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

U.S. Citizenship
and Immigration
Services

B3

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: OCT 18 2010

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Mari Johnson

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 a drug delivery, pharmaceutical research and development and manufacturing 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 manager of technology development. 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. Counsel asserts that the director erred in refusing "to consider the evidence [submitted] in spite of its own record of approving such petitions for researchers who are far less accomplished" than the beneficiary." Counsel submits two unpublished decisions by this office, only one of which sustained the appeal. That decision sustained an appeal for an alien who was both highly cited and a credited editor of a journal, elements not present in this matter. The second AAO decision withdrew a decision finding the beneficiary had insufficient experience but remanded the matter to the director after concluding that the petition was not approvable. Regardless, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

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. Specifically, when we simply "count" the evidence submitted, the petitioner has submitted qualifying evidence under two of the regulatory criteria as required, judging the work of others and scholarly articles pursuant to 8 C.F.R. §§ 204.5(i)(3)(i)(D) and (F). As explained in our final merits determination, 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.[1] *Employment-Based Immigrants,* 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)).

Beyond the decision of the director, the record also lacks the actual offer of employment from the petitioner to the beneficiary. In fact, the letter from the petitioner confirming the beneficiary's employment explicitly states that it does not alter the terms of the beneficiary's actual employment contract.

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

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

initial decision. *See 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); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

**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 6, 2009 to classify the beneficiary as an outstanding researcher in the field of bioengineering. 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. At issue is whether 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.[2] Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 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.[3] While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court's reasoning persuasive to the classification sought in this matter. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See* 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (recognizing the AAO's *de novo* authority).

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[2] Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) (comparable to 8 C.F.R. § 204.5(i)(3)(i)(D)) and 8 C.F.R. § 204.5(h)(3)(vi) (comparable to 8 C.F.R. § 204.5(i)(3)(i)(F)).

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

## II. Analysis

*A. Evidentiary Criteria*[4]

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

Initially, the petitioner submitted evidence that the in June 2006. asserts that the award recognized "exceptional service to students, staff and faculty." Other references, many of whom utilize language almost verbatim to letter throughout their letters, make the same assertion. None of the references explain what type of "service to students, staff and faculty" is recognized by this award. Nothing in the record suggests that the award recognizes outstanding achievement in the beneficiary's academic field, which would go beyond an undefined "service" to the students, staff and faculty of a single university.

The petitioner also submitted evidence that the issued second place to the beneficiary's team at The petitioner has submitted promotional material from website and an article about the competition confirming that companies participate in the event. ! Competition as Asia's largest business plan competition, a claim acknowledged in a *Times of India* article. According to the promotional materials, is designed to "encourage youth from across the globe to flesh out their ideas in business terms and form global enterprises that combine technology, vision and business acumen." While the categories include the beneficiary's academic field of biotechnology, other categories include banking and finance, hospitality, consultancy and tourism. As such, the award appears to be primarily recognition of the business plan rather than excellence in the beneficiary's academic field of bioengineering.

The director concluded that the Chair's Award was a local institutional award and that the Eureka! 2001 award recognized only potential rather than outstanding achievement. On appeal, counsel asserts that there were nearly 250 international entrants and that the beneficiary was a recipient of the prize because of the "substantial work that he had undertaken to develop the technology that was the basis for the business plan." The petitioner submits a March 5, 2001 article about confirming that 250 participants were likely in that year, the third year of the competition. Counsel also discusses the nomination of a product developed by the beneficiary for an The regulation at 8 C.F.R. § 204.5(i)(3)(i)(A) requires evidence of the beneficiary's "receipt" of a qualifying prize or award. A nomination is not a prize or award. Regardless, the nomination postdates the filing of the petition and cannot be considered

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

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).

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).

We concur with the director that the evidence does not establish that the Chair's Award is a major award for achievement in the beneficiary's academic field as contemplated in the commentary to the regulation. 56 Fed. Reg. at 60899. Moreover, as discussed above, even assuming that the Eureka! 2001 could be considered a "major" prize or award in entrepreneurship, it is not an award in the beneficiary's academic field of bioengineering. Finally, the regulation requires evidence of qualifying prizes or awards in the plural. Thus, even if we concluded that the Eureka! 2001 Award was qualifying, and we do not, the record does not contain evidence of a second qualifying prize or award.

