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



U.S. Citizenship  
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Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

**OCT 29 2010**

IN RE:

Petitioner:



Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 professor 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 an assistant professor. 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, the petitioner submits a statement and evidence that postdates the filing of the petition. Such evidence cannot establish the beneficiary's eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). 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 the latter criterion reflects routine 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.<sup>1</sup> *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 filed by the petitioner in a lesser classification pursuant to section 203(b)(2) of the Act. This decision is without prejudice to the approval of the previous petition in 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):

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

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

- (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 December 12, 2008 to classify the beneficiary as an outstanding researcher in the field of materials science. 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.<sup>2</sup> 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:

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

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.<sup>3</sup> 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 (9<sup>th</sup> Cir. 2003) (recognizing the AAO’s *de novo* authority).

## II. Analysis

### A. Evidentiary Criteria

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

The director concluded that the record contains no evidence relating to 8 C.F.R. § 204.5(i)(3)(i)(A). The petitioner does not challenge this conclusion on appeal and we concur with the director.

#### *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 the [REDACTED]. The petitioner also submitted evidence that the beneficiary was invited to serve on the [REDACTED] of the [REDACTED] in addition to committees for [REDACTED]. While we will consider

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

different levels of membership where sufficient evidence of the membership requirements is submitted, a committee is not an association and, thus, does not meet the plain language requirements of 8 C.F.R. § 204.5(i)(3)(i)(B). Rather, the beneficiary's membership on an editorial committee appears far more relevant to the regulatory criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(D) regarding serving as the judge of the work of others.

The record contains evidence that [REDACTED] professional members must have three years of active involvement as a professional in materials science following at least a baccalaureate, which can be waived if the candidate has five years of experience and is a practicing professional in the field.

The petitioner submitted materials establishing that [REDACTED] membership "shall be open to all persons interested in materials research and engineering." A regular member must be a "professional involved in or with an expressed interest in materials research or related scientific and engineering fields."

According to materials submitted by the petitioner, [REDACTED] professional membership is open to "those persons who occupy or have occupied responsible positions in engineering instruction, research or practice, and other persons who have a demonstrated interest in engineering education."

On appeal, the petitioner simply lists the beneficiary's memberships without explaining how any of them require outstanding achievements of their members.

A specific level of experience and education is not an outstanding achievement. In addition, having an interest in the subject is not an outstanding achievement. Thus, [REDACTED] do not require outstanding achievements of their members.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language of the regulation at 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*

On appeal, the petitioner notes that the petitioner submitted evidence of brief footnoted citations of the beneficiary's work in other articles reporting on the findings of the citing authors. The petitioner asserts that USCIS changed the way it assesses evidence under 8 C.F.R. § 204.5(i)(3)(i)(C) after the petition was filed.

The petitioner provides no legal authority for the assertion that USCIS previously considered footnoted citations to fall under 8 C.F.R. § 204.5(i)(3)(i)(C) as of the filing date in this matter, December 12, 2008 or even any other time. The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) is unambiguous. The published material must be "about the alien's work." The published material cannot be reduced to a single footnote, rather, it is the article itself. Articles which cite the beneficiary's

work as one of numerous footnoted articles are about the author's own work, not the beneficiary's work. Notably, it is the petitioner's position that the beneficiary's articles report her own original research rather than being "about" each and every footnoted article she cites.

As the citing articles by others are not about the beneficiary's work, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(i)(3)(i)(C).

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

The petitioner submitted evidence that the beneficiary was invited to join the editorial committee for [REDACTED] that she reviewed manuscripts for multiple journals as of the date of filing and that she reviewed grant proposals for the [REDACTED]. We concur with the director that 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 submitted evidence that the beneficiary has authored scholarly 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 has focused on the total number of citations of the beneficiary's work. As noted by the director, however, several of the citations are self-citations by the beneficiary or his coauthors. While self-citation is a normal and expected practice, it cannot demonstrate the beneficiary's influence beyond her immediate circle of colleagues. The record does not establish that any of the beneficiary's articles had been cited more than five times by independent researchers as of the date of filing. Moreover, the citations themselves are not indicative of an influence in the field. A number of the citations cite the beneficiary's article in addition to several other articles as examples of recent work in the field. In addition, a paper presented at a [REDACTED] conference in 2007 notes that the beneficiary and another researcher solved the cuboid inclusion problem using different methods but goes on to adopt the other researcher's method rather than the method reported by the beneficiary. We

acknowledge the submission of an article coauthored by [REDACTED] reporting results utilizing a calculation analogous to one reported in their own previous article in 2007 and an article by the beneficiary in 2001. This single citation, however, is not evidence of the beneficiary's influence at a level consistent with a contribution to the academic field as a whole.

