

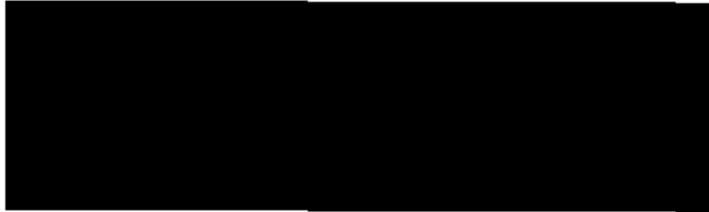
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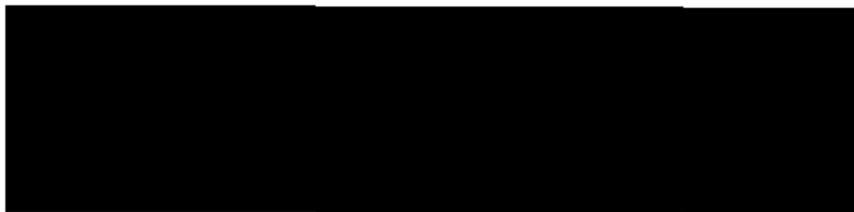
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: OCT 07 2010

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:



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, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an institution of higher education and research. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a "research associate." The petitioner's office of Human Resources summarizes the position, which pays \$36,367, as follows: "Conduct and organize data collection and analysis and assist in research, and related tasks, on specified projects." As of the date of filing, the beneficiary had published only two articles in toxicology, one of which was published only one month before the petition was filed. The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we uphold the director's ultimate decision that the petitioner has not established eligibility for the classification sought. Specifically, when we simply "count" the evidence submitted, the petitioner has submitted qualifying evidence under two of the regulatory criteria as required, judging the work of others and scholarly articles pursuant to 8 C.F.R. §§ 204.5(i)(3)(i)(D) and (F).¹ As explained in our final merits determination, however, much of the evidence that technically qualifies under these criteria reflects routine duties or accomplishments in the field that do not, as of the date of filing, set the beneficiary apart in the academic community through eminence and distinction based on international recognition, the purpose of the regulatory criteria.² *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)). We note that the beneficiary is also the beneficiary of an approved petition classifying her as a member of the professions holding an advanced degree pursuant to section 203(b)(2)(B) of the Act. This decision is without prejudice to the approval of that petition, filed under a lesser classification.

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):

* * *

¹ While counsel has never asserted that the petitioner was submitting qualifying evidence under 8 C.F.R. § 204.5(i)(3)(i)(D), the record contains evidence that technically qualifies under that regulation.

² The legal authority for this two-step analysis will be discussed at length below.

(B) Outstanding professors and researchers. -- An alien is described in this subparagraph if --

- (i) the alien is recognized internationally as outstanding in a specific academic area,
- (ii) the alien has at least 3 years of experience in teaching or research in the academic area, and
- (iii) the alien seeks to enter the United States --
 - (I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,
 - (II) for a comparable position with a university or institution of higher education to conduct research in the area, or
 - (III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

The regulation at 8 C.F.R. § 204.5(i)(3) states that a petition for an outstanding professor or researcher must be accompanied by:

- (ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from current or former employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

This petition was filed on July 28, 2009 to classify the beneficiary as an outstanding researcher in the field of toxicology. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching and or research experience in the field as of that date, and that the beneficiary's work has been recognized internationally within the field as outstanding. The beneficiary received her Ph.D. on December 16, 2006, less than three years before the petition was filed. The petitioner has not documented that the beneficiary had qualifying teaching experience while pursuing her Ph.D. Thus, the petitioner must demonstrate that the beneficiary's Ph.D. research is recognized within the academic

field as outstanding if that experience is to be applied towards the three years of necessary experience. 8 C.F.R. § 204.5(i)(3)(ii). Significantly, the inclusion of Ph.D. research experience towards the requisite three years of experience is the exception, not the rule.

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

- (A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;
- (B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;
- (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.³ Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the

³ 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)).