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

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

The petitioner submitted evidence of the beneficiary's membership in the [redacted], the [redacted] and [redacted] The director concluded that the petitioner had not established that any of these associations require outstanding achievements of their members. On appeal, counsel asserts that the beneficiary is a member of "premier" organizations in four different disciplines. Counsel further asserts that the director "disregarded" the evidence that the beneficiary is a member "of these highly selective professional organizations, as well as evidence of the stringent criteria for member[ship]." 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). For the reasons discussed below, the evidence of record does not support counsel's characterization of the membership requirements for these associations.

USCIS may not unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *Kazarian,* 596 F.3d at 1221, *citing Love Korean Church v. Chertoff,* 549 F.3d 749, 758 (9th Cir.2008). The regulation at 8 C.F.R. § 204.5(i)(3)(i)(B) requires evidence of membership in associations that "require outstanding achievement of their members." Thus, at issue are the requirements for the documented memberships. The prestige of a given association, which may be unrelated to how exclusive its membership requirements are, has no bearing on this criterion, which, according to the plain language of 8 C.F.R. § 204.5(i)(3)(i)(B), looks only at whether the associations require outstanding achievements of their members. Significantly, membership in professional associations without reference to the membership requirements is an evidentiary criterion for a lesser classification, aliens of exceptional ability pursuant to section 203(b)(2) of the Act. 8 C.F.R. § 204.5(k)(3)(ii)(E). Given the far more stringent language at 8 C.F.R. § 204.5(i)(3)(i)(B), it is clear that merely showing the beneficiary is a member of a professional association is insufficient for this higher classification.

**IEEE**

Initially, the petitioner submitted a letter confirming the characterized as the "world's largest technical society." The petitioner also submitted promotional materials from website stating that membership is "open to individuals who by education or experience give evidence of *competence* in an designated field of interest." (Emphasis added.) In response to the director's request for additional evidence, the petitioner submitted evidence that membership is limited to those with a "three-to-five" year degree and, if not in an IEEE designated field, an additional three years of experience in an designated field or six year of relevant experience.

In light of the above, an individual can qualify for IEEE membership with an undergraduate degree in a relevant field. Such a degree is the bare minimum for almost any entry-level job in engineering. *See* http://www.bls.gov/oco/ocos027.htm#training (accessed September 23, 2010). As such, it cannot credibly be asserted that an undergraduate degree is an outstanding achievement in the beneficiary's academic field.

**ACS**

The petitioner initially submitted the beneficiary's certificate of membership in ACS but no evidence of its membership criteria. In response to the director's request for additional evidence, the petitioner submitted information from ACS's website. This information reveals that ACS boasts 154,024 members and claims to be the "largest scientific society." Such a claim is not consistent with an exclusive membership. The petitioner also submitted the bylaws for ACS. These bylaws indicate that a member must demonstrate any of the following: a baccalaureate or higher in a chemical science or related field, an associate degree or equivalent in a chemical science or related field or full certification,

licensure, or other qualification as a pre-college teacher of chemical science deemed satisfactory by the Admission Committee.

In light of the above, an individual may qualify for ACS with only an associate degree. Once again, we are not persuaded that an associate degree is an outstanding achievement in the beneficiary's academic field.

**AIChE**

The petitioner initially submitted a letter welcoming the beneficiary to membership in characterized as the "premier professional association for chemical engineers." The letter indicates that one benefit of membership is "professional and technical training." The petitioner submitted no additional information in response to the director's request for additional evidence. As the petitioner has not submitted the required initial evidence for the membership requirements, we cannot conclude that is a qualifying membership.

The petitioner submitted a letter welcoming the beneficiary to membership in a scientific research society with nearly 65,000 active members. In response to the director's request for additional evidence, the petitioner submitted the membership requirements posted on website. Specifically, full members must demonstrate "noteworthy achievements" as "evidenced by publication as a first author on two articles published in a refereed journal, patents, written reports or a thesis or dissertation." These requirements also appear in constitution and bylaws, also submitted by the petitioner.

On appeal, counsel asserts that requires nomination from an "eminent researcher" who "uses his or her discretion and subjective judgment about the quality of the nominee's research to nominate him or her to be a member of ' As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980). The record contains no evidence that independent eminent researchers evaluate the merits of a candidate's published research.

appears more akin to an academic scientific honor society rather than an association that limits its membership to those who have demonstrated outstanding achievements in the beneficiary's academic field. Even if we were to conclude that is qualifying, and we do not, the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B) requires evidence of qualifying memberships in the plural. For the reasons stated above, the beneficiary's other memberships fall far short of qualifying under 8 C.F.R. § 204.5(i)(3)(i)(B).