The beneficiary has presented her work at several conferences, although her coauthor is the listed presenter for several papers. The petitioner did submit evidence that the beneficiary gave two invited talks at a conference. While the invitation reveals that the beneficiary's work was deemed valuable for dissemination, the invitation cannot demonstrate the ultimate impact of the presentation.

On appeal, counsel asserts that the reference letters submitted provide specific examples of the beneficiary's contributions to the field. As will become evident in our discussion of the letters, however, the references make conclusory assertions that the beneficiary has contributed to the field but only provide examples of work that may prove influential in the future because of its applicability to multiple industries.

[REDACTED] a professor at the petitioning university, explains the importance of the beneficiary's area of research, porous titanium foams. Specifically, [REDACTED] notes the widespread use of hip, knee and dental replacements in the United States and concludes that the beneficiary's "crucial research will promote the commercialization of metallic foams" that will overcome problems with current implants such as bone resorption and implant loosening. [REDACTED] also asserts that metallic foams "are the most competitive candidates for catalyst systems," relevant for clean energy production storage and distribution systems. While we do not contest the benefit this work could have, at issue is whether the beneficiary has already contributed to the academic field as a whole.

[REDACTED] next discusses the beneficiary's grants from the [REDACTED] to investigate alloys for medical devices and shock absorbent landing gear. While grants reflect the opinion of the granting entity as to the merits of the research proposal, the mere funding of research cannot demonstrate that the research can already be considered a contribution to the academic field.

[REDACTED] a senior research staff member and group leader at the [REDACTED] states that she met the beneficiary during conferences. [REDACTED] states generally that the beneficiary "has greatly contributed to the field of mechanical properties of nanostructured materials and is highly valuable for the continuing research in this area." More specifically, [REDACTED] asserts that the beneficiary "developed a novel 3D dislocation cellular automaton model to simulate yield and hardening in nanostructured metallic multilayer thin films." According to [REDACTED] the beneficiary's simulations demonstrated that the strength of those thin films fluctuates depending on how source length and barrier strength vary with layer thickness. [REDACTED] notes that the beneficiary published this work. As stated above,

however, publication of scholarly articles is a separate regulatory criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(F). [REDACTED] provides no examples of any independent research team or industry using the beneficiary's model.

[REDACTED] next discusses the beneficiary's studies on the relation between hardness and grain size of [REDACTED]. [REDACTED] explains that the beneficiary's research in this area "presented an original idea that a hardness peak and loss of dislocation confinement in the 5 to 30 nm grain size regime may [be] due to the change of the nature of dislocation interaction with grain boundaries in the [REDACTED]." Once again, while [REDACTED] notes that this work was published, at issue under 8 C.F.R. § 204.5(i)(3)(i)(E) is not whether the work was merely disseminated in the field but whether it has been influential at a level consistent with a contribution to the academic field. Rather than explain how this work is being applied or considered for application, [REDACTED] affirms the applicability of this research to hard coatings, [REDACTED] based switches, [REDACTED] in computers and thin film catalysts in fuel cells. [REDACTED] does not identify a company in one of these industries that is actually in the process of adopting the beneficiary's work. The record contains no letters from any industry officials confirming their reliance on the beneficiary's work to reduce costs, increase efficiency or for any other purpose.

[REDACTED] Editor of [REDACTED], states generally that the beneficiary's research on lattice block structured metallic materials "has a great impact to the related academic field and the human society, since metallic foams and porous metals are the focus of greatly active research and development activities in both academia and industries." [REDACTED] however, does not support this vague and general assertion with specifics of how the beneficiary's work is already being utilized or even considered for application in any industry. Rather, [REDACTED] asserts that "there are numerous important industrial applications such as high-strength lightweight structures, [REDACTED] [REDACTED] lists the automobile industry as a possible industry for which the beneficiary's work might be relevant. The record contains no evidence that any automobile manufacturer is applying the beneficiary's research. Instead, [REDACTED] speculates that the application of the beneficiary's work in transit "will tremendously lower the weight" of transport vehicles and, by reducing the usage of gasoline, "will contribute enormously to mitigate the energy crisis."

[REDACTED] a professor at [REDACTED], asserts that he met the beneficiary while visiting [REDACTED] where the beneficiary was a postdoctoral researcher at the time. [REDACTED] praises the beneficiary's work on [REDACTED] and [REDACTED] notes that metallic cellular structures have impact energy absorption approximately 5.6 times that of solid material samples of the same weight, allowing a 20 percent decrease in weight for the same absorption. [REDACTED] concludes that the beneficiary's research demonstrated that metallic cellular structures are suitable for uses such as landing gear and car bumpers but provides no examples of manufacturers of these devices applying the beneficiary's research.