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.⁴ While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court's reasoning persuasive to the classification sought in this matter. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (recognizing the AAO's *de novo* authority).

II. Analysis

A. Evidentiary Criteria⁵

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

The petitioner submitted a certificate from the City of Tucson, Office of the Mayor, in conjunction with the University of Arizona and the International Friends Community Organization honoring the beneficiary as an "Honorary Citizen of Tucson" for "positive contributions you made to our

⁴ 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.

⁵ The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

community," a 2006 travel grant from East Coast PARP to attend the group's meeting, 2005 and 2006 travel grants from the Arizona Cancer Center to attend the annual American Association for Cancer Research (AACR) meetings and a Certificate of Appreciation for volunteering at a junior scientists kids' day at the University Arizona Science Engineering Library. Counsel also references academic scholarships.

In response to the director's request for additional evidence, counsel asserts that the University of Arizona Travel awards are limited to graduate students at the university and are reviewed by the Cancer Biology Graduate Interdisciplinary Program. Counsel further asserts that of the more than 7,000 graduate students at the university, only ten received this award in 2006 and 24 received the award in 2005. Counsel does not suggest that all 7,000 graduate students at the university submitted abstracts to be presented at a cancer conference or even that all 7,000 are involved in cancer research. Counsel also fails to explain whether the awards take into account an ability to finance one's own travel to the conference. Regardless, the petitioner submits no evidence to support these assertions. 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).

According to counsel, the Honorary Citizen recognition is based on community activities and is limited to international students at the University of Arizona, 21 of whom who received this recognition in 2005. Even if we accept counsel's characterization of this recognition, it is not an award in the beneficiary's academic field.

Finally, counsel asserts that the Beijing University of Chinese Medicine scholarships are open to all students at the university and are merit based. Scholarships generally recognize academic performance rather than outstanding achievement in an academic field. Moreover, the beneficiary's academic field is toxicology while her scholarships were based on academic performance in a traditional Chinese medicine curriculum. Regardless, the record does not contain the scholarship or evidence of their significance beyond a single institution. We reiterate that 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. While the beneficiary lists the scholarships on her self-serving curriculum, 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)).

On appeal, counsel no longer asserts that the above recognition constitutes qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(A). We concur with the director that the above recognition is not qualifying evidence under that regulation.

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).

As discussed above, the petitioner has not established that the above recognition amounts to prizes or awards for outstanding achievements in the beneficiary's academic field. Nor is the record persuasive that this recognition rises to the level of "major" prizes or awards as required under 8 C.F.R. § 204.5(i)(3)(i)(A) and explained at 56 Fed. Reg. 60899. Thus, the petitioner has not submitted qualifying evidence that meets the plain language of this regulation.

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

Initially and in response to the director's request for additional evidence counsel asserted that the beneficiary's professional memberships in AACR, the American Association for the Advancement of Science (AAAS) and the Society of Toxicology (SOT). The petitioner submitted information about AACR and SOT in general but not their membership requirements as well as evidence that AAAS is "open to all."

In response to the director's request for additional evidence, the petitioner submitted evidence that AACR is "open to qualified scientists of any nation who have established a record of scholarly activity resulting in original, peer-reviewed publications relevant to cancer and biomedical research." While the Board of Directors may invite to membership other members who have made substantial contributions to cancer research in an administrative or educational capacity, the minimum requirements for membership are published publications in the field. The Department of Labor's Occupational Outlook Handbook (OOH) states specifically with respect to the biological sciences that a "solid record of published research is essential in obtaining a permanent position performing basic research, especially for those seeking a permanent college or university faculty position." See www.bls.gov/oco/ocos047.htm, accessed September 30, 2010 and incorporated into the record of proceeding. Thus, publication alone is not an outstanding achievement.

Finally, the petitioner submitted the Constitution of SOT which provides the following requirements for full membership:

Qualified persons who have a continuing professional interest in toxicology and (a) who have conducted and published original research in some phase of toxicology *or* (b) who

are generally recognized as expert in some phase of toxicology shall be eligible for membership.

