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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 23 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,

2 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 wireless semiconductor provider. 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 an electrical senior engineer. The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher.

On appeal, counsel reiterates the claim, made for the first time in response to the director's request for additional evidence, that the power amplifiers in more than half of the world's cell phones can be directly attributed to the beneficiary's research. Counsel further asserts that the beneficiary has authored "numerous" articles and has been cited "numerous" times. Finally, counsel asserts that the director applied arbitrary standards not found in the law or regulations. 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 a letter that is inconsistent with counsel's assertion that the beneficiary is responsible for the current technology in more than half of the phones worldwide and lacks any patent applications that might support that assertion. In addition, the record does not contain "numerous" publications or "numerous" citations.

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.<sup>1</sup> *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)).

At the outset, we note that the beneficiary received his Ph.D. on May 10, 2008, 14 months before the petition was filed. As will be discussed below, section 203(b)(1)(B)(ii) of the Act requires that the beneficiary have at least three years of experience. The regulation at 8 C.F.R. § 204.5(i)(3)(ii) allows the inclusion of research experience gained while pursuing an advanced degree provided the beneficiary received the degree and the research conducted during that time is recognized in the

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

academic field as outstanding. Thus, eligibility based on experience gained while pursuing an advanced degree is the exception, not the rule.

## 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 July 10, 2009 to classify the beneficiary as an outstanding researcher in the field of electrical engineering. 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. As discussed above, the beneficiary received his Ph.D. on May 10, 2008, 14 months before the petition was filed. As the petitioner has not submitted evidence of the beneficiary's qualifying teaching experience while pursuing his Ph.D., the petitioner must demonstrate that the beneficiary's doctoral research as early as July 2006 has been recognized within the academic field as outstanding if that experience is to count towards the beneficiary's required three years of experience. 8 C.F.R. § 204.5(i)(3)(ii).

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.

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).

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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)).

<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.

## II. Analysis

### A. Evidentiary Criteria<sup>4</sup>

*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*

While the petitioner has never claimed that the beneficiary meets this criterion, we acknowledge the submission of citations of the beneficiary's work and a May 2007 article in [REDACTED] downloaded from [REDACTED]. The article reports that [REDACTED] earned the [REDACTED] Award in the semiconductor category for its AX502 fully integrated complementary metal oxide semiconductor (CMOS). According to the record, however, the beneficiary did not begin working for [REDACTED] until May 2007. We must presume that an article about award-winning work already completed at Axiom from the same month the beneficiary began working at [REDACTED] cannot be discussing the beneficiary's work. Finally, articles which cite the beneficiary's work are primarily about the author's own work or recent developments in the field, and not the beneficiary's work. As such, they cannot be considered published material about the beneficiary's work.

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)(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 initially submitted evidence that he had reviewed manuscripts for [REDACTED]. In response to the director's request for additional evidence, the petitioner submitted evidence that the beneficiary reviewed a manuscript for [REDACTED]. This evidence, however, postdates the filing of the petition and cannot be considered evidence of the beneficiary's eligibility as of that date. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). The reviews for [REDACTED] qualify 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

<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.

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 contribution be “to the academic field” rather than an individual laboratory or institution.

As of the date of filing, the beneficiary had authored seven 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. While counsel and some of the beneficiary’s references have asserted that the beneficiary’s work has garnered “numerous” citations or has been “widely” cited, the record does not support those claims. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 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. Similarly, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l. Comm’r. 1972)).

As stated above, the petitioner must 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. at 49. While the director’s request for additional evidence implied that citations postdating the filing of the petition would be considered, we disagree with that position. All of the case law on this issue focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. *Matter of Wing’s Tea House*, 16 I&N Dec. 158, 160 (Reg’l. Comm’r. 1977); *Matter of Katigbak*, 14 I&N Dec. at 49; see also *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Comm’r. 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that we cannot “consider facts that come into being only subsequent to the filing of a petition.”) Consistent with these decisions, a petitioner cannot secure a priority date in the hope that his recently published research will subsequently prove influential. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4<sup>th</sup> Cir. 2008).

