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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:

SEP 13 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:



INSTRUCTIONS:

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

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

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, 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 institute of higher education. 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.<sup>1</sup> 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 conclusion that the petitioner has not established the beneficiary's eligibility for the classification sought.

## I. Law

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

\* \* \*

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

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

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<sup>1</sup> The beneficiary, a medical doctor, currently works as an assistant professor for the petitioner while concurrently pursuing his Ph.D. at the petitioning university.

(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 November 24, 2008 to classify the beneficiary as an outstanding researcher in the field of emergency medicine. 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 petitioner has demonstrated that the beneficiary is 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:

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.

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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)).

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<sup>4</sup>

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

Initially and in response to the director's request for additional evidence, counsel asserted that the beneficiary's "Career Development Award" from the [REDACTED] constitutes qualifying evidence under 8 C.F.R. § 204.5(i)(3)(i)(A). Counsel's characterization of the evidence is not determinative. See generally *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 April 18, 2007 letter from EMF and EMF's application materials submitted in response to the director's request for additional evidence all reveal that the beneficiary actually received a Career Development Grant. The grant funded a research proposal entitled "[REDACTED]" during the 2007-2008 academic year.

In response to the director's request for additional evidence, the petitioner also submitted evidence that the beneficiary received "Best Oral Presenter – Faculty" at a 2004 [REDACTED]

The director concluded that a research grant could not serve as qualifying evidence under 8 C.F.R. § 204.5(i)(3)(i)(A) and that the limited nature of the competition at the conference could not elevate the beneficiary's award at that competition to a "major" prize or award as required under 8 C.F.R. § 204.5(i)(3)(i)(A).

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<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.

<sup>4</sup> The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

On appeal, counsel discusses the evidence submitted to establish the prestige of [REDACTED] and asserts that its research grants are very competitive in comparison with larger funding entities such as the [REDACTED]. Counsel further asserts that the director mischaracterized the percentage of participants who received awards at the regional conference. Finally, counsel states that the beneficiary “received a Special Recognition Award from the [REDACTED] for his contributions and dedication to Emergency Medicine in 1997.” The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The record does not contain evidence of a 1997 award.

The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(A) requires evidence of qualifying prizes or awards for “outstanding achievement in the academic field.” In general, research grants are not recognition of past achievement. Rather, they are designed to fund specific proposals for future research. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement.

The record contains no evidence that the [REDACTED] is unique among grants such that it can be considered a prize or award for outstanding achievement in an academic field. The application materials submitted by the petitioner state:

Each application will be judged by 1) the *potential* to develop the proposed line of investigation into a sustained research career. 2) applicant’s background, commitment, and *potential* as a researcher in emergency medicine, 3) the scientific merit of the research projects, 4) adequacy of funding, and 5) the willingness of the mentor and the institution to train researchers in emergency medicine and provide the necessary facilities and support to complete the projects as described.

(Emphasis added.) Numbers one and two address the “potential” of the proposed project and the applicant as a researcher in emergency medicine. Number three appears to reference the merit of the proposed research rather than the applicant’s past achievements. Number four is unrelated to the applicant’s abilities. Finally, number five suggests that the applicant must have a “mentor” willing to train researchers and support the proposal. The application itself requires identification of a mentor in addition to the applicant applying for funding.

On appeal, the petitioner submits a letter from Dr. [REDACTED] a former Chair of the [REDACTED]. She asserts that the [REDACTED] is [REDACTED]’s “second highest award for research.” She continues, however, that it is given to “*a promising young investigator who we feel will make a major contribution to the practice of Emergency Medicine.*” (Emphasis added.) Nothing in Dr. [REDACTED]’s letter suggests that [REDACTED] issues grants as recognition for outstanding achievement rather than as funding for future research based on the nature of the proposal and the competency of the

applicant in addition to the availability of a “mentor.” The completion of a promising research proposal and the ability to secure a mentor are not outstanding achievements in emergency medicine.

As the beneficiary’s research grant is not an award or prize for outstanding achievement in emergency medicine, it cannot serve as qualifying evidence under the plain language requirements of 8 C.F.R. § 204.5(i)(3)(i)(A).