In light of the above, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(i)(3)(i)(B).

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

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. Counsel has never explained how the articles containing brief footnoted citations of the beneficiary's work can be considered to be primarily about the beneficiary's work. Thus, we uphold the director's conclusion that the petitioner has not submitted qualifying evidence that meets the plain language requirements of 8 C.F.R. § 204.5(i)(3)(i)(C).

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

The petitioner submitted evidence that the beneficiary has served as a peer reviewer for manuscripts and papers submitted for publication or presentation. 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 an individual laboratory or institution.

The petitioner has authored several original articles. The regulations, however, include a separate criterion for scholarly articles at 8 C.F.R. § 204.5(i)(3)(i)(F). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly articles.

The petitioner submitted evidence that the beneficiary's 2006 article in *Langmuir* has generated moderate citation. While a limited number of the articles address the beneficiary's work individually, most of the citing articles cite the beneficiary's work as an example of multiple articles reporting work in this area. Significantly, the regulation requires evidence of qualifying contributions in the plural.

The citation evidence, limited to moderate citation of a single article, does not establish that the beneficiary's research rises to the level of multiple contributions to the field as a whole.

The petitioner is also listed as an inventor on a patent and a patent application. 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.* Consistent with that decision, not every patent is a contribution to the field as a whole.

On appeal, counsel asserts that the director substituted his own opinion "for that of sixteen separate experts who are highly educated, accomplished and knowledgeable in the beneficiary's field of research, giving absolutely no weight to the evidence presented by these experts attesting to the beneficiary's Outstanding Ability in the Sciences." We will consider the letters below. At the outset, however, we note that the letters are highly conclusory without providing supporting examples of the beneficiary's work being used in the field. Moreover, the vast majority of the letters contain boilerplate language copied nearly verbatim from a common source. While the references all sign the letters, affirming their content, it is clear that the language in the letters is not their own.

The initial letters are all dated in 2007 and focus on the work the beneficiary was then pursuing as a postdoctoral researcher at the [redacted] the beneficiary's supervisor at the time, provides the details of this work. First, [redacted] reviews the beneficiary's credentials, publications, recognition at the [redacted] service on a technical program committee and patent. This language is repeated nearly verbatim in all but one of the initial letters submitted. With the exception of the beneficiary's service on a technical program committee, this information is already apparent in the record. For example, while [redacted] states that the beneficiary is a listed inventor on a patent, which is already apparent from the record, he does not provide any examples of the patent being licensed or otherwise used in the field. Letters are most useful when they explain why the evidence is significant rather than list it and conclude that it is evidence of international recognition. Regarding the beneficiary's research, [redacted] states generally:

> Since January 2003, [the beneficiary] has served as a Research Associate at the [redacted] [The beneficiary] has envisioned and executed projects based on original ideas for engineering droplet behavior on textured superhydrophobic surfaces. [The beneficiary] proposed combining these technologies into a versatile droplet manipulation platform that has applications ranging from lab-on-chip bioassay to optical communication systems. He has also executed two projects as an active member of the [redacted]: i) [redacted] and ii) conceptualized and developed [redacted] systems."

This paragraph also appears nearly verbatim in all but one of the letters submitted initially. This language does not explain how the beneficiary's work is already being applied in the field.

an assistant professor at the uses the boilerplate language discussed above and also includes the following language that also appears nearly verbatim in several other letters:

> [The beneficiary's] work in engineered super-hydrophobic surfaces has a wide-range of commercial applications – non-wetting coatings for windshields, window panes, and clothing to microfluidic systems with applications in cancer research. He has also initiated a project on yeast cell separation in collaboration with [the] that may have far-reaching impact on cancer diagnosis and therapy. [The beneficiary's] investigation of Electroporation provides a powerful tool for biologists to load individual cells with macromolecules – DNA, sugar, protein or drug. We look forward to seeing applications of this technology as a tool both in biology research laboratories and in pathologists' laboratories for diagnosis.

The beneficiary's multidisciplinary background appears amenable to enumeration on an application for alien employment certification and does not imply that the beneficiary has already made a contribution to his academic field as a whole. Moreover, the pursuit of research that has eventual applications is not, in and of itself, a contribution to the academic field as a whole. Rather, the petitioner must demonstrate that the beneficiary's research is already being adopted towards such applications.