(Emphasis added.) Given the use of the conjunction "or," it is clear that SOT only requires original publications in the field. As explained above, merely conducting and publishing original research is not an outstanding achievement for a biological scientist.

On appeal, counsel does not contest the director's conclusion that the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(i)(3)(i)(B) and for the reasons discussed above, we concur with the director.

Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation

Counsel has never asserted that the record contains evidence that qualifies under 8 C.F.R. § 204.5(i)(3)(i)(C). We concur with the director that articles which cite the beneficiary's work are primarily about the author's own work or recent trends in the field, not the beneficiary's work. As such, they cannot be considered published material about the beneficiary's work. Thus, we affirm the director's conclusion that the petitioner has not submitted evidence that qualifies under the plain language requirements set forth at 8 C.F.R. § 204.5(i)(3)(i)(C).

Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field

While counsel does not appear to have addressed this criterion, the record contains an October 29, 2007 letter from the petitioner thanking the beneficiary for her participation as a judge of the 2007 poster competition that recognized excellent research at the petitioning university. While internal to the petitioning university, this evidence technically 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 an individual laboratory or institution.

Significantly, the regulation at 8 C.F.R. § 204.5(i)(3)(i)(E) requires evidence of qualifying contributions in the plural. Significantly, not all of the criteria at 8 C.F.R. § 204.5(i)(3)(i) are worded in the plural. Specifically, the regulation at 8 C.F.R. § 204.5(i)(3)(i)(D) only requires service on a single judging panel. Thus, we can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.⁶

The petitioner submitted evidence that the beneficiary had authored, as of the date of filing, two scholarly articles in her academic field of toxicology, one of which was published one month before the petition was filed. The regulations, however, include a separate criterion for scholarly articles at 8 C.F.R. § 204.5(i)(3)(i)(F). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly articles. As of the date of filing, the beneficiary's 2007 article had garnered moderate citation from independent sources. Moreover, a few of the citations single out the beneficiary's work as of significant or particular interest. Even if we concluded that this citation record was consistent with a contribution to the academic field as a whole, it would only demonstrate a single such contribution.

In addition, the petitioner has presented her work at conferences both orally and as poster presentations. Counsel and some of the beneficiary's references note that the SOT accepted the beneficiary's submitted abstract for a "platform presentation" of less than 20 minutes during a two and a half hour session during a four-day conference. While the acceptance of the abstract for oral presentation may demonstrate that it was deemed worthy of dissemination, we will not presume that every oral presentation constitutes a contribution to an academic field as a whole. Rather, at issue is the presentation's ultimate influence in the field.

On her curriculum vitae, the beneficiary lists a book chapter "in press" in 2009. On appeal, counsel submits an author's proof of the chapter and a 1997 review of the book, edited by a professor at the University of Arizona, characterizing it as a "monumental, once-in-a-generation (or even a lifetime) work." While the original edition of the book may have been such a work in 1997, the petitioner has not established that every updated chapter for a new edition is a comparable achievement. Regardless, the book chapter was unpublished as of the date of filing 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. 45, 49 (Reg'l. Comm'r. 1971).

The beneficiary began her Ph.D. studies at the University of Alabama at Birmingham before transferring to the University of Arizona. At the University of Alabama, the beneficiary worked in the laboratory of [REDACTED] now a professor at West Virginia University. [REDACTED] discusses the beneficiary's earlier work on phenylketonuria (PKU) at the China-Japan Friendship

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

Hospital, asserting that the beneficiary's discovery of a strong correlation between genotype and phenotype in classic PKU patients "has been successfully applied to genetic consultation for PKU patients." [REDACTED] does not appear to have first-hand knowledge of the influence of the beneficiary's PKU research results.

The record contains no guidelines for PKU genetic consulting referencing the beneficiary's work or affirmations from a number of clinics confirming their use of the beneficiary's results in PKU genetic consulting. Moreover, it is not clear that this work is within the beneficiary's current academic field of toxicology.