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

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

The claimed 1997 award appears limited to [REDACTED]. The record contains no evidence of any wider recognition. As such, it does not appear to be a “major” award as contemplated by 8 C.F.R. § 204.5(i)(3)(i)(A) and explained in the commentary to the rule. 56 Fed. Reg. at 60899. Similarly, the documented 2004 award was presented at a regional conference. The record contains no evidence, such as but not limited to media coverage in the trade or other major media, that would suggest the award is “major” as contemplated in the commentary to the rule. *Id.*

Finally we note that the regulation at 8 C.F.R. § 204.5(i)(3)(i)(A) requires evidence of qualifying prizes or awards in the plural. Thus, the petitioner would need to demonstrate that the beneficiary received more than one qualifying 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).

*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 the petitioner has never asserted that the evidence submitted qualifies under 8 C.F.R. § 204.5(i)(3)(i)(D), we note that on appeal, the petitioner submits an October 19, 2009 email advising the beneficiary that he had been selected to join the 2009 [REDACTED] as a reviewer. This email, however, postdates the filing of the petition and

cannot establish the beneficiary's eligibility as of that date. See 8 C.F.R. §§ 103.2(b)(1), (2); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

In light of the above, the petitioner has not submitted qualifying evidence that predates the filing of the petition that meets the plain language requirements 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.*

Counsel relies on reference letters and the beneficiary's publication record, including the impact factors of the journals that have carried his work as well as citations of the beneficiary's work. The director concluded that the record did not establish the impact of the beneficiary's work. On appeal, counsel reviews the evidence previously submitted and concludes that the petitioner "has provided credible evidence that more likely than not [the beneficiary] has contributed original scientific and scholarly research."

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 an original "research contribution." Had the regulation contemplated merely the submission of original research, it would have said so, and not have included the extra word "contribution." Moreover, the plain language of the regulation requires that the contribution be "to the academic field" rather than an individual laboratory or institution.

While the beneficiary has authored several published articles, the regulations include a separate criterion for scholarly articles at 8 C.F.R. § 204.5(i)(3)(i)(F). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly articles. The petitioner has submitted evidence of the impact factor of the journals that have carried his articles. We will not presume the influence of an article from the journal in which it appears. Rather, the petitioner must demonstrate the influence of the beneficiary's individual articles. While not determinative, the beneficiary is not the first author of the articles published as of the date of filing. The record lacks letters from the beneficiary's coauthors of the moderately cited articles confirming the significance of his role on these studies.

Initially, the petitioner submitted evidence that his 2006 article had been cited four times total, twice by independent researchers. In response to the director's request for additional evidence, the petitioner submitted evidence from a different source reflecting that the same article had been cited 18 times as of July 10, 2009. At least one of the citations postdates the filing of the petition. An addition four citations are self-citations by the beneficiary's coauthors. The petitioner also submitted evidence that additional articles by the beneficiary have garnered minimal citation individually. On appeal, the petitioner submitted evidence that the beneficiary's 2000 article had been cited 17 times as of October 23, 2009. Seven of these citations are self-citations by the beneficiary's coauthors. Significantly, two

of the citing articles have been cited 27 and 41 times, suggesting that the beneficiary's academic field is not a poorly cited field. The beneficiary's citation record, by itself, cannot establish that the beneficiary's research has contributed to the academic field as a whole.

The beneficiary has also presented his work and received an award at a regional conference for his presentation. An award issued at the conference where the work is presented appears more indicative of the promising nature of the results rather than recognition of the work's ultimate impact in the field. We reiterate that the recognition was regional and cannot demonstrate the beneficiary's wider influence. The record contains no documentary evidence, including but not limited to citations, establishing that the beneficiary's conference presentations have been influential in the field as a whole.

We will consider the letters in depth below. At the outset, we note that all of the letters affirm that the beneficiary's admission to the United States would benefit the "national interest." Significantly, members of the profession with an advanced degree or aliens of exceptional ability under section 203(b)(2) of the Act, a lesser classification than the one sought in this matter, are able to seek a waiver of the alien employment certification process in the "national interest." Section 203(b)(2)(B) of the Act. That issue is not before us in this matter, which involves a petition to classify the beneficiary under the higher preference classification at section 203(b)(1)(B) of the Act.

Dr. [REDACTED], [REDACTED] at the petitioning university, confirms that he has known and been involved with the beneficiary since 1991. Dr. [REDACTED] recounts the beneficiary's educational background and his work in Brazil helping establish an emergency medicine training program. This information does not explain how the beneficiary has made original research contributions to the academic field as a whole. Dr. [REDACTED] indicates that while the beneficiary, a medical doctor, is employed as an assistant professor, he is also pursuing his Ph.D. under the direction of Dr. [REDACTED]. [REDACTED] notes the beneficiary's receipt of the presentation award at the regional conference, his research grant and his publications but provides little detail about the beneficiary's research and how it has influenced the field. Rather, Dr. [REDACTED] states only that the beneficiary is "one of the few scientists capable of studying the isolated trabeculae model and the mechanisms of myocardial force development and calcium handling at physiological temperatures." Dr. [REDACTED] does not explain how these skills, in and of themselves, constitute an original research contribution to emergency medicine as a whole.