As of the date of filing, the beneficiary’s articles had only been individually cited a few times by independent research teams. Moreover, the citations themselves, some of which the petitioner submitted, do not single out the beneficiary’s work as influential or suggest that the authors of the citing articles are relying upon the beneficiary’s results. Rather, the beneficiary’s work is mostly cited as one of several examples of recent work in the field or for the general proposition that the major challenge in designing a low power-consumption distributed amplifier is the tradeoff between efficiency and gain. The record does contain two citations of the beneficiary’s work on CMOS distributed amplifiers by the same research team at the [REDACTED], stating that the beneficiary’s article represents the publication of a distribution amplifier using a cascade of inductively coupled common source gain cells to provide a considerably higher transconductance and low power consumption. Both citations postdate the filing of the petition. Regardless, even these

these citations do not evaluate the significance of the beneficiary's work and the articles ultimately go on to report on the authors' analysis, design and implementation of their own distributed amplifier.

In response to the director's request for additional evidence, counsel asserts that [REDACTED], which the petitioner acquired in June 2009, won an award for its AX502 CMOS power amplifier and that [REDACTED] had shipped more than 25 million units of this amplifier as of December 2008.<sup>5</sup> In support of these assertions, the petitioner submits the above-mentioned May 2007 article in [REDACTED] announcing [REDACTED]'s receipt of the [REDACTED] for the AX502 fully integrated CMOS power amplifier. In addition, the petitioner submitted materials printed from the petitioner's website confirming that [REDACTED] had indeed shipped over 25 million AX502 units as of December 2008. As also stated above, however, the beneficiary did not begin working for [REDACTED] until May 2007. As [REDACTED] received an award for the AX502 that same month, it would appear that this was a completed product as of May 2007, when the beneficiary began working there. As such, it is not clear how the beneficiary can be credited with developing this technology. Moreover, the article describes the AX502 as "patented technology." The petitioner did not submit any evidence indicating that the beneficiary is a credited inventor on the patent.

The record also contains materials about the AX508, which integrates a full quad band GSM/GPRS power amplifier on a single integrated Circuit using CMOS process technology. This material does not indicate when the AX508 was developed, but the materials do state that all of [REDACTED] CMOS power amplifiers "were developed using the company's patented Distributed Active Transformer (DAT) technology." Once again, the record contains no evidence that the beneficiary is a listed inventor on any patent or patent application.

In a letter dated May 13, 2009, [REDACTED] Vice President of Engineering at [REDACTED], discusses the beneficiary's earlier published work and states that at [REDACTED], the beneficiary was working on the company's next generation product, AX901, "an important extension to our existing quad-band GPRS CMOS PA, designated the AX502." [REDACTED] discusses the advantages of CMOS power amplification and asserts that the "next step of our research and development (R&D) is to further integrate the PA with other cell phone components." [REDACTED] explains that this step is dependent on the beneficiary's research in a new technique to remove the saw-filter between antenna and the receiver chip and implementation of a novel architecture to integrate the whole transceiver with the power amplifier into a single CMOS die. [REDACTED] asserts that when complete, this project "will provide the world's first CMOS quad-based receiver integrated with power amplifier. [REDACTED] then discusses the cell phone market and concludes that the beneficiary "will" contribute to the U.S. economy. [REDACTED] states that the beneficiary's accomplishments distinguish only from "other new [REDACTED]" and, while praising the beneficiary's past record, ultimately concludes:

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<sup>5</sup> The petitioner announced the acquisition June 2, 2009. See [REDACTED] (accessed September 16, 2010 and incorporated into the record of proceeding).

