturing or agriculture production, maintenance, or technical sales; many become administrators or managers.

* * *

Petroleum engineers design methods for extracting oil and gas from deposits below the earth. Once these resources have been discovered, petroleum engineers work with geologists and other specialists to understand the geologic formation and properties of the rock containing the reservoir, to determine the drilling methods to be used, and to monitor drilling and production operations. They design equipment and processes to achieve the maximum profitable recovery of oil and gas. Because only a small proportion of oil and gas in a reservoir flows out under natural forces, petroleum engineers develop and use various enhanced recovery methods, including injecting water, chemicals, gases, or steam into an oil reservoir to force out more of the oil and doing computer-controlled drilling or fracturing to connect a larger area of a reservoir to a single well. Because even the best techniques in use today recover only a portion of the oil and gas in a reservoir, petroleum engineers research and develop technology and methods for increasing the recovery of these resources and lowering the cost of drilling and production operations.

See <http://www.bls.gov/oco/ocos027.htm>. As original designs are inherent to mechanical engineers and petroleum engineers, the mere originality of the beneficiary's work does not set the beneficiary apart in the academic community through eminence and distinction based on international recognition, the purpose of the regulations. 56 Fed. Reg. at 30705. For the reasons discussed above, the record does not contain sufficient evidence that the beneficiary's original technologies and methodologies have had a notable influence in the field, let alone an influence consistent with being internationally recognized as outstanding.

While the beneficiary has authored scholarly articles and taught in a university setting, the OOH (accessed at www.bls.gov/oco on October 1, 2010 and incorporated into the record of proceedings) provides information about the nature of employment as a postsecondary teacher and the requirements for such a position. See www.bls.gov/oco/ocos066.htm. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* 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 evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. See *Kazarian*, 596 F. 3d at 1122. As the beneficiary's work has been only minimally cited and the record contains no other comparable evidence demonstrating the impact of the beneficiary's scholarly articles and U.S. patent, we cannot conclude that the beneficiary's citation record is consistent with international recognition.

In light of the above, our final merits determination reveals that the beneficiary's single form of qualifying evidence, his review of one paper submitted to [REDACTED] in 2001, 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 – International Recognition as Outstanding

The petitioner has shown that the beneficiary is a talented research engineer, who has won the respect of his coworkers and supervisors, while securing a small 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.

IV. Job Offer

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(i)(3)(iii) provides that a petition must be accompanied by:

An *offer* of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning *offering* the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning *offering* the alien a permanent research position in the alien's academic field; or

(C) A department, division, or institute of a private employer *offering* the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

(Emphasis added.) Black's Law Dictionary 1189 (9th ed. 2009) defines "offer" as "[t]he act or an instance of presenting something for acceptance" or "a display of willingness to enter into a contract on specified terms, made in a way that would lead a reasonable person to understand that an acceptance, having been sought, will result in a binding contract." Black's Law Dictionary does not define "offeror" or "offeree." The online law dictionary by American Lawyer Media (ALM), available at www.law.com, defines offer as "a specific proposal to enter into an agreement with another. An offer is essential to the formation of an enforceable contract. An offer and acceptance of the offer creates the contract." Significantly, the same dictionary defines offeree as "a person or entity *to whom an offer to enter into a contract is made* by another (the offeror)," and offeror as "a person or entity who makes a specific proposal *to another (the offeree)* to enter into a contract." (Emphasis added.)

In light of the above, the ordinary meaning of an "offer" requires that it be made to the offeree, not a third party. As such, regulatory language requiring that the offer be made "to the beneficiary" would simply be redundant. Thus, a letter from the petitioner addressed to USCIS *affirming* the beneficiary's employment is not a job *offer* within the ordinary meaning of that phrase.

The regulation at 8 C.F.R. § 204.5(i)(2), provides, in pertinent part:

Permanent, in reference to a research position, means either tenured, tenure track, or for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination.

On Part 6 of the petition, the petitioner indicated that the proposed employment was a permanent position. The petitioner's initial evidence included an undated letter of support from Baker Hughes Inc.'s Human Resources Representative to USCIS, but this letter does not constitute a job offer from the petitioner to the alien beneficiary. The petitioner has not submitted the required primary initial

evidence, the original job offer predating the filing date of the petition. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). Confirmations after the fact are not evidence of eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Moreover, the nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence. In this instance, the petitioner has not complied with the regulation at 8 C.F.R. § 103.2(b)(2) regarding its failure to submit primary evidence of the beneficiary's original job offer. Specifically, the petitioner has not demonstrated that the original job offer to the beneficiary does not exist or is unavailable. Without the initial job offer, we cannot consider the petitioner's explanations about the terms and conditions set forth in that job offer.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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.