Dr. [REDACTED] confirms that he is the beneficiary's "current PhD advisor." Dr. [REDACTED] continues:

[The beneficiary's] initial work and the subject of his master's Thesis increased the understanding of myocardial metabolism during ventricular fibrillation, a condition that affects most victims of sudden cardiac arrest. He has further investigated the role of epinephrine and oxygen on cardiovascular response during periods of global ischemia. [The beneficiary] has been lately involved with elucidating basic mechanisms involved in heart failure, an ailment that affects approximately 1 in 56 or 4.8 million people in USA. It is a leading cause of disability and disease in developed countries. He has been

very successful in uncovering some of the basic mechanisms involved with heart rate variability (in press) as well as with myofilament calcium sensitivity when subjected to metabolic modifiers such as pyruvate.

Nothing in Dr. [REDACTED]'s letter explains how the beneficiary's work is already influencing the field at a level consistent with a contribution to the academic field as a whole.

Dr. [REDACTED], an associate professor at the [REDACTED], asserts that he has "followed [the beneficiary's] trajectory over the past years" and affirms that he can speak "candidly about [the beneficiary's] research potential." Dr. [REDACTED] discusses the beneficiary's unique ability to "combine the rigors of patient care and scientific investigation" and "address clinical questions using basic science tools." 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. 215, 221 (Comm'r 1998). Dr. [REDACTED] praises the beneficiary's talent generally and notes his publications. More specifically, Dr. [REDACTED] states that the beneficiary's work with Dr. [REDACTED] and others "has increased our understanding of how the heart is damaged during cardiac arrest [and] what effects current and novel treatments have on patient outcome and survival." While Dr. [REDACTED] predicts that the beneficiary's research "will potentially" benefit numerous patients, he provides no specific examples of how the beneficiary's work is already influencing the academic field at a level consistent with a contribution to the field as a whole.

Dr. [REDACTED], Chair of the [REDACTED] confirms that he has not worked with the beneficiary but has "observed his contributions to the field as he has been published." Dr. [REDACTED] asserts that the beneficiary has "provided insights into the needs for patients undergoing clinical resuscitation for heart attacks, traumatic shock and cardiac arrest," "increased the understanding of myocardial metabolism during ventricular fibrillation," and "investigated the role of epinephrine and oxygen on cardiovascular response during periods of global ischemia." Dr. [REDACTED] explains that this last investigation is "important in determining the role of drugs and CPR as set forth in the guidelines for [REDACTED] program from the [REDACTED]. Dr. [REDACTED] does not suggest that these guidelines have already been amended based on the beneficiary's work. Finally, Dr. [REDACTED] asserts that the beneficiary has "established a successful partnership with investigators in the field of cardiac physiology and is now only one of a handful of scientists capable of exploring the intricate relationships that govern myofilament function during health and disease states. Dr. [REDACTED] does not explain how this recent work is already influencing the field.

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 specifically identifying contributions and 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>5</sup> The petitioner submitted only two independent letters and these letters do not suggest the authors have applied the beneficiary's work. 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 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 not 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 only the criterion set forth at 8 C.F.R. §§ 204.5(i)(3)(i)(F). Nevertheless, 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

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<sup>5</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); *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).

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 beneficiary's "awards" include a research grant limited to "promising young investigators" holding only an "instructor or assistant professor" rank working under a "mentor" who is "responsible for conducting the research projects and supervising the work of the applicant and associate investigators."<sup>6</sup> The beneficiary's remaining awards are regional and not indicative of or consistent with international recognition in the academic field.

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, the purpose of the criteria. 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](http://www.bls.gov/oco) on August 26, 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](http://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.*

Furthermore, 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 cited at a level consistent with international recognition as outstanding or other comparable evidence that demonstrates the beneficiary's publication record is consistent with international recognition.

In light of the above, our final merits determination reveals that the beneficiary's qualifying evidence, publishing articles that have not garnered significant independent 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. 56 Fed. Reg. at 30705.

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<sup>6</sup> As discussed above, [REDACTED] states that the grant is aimed at promising young investigators. The remaining quoted language comes from the grant application materials submitted by the petitioner.

### **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.

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.