In addition to utilizing the boilerplate language discussed above, a professor at the provides additional information. Specifically, he highlights the beneficiary's work in the only article to garner even moderate citation. characterizes the work as "some of the most important recent work in the field" because "it provides a new understanding of the motion of droplets, in particular how the advancing and receding sides of the moving droplet interact differently with the underlying substrate." then explains that there are a large number of biochemical analysis systems being

developed worldwide that rely on the ability of micro-chips to perform assays on droplets and that these systems have medical environmental sensing applications. continues:

> [The beneficiary's] work in this topic elucidates the relationship between droplets and structured surfaces that are fabricated by means compatible with micro-chip fabrication. Specifically, it explains why the contact angle between the droplet and the substrate exhibits hysteresis, and what is the impact of the specific types of roughness that can be deliberately built in to the substrate surface.

Ultimately, however, merely speculates that this work "will impact the energy and power requirements of the systems, the actuation speeds, contamination and sample size, manufacturing tolerances, and test methodologies." does not identify any research university or industry already relying on the beneficiary's work or even claim to be using it himself.

a professor at the uses much of the boilerplate language discussed above and concludes:

> The work of [the beneficiary] has a very serious application potential. The manipulation of liquids in extremely small volumes has great advantages for instance when very expensive biochemical compounds are involved. This makes the techniques developed by [the beneficiary] extremely well-suited for the development of tools for creening [*sic*] of biomarkers and other bioassays, that are typically carrie [*sic*] out with nanoliter sample volumes. Also, his findings are very useful in the area of drug development and screeing [*sic*], an area that many pharmaceutical companies have great interest in. The original and innovative work of [the beneficiary] in this respect of world-leading [*sic*] and of great value for many users.

While the beneficiary's work may have the potential to contribute to the field as a whole, does not explain how it has already done so. He provides no examples of the beneficiary's work already being used by pharmaceutical companies or other independent research teams.

The record also includes a letter from a visiting professor at the advisor at the In addition to using some of the boilerplate language discussed above, also addresses the beneficiary's Ph.D. research on separating DNA molecules using pulsed fields and observing their separation by capacitance measurements. According to the beneficiary "also worked on a novel technique for inserting molecules in biological cells using a technique called electroporation." concludes that the beneficiary's work "has resulted not only in the publication of these original ideas in quality journals and conferences, but also in the creation of unit devices that have great technological applications in diagnostics and environmental monitoring." does not suggest that any of these devices are widely used or even identify any independent institutions that are considering adopting these devices.

The petitioner also submitted a letter dated April 18, 2007 from a is the only one of the initial references not to utilize any of the above referenced boilerplate language. explains that he worked with the beneficiary on a project that led to U.S and overseas patent applications in addition to presentations and manuscripts for publication. does not, however, indicate that this work is being licensed or otherwise utilized by independent research teams. Rather, he states that the beneficiary was continuing to build on this work for his then employer, Stratagent LifeSciences. The beneficiary's curriculum vitae indicates that Stratagent LifeSciences subsequently merged with the petitioner.

also discusses the importance of the beneficiary's training at NSF-ERC, which, according to produces students that are more "job-ready." concludes that the beneficiary is "especially equipped to succeed in an area where is an insufficient population of scientists and/or engineers with his skill-set and core competencies." The issue of whether similarly-trained workers are available in the United States, however, is an issue under the jurisdiction of the Department of Labor. *New York State Dep't of Transp.*, 22 I&N Dec. at 221.

In response to the director's request for additional evidence, the petitioner submitted two new reference letters. a professor at the , discusses the importance of research on microfluidics, which has the "potential to influence subject areas from chemical synthesis and biological analysis to optics and information technology." further explains that " is a "revolutionary approach to liquid handling where there are no pipes, pumps or valves," but rather relies on "generation and manipulation of discrete droplets inside microdevices." discusses the importance of these systems, stating that they must be "inexpensive, reliable and rugged." Specific to the beneficiary, explains that the beneficiary "reported a new technology for drop transport that employs roughness and vibration to move drops along desired trajectories." The beneficiary reported this work in his 2006 article in explains that the beneficiary subsequently made the technique more versatile. While notes that the beneficiary presented this work at a prestigious conference, the record contains no evidence that the presentation has been cited or otherwise utilized by independent researchers. concludes that this work "provides new insights relative to existing prior art and forms the basis for microfluidic systems where drops move along predetermined trajectories to perform unit operations required for a bio-assay – dispensing, mixing, reaction and separation." Without evidence of the influence of this work beyond the beneficiary's own laboratory, however, we cannot conclude that it represents a contribution to the academic field as a whole.

