

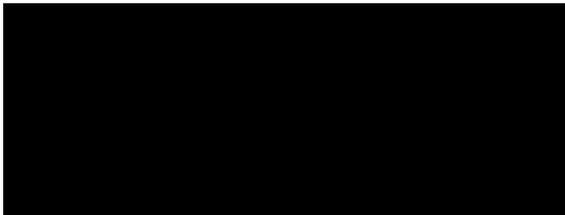
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services



B3

FILE:



Office: NEBRASKA SERVICE CENTER

Date:

SEP 27 2010

IN RE:

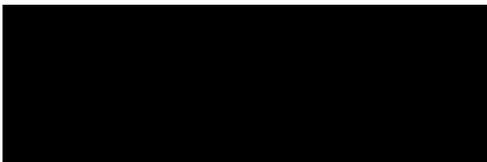
Petitioner:



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:

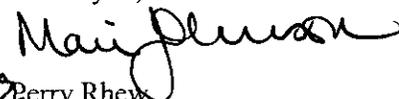


INSTRUCTIONS:

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 institution 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. 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 statement. For the reasons discussed below, we uphold the director's ultimate conclusion that the petitioner has not demonstrated the beneficiary's eligibility for the classification sought. Specifically, when we simply "count" the evidence submitted, the petitioner has submitted qualifying evidence under two of the regulatory criteria as required, judging the work of others and scholarly articles pursuant to 8 C.F.R. §§ 204.5(i)(3)(i)(D) and (F). As explained in our final merits determination, however, much of the evidence that technically qualifies under these criteria reflects routine duties or accomplishments in the field that do not, as of the date of filing, set the beneficiary apart in the academic community through eminence and distinction based on international recognition, the purpose of the regulatory criteria.¹ *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)).

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

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

(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 October 28, 2008 to classify the beneficiary as an [REDACTED]. 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 established that the beneficiary's work has been recognized internationally within the field as outstanding.

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

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

- (B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;
- (C) Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;
- (D) Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field;
- (E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or
- (F) Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under a similar classification set forth at section 203(b)(1)(A) of the Act. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion. With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while U.S. Citizenship and Immigration Services (USCIS) may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations.² Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained

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

national or international acclaim” are eligible for an “extraordinary ability” visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20.

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

II. Analysis

A. Evidentiary Criteria⁴

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

The petitioner submitted evidence that the beneficiary has reviewed manuscripts for at least two journals as of the date of filing. 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.

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

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

The petitioner submitted evidence of the beneficiary's published articles in the field. We simply note that 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.

Initially, counsel asserted that one of the petitioner's articles had been "cited by many researchers." 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). In response to the director's request for additional evidence, which requested citations other than self-citations, the petitioner submitted 15 citations, four of which are self-citations by the beneficiary or his coauthors. Two of the citations cite the beneficiary's geological modeling, which does not appear to relate to his current work. The remaining independent citations cite the beneficiary's work as an example of work using positivity preserving schemes, as a proposal to use finite-element methods for an effective treatment of the particle in [REDACTED] that has yet to be implemented beyond the [REDACTED], as an example of work replacing delta-functions with a narrow [REDACTED], as one of several examples of collaborations between analysts and numerical relativists with finite elements, for the result that the optimal error bound in [REDACTED] is sharp for the class of functions with non-vanishing [REDACTED] on general triangular elements, as work that demonstrated the relationship between the optimal mesh and [REDACTED], for the suggestion of a continuous monitor function is the 1D version of the monitor function and as an example of work incorporating the equidistribution principle into the variational mesh generation framework. None of these citations single out the beneficiary's work as influential or imply that the authors are relying on the beneficiary's work as the foundation of their own research.

The director stated that he had independently verified on [REDACTED] that there were 40 citations of the beneficiary's work. The director did not add this evidence to the record of proceeding. We accessed [REDACTED] on September 16, 2010 and have now added that information to the record of proceeding. Significantly, not all of the citations identified on that date predate the filing of the petition. Our review of [REDACTED] reveals that the beneficiary has coauthored one article that has garnered moderate citation. Specifically, the beneficiary's [REDACTED] has now been cited 55 times. Thirteen of these citations, however, are self-citations by the beneficiary and his coauthors and an additional 17 citations postdate the filing of the petition.

The petitioner must demonstrate 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). In this matter, that means that he must demonstrate an influence in the field consistent with a contribution to the academic field as of that date. 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 (4th Cir. 2008).

Even if we concluded that the 25 independent citations that predate the filing of the petition are consistent with a contribution to the field, none of the beneficiary's other articles reflect any significant amount of citation as of the date of filing. The regulation at 8 C.F.R. § 204.5(i)(3)(i)(E) requires evidence of contributions in the plural.