[REDACTED] goes on to discuss the beneficiary's work at the University of Alabama at Birmingham. [REDACTED] explains that the beneficiary "investigated the role of KLF4, a protein involved in the early stages of carcinogenesis, in skin dysplasia." While [REDACTED] praises the beneficiary's skills in pursuing this research, he does not discuss the results of this work or how it has been influential.

[REDACTED] the beneficiary's Ph.D. advisor at the University of Arizona, discusses the beneficiary's research in [REDACTED] laboratory, which focuses on poly(ADP-ribose) (PAR) metabolism. [REDACTED] explains that PAR metabolism "plays an essential role in cell fate determination following genotoxic stress" and, thus, has clinical applications for cancer research and research into damage from heart attack or stroke. According to [REDACTED], poly(ADP-ribose) glycohydrolase (PARG), is known to be the major catabolic enzyme degrading PAR although its biological functions in cell fate determination were unclear due to technical obstacles such as PARG's low abundance in mammalian cells, sensitivity to proteases and lack of animal models. [REDACTED] asserts that the beneficiary overcame these technical challenges by implementing a novel experimental design using a partial PARG knockout mouse fibroblast as a research model. The beneficiary's model, according to [REDACTED] enables a comparison with full length PARG with its truncated isoform. [REDACTED] Jacobson further asserts that the beneficiary "revealed complex biological functions of PARG in cell fate determination following genotoxic stress." More specifically [REDACTED] states:

[The beneficiary] is the first scientist who made the following exceptional discoveries about PARG: First, she demonstrated that the N-terminal A domain of PARG may negatively regulate PARG enzymatic activity because a truncated PARG has higher capacity to degrade PAR *in vivo*. Secondly, she found that PARG regulates enzymatic activity of [poly(ADP-ribose) polymerase (PARP)] by altering its automodification status following genotoxic stress. This discovery proved that PARG is not only the catabolic enzyme but also an important regulator of PAR metabolism. Thirdly, [the beneficiary] revealed that PARG is involved in DNA repair and cell death following mild and severe genotoxic stress, respectively.

As examples of how this work has been recognized internationally, [REDACTED] notes that the beneficiary presented her research at a conference and that she published her results. We will not presume the influence of a given presentation or publication from the fact that it was presented or published. Rather, it is the petitioner's burden to demonstrate the influence of the individual

presentation or publication. [REDACTED] asserts that "many prestigious scientists" from several countries have cited the beneficiary's article on PARG and the record contains evidence of moderate citation of this article. As stated above, however, the petitioner must demonstrate more than a single original research contribution according to the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(E).

In addition to the above project, [REDACTED] further asserts that the beneficiary "made significant contributions to another research project in my laboratory." As stated above, however, the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(E) requires a contribution to the field rather than simply to a single research laboratory. [REDACTED] explains that the beneficiary demonstrated, contrary to previous thought, that PARG can remove the proximal ADP-ribose residue in an *in vitro* system. [REDACTED] asserts that the beneficiary "did most of the important experiments for this project." While it appears that these results may have been presented at a conference, this work does not appear to be the subject of the beneficiary's second article in toxicology, published only one month prior to the date of filing. [REDACTED] does not explain how the beneficiary's work on PARG's ability to remove the proximal ADP-ribose residue has been influential beyond [REDACTED] laboratory. For example, [REDACTED] provides no examples of other research laboratories that have altered their own research strategies on PARG based on the beneficiary's results.

The remaining letters from the beneficiary's Ph.D. professors provide similar information and make general assertions as to her recognition without providing specific examples of the beneficiary's influence in independent laboratories.

The petitioner also submitted letters from independent references. [REDACTED], a professor at the University of Sussex, asserts that while he has never met the beneficiary, he is "well-acquainted with her published work." [REDACTED] notes that he has cited the beneficiary's research in three of his own articles. [REDACTED] discusses the beneficiary's research with PARG and concludes that this work "would certainly inspire other scientists to treat PARP and PARG as a coordinated regulatory system, instead of only two enzymes with separate functions." [REDACTED] concludes that the beneficiary has validated PARG as a novel therapeutic target. [REDACTED] does not provide specific examples of research projects inspired by the beneficiary's work. Regardless, [REDACTED] does not suggest that any of the beneficiary's other research has risen to the level of a contribution to the field as a whole.