In addition, also discusses the beneficiary's previous work on cell electroporation. While asserts that the beneficiary's system "enables biologists to insert DNA into cells

maintaining a high throughput and viability," he does not provide examples of independent research teams utilizing this system.

, a professor at asserts that he became aware of the beneficiary through his publication in further asserts that the research is "of great academic and commercial interest." explains that his own laboratory has studied resonant modes of moving drops in detail and published this work, citing the beneficiary's research. The citation is contained in the record. Specifically, cites the beneficiary's article as one of three articles that has "also demonstrated [the movement of droplets through vibration] with an asymmetrically rough surface." This citation does not reveal that laboratory has relied on the beneficiary's work in their own work and does not single out the beneficiary's work as a contribution to the academic field as a whole.

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

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-,* 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of widespread recognition and vague claims of contributions without providing specific examples of how those contributions have influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[5] The independent letters do not suggest the authors have applied the beneficiary's work or identify other research teams that have done so. The petitioner also failed to

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[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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

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

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

In light of the above, the petitioner has submitted evidence that meets 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, however, is a final merits determination that considers whether the evidence is consistent with the statutory standard in this matter, international recognition as outstanding. Section 203(b)(1)(B)(i) of the Act.

*B. Final Merits Determination*

It is important to note at the outset that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. More specifically, outstanding professors and researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. *Employment-Based Immigrants,* 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)).

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 his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. We cannot ignore that scientific journals and conferences are peer reviewed and rely on many scientists to review submitted manuscript and papers. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed manuscripts for a journal that credits a small, elite group of referees, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the beneficiary's judging experience is indicative of or consistent with international recognition.

Regarding the beneficiary's original research, as stated above, it does not appear to rise to the level of a contribution to the academic field as a whole. Demonstrating that the beneficiary's work was

"original" in that it did not merely duplicate prior research is not useful in setting the beneficiary apart in the academic community through eminence and distinction based on international recognition. 56 Fed. Reg. at 30705. Research work that is unoriginal would be unlikely to secure the beneficiary a master's degree, let alone classification as an outstanding researcher. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

While the beneficiary has published articles, the Department of Labor's Occupational Outlook Handbook, (accessed at www.bls.gov/oco on September 23, 2010 and incorporated into the record of proceedings), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See* www.bls.gov/oco/ocos066.htm. 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.*

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. A single, moderately cited article is not indicative of or consistent with international recognition.

In light of the above, our final merits determination reveals that the beneficiary's qualifying evidence, participating in the widespread peer review process and publishing articles that have not garnered significant citations or other response in the academic field, does not set the beneficiary apart in the academic community through eminence and distinction based on international recognition, the purpose of the regulatory criteria. 56 Fed. Reg. at 30705.

## III. Conclusion

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

## IV. Job Offer

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 1113 (8th ed. 2004) defines "offer" as "the 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, we concur with the director that 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 addressed to U. S. Citizenship and Immigration Services (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 submitted a letter from the petitioner addressed to USCIS, asserting that that the beneficiary continues to work for the petitioner as a Manager of Technology Development. At the end of the cover letter, the petitioner states: "Please note that this letter is provided solely in support of

our I-140 petition, and neither this letter nor this application (including any documentation submitted in support thereof) constitutes an employment contract or alters in any way the terms of the employment relationship, which shall be an employment at will." This document does not constitute a job offer from the petitioner to the beneficiary.

The petitioner has not submitted the primary required initial evidence, the original job offer predating the filing date of the petition. Confirmations after the fact are not evidence of eligibility as of the date of filing. *See generally* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm'r. 1971). The petitioner has not complied with the regulation at 8 C.F.R. § 103.2(b)(2) regarding the submission of secondary evidence. Specifically, the petitioner has not demonstrated that the original job offer does not exist or is unavailable. While we do not question the credibility of those who have confirmed the beneficiary's employment, counsel has not sufficiently explained why we should accept attestations about the terms and conditions in a document in lieu of the document itself. Without the initial job offer, we cannot consider the petitioner's explanations about the terms and conditions set forth in that job offer.

Finally, the petitioner has not satisfactorily established that it is offering the beneficiary a research position. The petitioner characterizes the beneficiary's role as follows:

> [The beneficiary's] specific role at [the petitioner] is to manage the development of the microneedle system in order to deliver large and small molecules systematically through the skin. This role is key to the success of the MicroCor program. Additionally, [the beneficiary] will aid in the formulation development, process development and applicator development, which are also critical to producing a successful product.

Additional explanation of how these duties constitute research duties is required.

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

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.