[The beneficiary's] latest works on fully integrated CMOS GSM/EGSM/DCS/PCS Quad-band receivers show that [the beneficiary] continues to work on the leading edge of technology, and he will be one of the elite scientists whose discoveries will fuel future technology which will in turn create companies, products, and jobs within the United States. Results from his research will allow for the creation of the world's smallest, lowest cost cellular phone with highly competitive performance.

It appears from this letter that the beneficiary did not work on the AX502 or the AX508, but the AX901. The record contains no evidence that the AX901 had been completed and marketed as of the date of filing, only two months after [redacted] authored his letter.

In response to the director's request for additional evidence, the petitioner submitted a letter from its own vice President of Engineering, [redacted]. [redacted] asserts that the beneficiary's work "is not only recognized within the technical community but is also recognized worldwide through the commercial success of the CMOS power amplifier products, the AX502 and AX508." This statement is highly disingenuous and diminishes [redacted] credibility. The record is clear that the AX502 was complete prior to the beneficiary's first employment with [redacted] a four-month internship from May 2007 through August 2007. Thus, the beneficiary simply could not have worked on the AX502. Also, [redacted] makes no mention of the beneficiary working on the AX508 and the record does not contain the patent application for this device. Rather, [redacted] only discusses a single project at [redacted] on which the beneficiary was working, the AX901. [redacted] goes on to assert that the petitioner's power amplifiers are included in more than half of the phones worldwide. Once again, however, without evidence that the beneficiary can be credited with either the AX502 or the AX508, these claims have no relevance to whether the beneficiary has contributed to the field.

As is clear from the above discussion, [redacted] letter is not consistent with [redacted] It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* The record does not contain patent applications or other comparable evidence that might resolve the inconsistencies discussed above.

[redacted] continues that the beneficiary is now designing the petitioner's "next generation full integrated CMOS power amplifier." [redacted] explains that the beneficiary is reducing the number of cores in the DAT to achieve even higher power efficiency. It appears that this is the same project [redacted] identified as the only project for Axiom on which the beneficiary actually worked. As this project has yet to produce results, it cannot be considered a contribution to the academic field as of the date of filing.

For the reasons discussed above, the record does not contain consistent evidence establishing that the beneficiary's work for [REDACTED] and the petitioner constitutes a contribution to the academic field as a whole. Thus, we will now look at the beneficiary's doctoral research.

The record contains a letter from [REDACTED] the beneficiary's Ph.D. advisor at Texas A&M University. We will address each project below.

I. [REDACTED] discusses the beneficiary's "critical role" on a U.S. Department of Defense (DoD) funded project to detect Unexploded Ordnance (UXO). The goal of the project was to develop a multi-sensor Electromagnetic Induction (EMI) prototype capable of locating and classifying EMI. [REDACTED] explains that as the scientist in charge of receiver design and system integration, the beneficiary "independently developed the first EMI sensor prototype in just six months." [REDACTED] explains that the beneficiary implemented an "innovative multi-layer hardware structure and novel circuit architecture" in his design, reducing size and increasing efficiency. [REDACTED] concludes that the beneficiary "has done more than his predecessors in addressing several cutting-edge techniques in a single design."

[REDACTED] Luong, a professor at Hong Kong University and one of [REDACTED] coauthors, asserts that the beneficiary's EMI prototype "has already been tested and applied" in the ongoing project. [REDACTED] does not explain how he, a professor in Hong Kong, has first hand knowledge of the beneficiary's work being applied by DoD. The record contains no confirmation from an official at DoD explaining their reliance on the beneficiary's prototype. The record contains no published articles or patent applications relating to this work. Moreover, as stated above, the petitioner must demonstrate the beneficiary's contribution to the field rather than to a single project.

II. [REDACTED] also discusses the beneficiary's "leading role" in a CMOS ultra-wideband (UWB) Transceiver Design project sponsored by the [REDACTED] ([REDACTED] and [REDACTED] [REDACTED] explains the relevance of this work to the military and other high tech industries and asserts that the beneficiary contributed "many new circuits," including "a 0.18- $\mu$ m CMOS distributed amplifier implementing the new gain cells, which achieves the lowest power consumption, with the highest gain ever reported over the entire UWB band of 3.1-10.6 GHz." [REDACTED] asserts that no other scientist had previously achieved this level of performance.