[REDACTED], an associate professor at Cornell University, also asserts that while he does not know the beneficiary personally, he is familiar with her work on PARG. [REDACTED] affirms that the beneficiary "significantly improved our understanding about the important role of PARG in cellular responses to genotoxic stress" and "greatly enriched our understanding about the relationship between PARP and PARG." [REDACTED] does not provide specific examples of recent research on PARG directly motivated by the beneficiary's results. For example, he does not suggest that any team is using the beneficiary's mouse model. [REDACTED] at the University of California, San Francisco, provides similar information to that discussed above.

of multiple contributions in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

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

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

As stated above, the petitioner submitted two articles authored by the beneficiary as of the date of filing in her academic field of toxicology that appeared in a scholarly journal with a documented international circulation.⁸ This evidence qualifies under 8 C.F.R. § 204.5(i)(3)(i)(F).

In light of the above, the petitioner has submitted evidence that meets at least 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 criteria set forth at 8 C.F.R. §§ 204.5(i)(3)(i)(D) and (F). 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 beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond her own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. Internal judging is not evidence of the beneficiary's recognition beyond that institution. *Id.* Thus, while technically meeting the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(D), the evidence of the beneficiary's service as a judge of other research at the petitioning institution is not consistent with or indicative of international recognition.

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

⁸ The petitioner authored an article on progress on tetrahydrobiopterin deficiency research in the *Journal of China-Japan Friendship Hospital* in 2001, but the record contains no evidence that this article is in the beneficiary's current field of toxicology or that the journal enjoys an international circulation.

Regarding the beneficiary's original research, as stated above, it does not appear to rise to the level of multiple 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."

While the petitioner's 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 scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge enjoys international recognition.

While the beneficiary has published articles, the OOH provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. 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. See www.bls.gov/oco/ocos066.htm, accessed September 30, 2010 and incorporated into the record of proceedings. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* Further, as stated above, the OOH states specifically with respect to the biological sciences that a "solid record of published research is essential in obtaining a permanent position performing basic research, especially for those seeking a permanent college or university faculty position." See www.bls.gov/oco/ocos047.htm. This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field.

Moreover, the beneficiary's citation history is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond her own circle of collaborators. See *Kazarian*, 596 F. 3d at 1122. The record is not persuasive that two articles that were not extensively cited are indicative of or consistent with international recognition as outstanding.

We acknowledge that under the classification sought, the beneficiary need not be within the small percentage at the top of the field. Compare section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2). Thus, the fact that the qualifications of the beneficiary's references far outweigh her own does not necessarily preclude eligibility. That said, we cannot ignore that the qualifications of the beneficiary's references are far more consistent with international recognition than the beneficiary's qualifications. For example, [REDACTED] an associate dean at the University of Arizona, serve on the editorial board of prominent scientific journals. [REDACTED] has published 118 peer-reviewed articles including articles in *Nature* and *Science*, presented 38 invited papers, authored a "widely-cited book," gave 133 invited seminar and symposium presentations, and is a listed inventor on 35 patent

applications. As stated above, the beneficiary has merely participated in internal review and had authored only two articles as of the date of filing, only one of which had garnered any attention in the field. Moreover, as stated above, the beneficiary works as a research associate, a position requiring that the beneficiary "conduct and organize data collection and analysis and assist in research, and related tasks, on specified projects." While not determinative, this position appears to be an entry-level position with minimal independent research responsibilities.

In light of the above, our final merits determination reveals that the beneficiary's qualifying evidence, participating in internal review and publishing two articles, one of which was moderately cited, 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. Rather, the beneficiary's references, who attest to their own international recognition, reflect credentials far more consistent with such recognition.

III. Conclusion

The petitioner has shown that the beneficiary is a talented researcher, who has won the respect of her collaborators, employers, and mentors, while securing some degree of international exposure for her work. The record, however, stops short of elevating the beneficiary to the level of an alien who is internationally recognized as an outstanding researcher or professor. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.