██████████, a professor at the ██████████ discusses the beneficiary's work on "transformation superplastic forming through the computational simulation method – finite element modeling." While ██████████ notes that the beneficiary presented this work at a conference, at issue is how this work ultimately influenced the field upon dissemination. ██████████ concludes that the beneficiary's dome evolution (forming) process "is groundbreaking and extremely substantial, since transformation superplastic forming is a novel alternative to the traditionally employed superplastic forming based on microstructural superplasticity." The remainder of ██████████ letter, however, merely contains speculation as to the potential applications for the beneficiary's work, which ██████████ predicts "will lead to enormous economic benefits" and "will contribute largely to grand saving of resources and energy."

██████████, a professor emeritus at ██████████ and a member of the ██████████ states generally that the beneficiary's work "has broad impact on different industries such as automobile and aerospace industries." More specifically, ██████████ continues:

The novel superplastic forming method developed by her has extensive and enormous applications in manufacturing a large number of structural parts such as pylon panels, nacelle panels, piping components, air intakes, compressor ducts, environmental influences because of its various advantages such as improved structural performance, near net shape forming of complex shapes, non-lead die lubes, and low noise. Furthermore, this transformation superplastic forming eliminates the requirements of costly intermediate processing required for traditional superplastic forming and leads to tremendous cost reduction and energy savings. The understanding of deformation mechanisms and mechanical properties of advanced materials from [the beneficiary's] work provides invaluable guidance to the optimization of materials and the appropriate design of devices for different applications.

██████████ notes that he cited the beneficiary's work. While after the date of filing and, thus, not evidence of the beneficiary's influence as of that date as required, *see* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49, the citation itself is not remarkable. ██████████ cites one of the beneficiary's articles as one of seven examples of modeling extended from basic dislocation calculations and another of the beneficiary's articles as an example of modeling using the cellular automation method. The next phrase, however, suggests the existence of "more realistic and sophisticated models" than the beneficiary's models just cited. Nothing in this article suggests that ██████████ adopted the beneficiary's models.

██████████, ██████████ and a member of the ██████████ discusses the importance of the beneficiary's area of research, which is not contested. ██████████ explains that the beneficiary "developed an innovative three-dimensional dislocation-based cellular automation (CA) model to study the evolution of dislocation configurations in FCC single

crystals.” [REDACTED] concludes: “The work has significant implications since the computational models can make great contributions to understanding how materials behave under loading.” [REDACTED] does not, however, explain how the beneficiary’s models are already being applied. Similarly, [REDACTED] states that the beneficiary’s work with a titanium alloy “leads to large savings in cost and energy” without providing examples of industries that are realizing such savings or preparing to use the beneficiary’s work to do so.

[REDACTED] a technical staff member at [REDACTED] asserts that the beneficiary’s work on dislocations and misfitting cuboidal volume is relevant to the manufacture of turbine blades. While [REDACTED] speculates as to future savings of money and energy due to the beneficiary’s work, he does not identify any turbine manufacturer that has expressed an interest in applying the beneficiary’s work.

The remaining letters provide similar general assertions of contributions but merely speculate as to the future application of the beneficiary’s work.

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.<sup>4</sup> While the petitioner submitted several independent letters, including

<sup>4</sup> *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Similarly, USCIS need not accept

from members of the [REDACTED], these letters do not suggest the authors have applied the beneficiary's work or identify others who have done so. The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

In light of the above, 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 petitioner 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)).

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 provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See [www.bls.gov/oco/ocos066.htm](http://www.bls.gov/oco/ocos066.htm) accessed on October 7, 2010. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field.

Moreover, the beneficiary's citation history is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. See *Kazarian*, 596 F. 3d at 1122. The record contains no evidence that the beneficiary's articles have been widely cited or other comparable evidence that demonstrates the beneficiary's publication record is consistent with international recognition.

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. As stated above, the record contains letters from members of the National Academy of Engineering and editors of prestigious journals (including *Science*). In contrast, the beneficiary's professional memberships are not limited to those with outstanding achievements and she serves on the editorial committee of a magazine that has not been demonstrated to be a peer-reviewed journal.

In light of the above, our final merits determination reveals that while the beneficiary's editorial and grant proposal review experience is notable, the remaining qualifying evidence, 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 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.