[REDACTED] concludes that the beneficiary's "innovative design has not only improved the performance of distributed amplifiers, but also made it possible for the use of distributed amplifiers in portable devices. [REDACTED] notes that this work was published in 2006. While this work has been cited as an example of the growth in interest in CMOS UWB designs, it has not garnered citation at a level consistent with a contribution to the academic field as a whole. None of the beneficiary's references explain how this work is being used by independent researchers.

III. [REDACTED] further asserts that the beneficiary invented “the world’s smallest distributed amplifier” in a “standard Jazz 0.18 $\mu$ m RF/mixed signal CMOS process.” [REDACTED] explains that the beneficiary reduced the size of the amplifier by 90 percent without sacrificing overall performance.

[REDACTED] explains that this work was published in 2008 and is “available for [the] new generation of wireless communication.” Similarly, [REDACTED] a professor at the University of California, [REDACTED], who spends most of his letter explaining how the projects on which the beneficiary is working are in the “national interest,” asserts that this work “can be further applied to more compact broadband RFIC applications.”<sup>6</sup> [REDACTED] appears to be basing his opinion on a review of the beneficiary’s credentials and publications and does not explicitly state that he had ever heard of the beneficiary’s work prior to being requested to provide a reference letter. The record contains no evidence that the beneficiary’s article reporting his small distributed amplifier had been cited as of the date of filing and [REDACTED] provides no examples of research teams or wireless communication developers expressing interest in the beneficiary’s work. The record also lacks evidence of a patent application for this amplifier.

In response to the director’s request for additional evidence, the petitioner submitted a letter from [REDACTED] a senior staff designer at Motorola who has cited the beneficiary. [REDACTED] asserts that the beneficiary has provided insights for [REDACTED] own work. The actual citation, however, does not reflect an application of the beneficiary’s work. Rather, [REDACTED] merely cites the beneficiary’s work for the proposition that the “major challenge in designing a low power-consumption DA is the tradeoff between efficiency and gain.”

[REDACTED] a professor at Universitat Duisberg-Essen, asserts that the beneficiary’s work on UWB communication systems “inspired considerable research activities in the field thereafter.” [REDACTED] provides no examples of these “activities” and does not purport to have been influenced by the beneficiary himself. Similarly, [REDACTED] asserts that the beneficiary’s work on power efficiency of amplifiers through the use of topography has had a “significant influence” and that “many new distributed amplifiers were designed based on the similar idea to achieve even higher gain and lower power consumption.” Once again, [REDACTED] provides no examples.

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).

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<sup>6</sup> This petition seeks to classify the beneficiary as an outstanding research pursuant to section 203(b)(1)(B) of the Act rather than a waiver of the alien employment certification process in the national interest for an advanced degree professional pursuant to section 203(b)(2) of the Act.

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

The letters considered above detail the beneficiary's technical successes but fail to consistently provide 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>7</sup>

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 seven articles authored by the beneficiary and published prior to the date of filing. While not "numerous" as claimed by counsel, these articles are qualifying evidence that meet the plain language requirements set forth at 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

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<sup>7</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).

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 acknowledge the letters from editors affirming the importance of obtaining knowledgeable peer reviewers, but cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. 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. According to the Department of Labor's Occupational Outlook Handbook, OOH, electronics engineers design, develop, test, and supervise the manufacture of electronic equipment. *See* [REDACTED] accessed September 16, 2010 and incorporated into the record of proceeding. 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 OOH provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See* [REDACTED] (accessed on September 16, 2010 and incorporated into the record of proceeding). 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 cited at a

level consistent with international recognition as outstanding or other comparable evidence that demonstrates that 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, 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.

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.