On appeal, counsel states:

Indeed, in many fields, letters of reference from established experts are considered a reliable and authoritative [*sic*] means of determining the merit of an individual's work. They are helpful because only a detailed letter of reference can explain the nature of the individual's work and why it is important. **For example, a citation record can show that a particular article has been cited dozens of times – but only a letter of recommendation or an advisory opinion can explain why that article has been cited.**

(Emphasis in original.) While we concur with the general proposition that opinion letters can provide valuable information to place the remaining evidence in context, it is necessary to examine the content of those letters. We will address the letters in depth below, some of which are inconsistent with each other.

██████████ currently a professor at the University of California, Berkeley, asserts that he got to know the beneficiary while working on the migration of petroleum in some Chinese sedimentary basins. While ██████████ asserts that the beneficiary contributed to this project, he does not explain how this work constitutes a contribution to the academic field as a whole.

██████████ discusses the beneficiary's work as a postdoctoral researcher and assistant professor at that institution. ██████████ explains that from 2001 through 2004, the beneficiary collaborated with ██████████ on "various research projects ranging from basic algorithmic developments to practical applications and made significant progress in adaptive mesh methods, multigrid method, phase field method and applications in fields of fuel cell dynamics, convection dominate problem, two-phase fluid flow, and black hole problems." ██████████ notes that this work was published. As stated above, authorship of scholarly articles falls under a separate evidentiary criterion, 8 C.F.R. § 204.5(i)(3)(i)(F), and is not, by itself, also presumed to be qualifying evidence under 8 C.F.R. § 204.5(i)(3)(i)(E). ██████████ explains that one of the beneficiary's most significant projects was "the development of a numerical package for multi-level adaptive finite element methods," for which the beneficiary played a key role in this project."

then discusses the beneficiary's research at beginning in 2005, which "focused on the problems arising from fuel cell dynamics, an important project that they have been working on together for years in collaboration with [the] explains that the commercial software typically used for fuel cell simulations have limited efficiency and are not conducive to applying new mathematical ideas and implementing new algorithms. asserts that the beneficiary wrote a package of his own, a formidable project because of the complexity of fuel cell models. states that the beneficiary was able to complete a "preliminary finite element package" within a "few months" rather than the many years such a project could be expected to require. asserts that the beneficiary's "package now is already operational with efficiency comparable to the existing commercial software," but acknowledges that the aim is to improve the efficiency. Regarding this project, concludes:

Given the progress [the beneficiary] has been making, the team expects a new generation of fuel cell simulation package will be ready in the near future and this new package is expected to make a great impact in mathematical modeling and numerical simulations for fuel cells.

Speculation that the beneficiary's work will contribute to the academic field in the "near future" is insufficient. The petitioner must demonstrate that the beneficiary's work can already be considered such a contribution.

Other references characterize the beneficiary's fuel cell package differently than the above statements. a professor at asserts that the beneficiary completed an efficient package in "a couple of weeks" rather than developing a "preliminary" package in a "few months" as described by . In addition, , states that the beneficiary's code already "gives superior resolution with orders of magnitude faster computational time." These assertions go far beyond what states. also discusses the beneficiary's fuel cell model, claiming that the beneficiary increased the current numerical efficiency of fuel cell simulation by at least one order of magnitude and hopefully will increase the efficiency by two orders of magnitude in the future. 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 resolve how long the beneficiary took to complete his package and whether the package was merely "comparable" to available commercial software or more efficient than such software.

Finally, [REDACTED] praises the beneficiary's work on multidisciplinary areas including mechanical engineering and astronomical physics but fails to provide specific examples of how this work is already influencing the field at a level consistent with a contribution to an academic field.

[REDACTED] praises the beneficiary's methods, modeling, software development and analysis of fuel cells models. [REDACTED] then notes the importance of this area of research and asserts that it is in the best interest of the United States to grant the beneficiary permanent residency. The petitioner seeks to classify the beneficiary as an outstanding professor pursuant to section 203(b)(1)(B) of the Act and does not seek 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.

[REDACTED] a professor at [REDACTED] asserts that the beneficiary's "unique work on local refined adaptive mesh method" has had a "major impact on the research of mesh adaptivity and has been cited by many researchers" and that "many scientists" have realized the "extensions and applications to other important scientific computing problems." The actual citations provided, however, discussed above in detail, do not reflect that the authors are applying the beneficiary's models or methods. [REDACTED] then discusses the beneficiary's proposed solution for a strongly convection-dominated diffusion equation. [REDACTED] concludes: "Many mathematicians are following [the beneficiary's] new approach in their own research. [REDACTED] does not identify these mathematicians or their institutions and, as stated previously, the citations provided do not suggest the authors are "following" the beneficiary's approach. Moreover, none of the independent citations provided cite this work, published in 2005. Finally, [REDACTED] asserts that the beneficiary's package for fuel cell modeling has been "widely" used at [REDACTED]. This statement does not suggest that the beneficiary has contributed to the academic field beyond the institution where he completed his research.

[REDACTED] discusses the importance of fuel cell research in general, which is not contested. [REDACTED] then concludes that the beneficiary's code "and its future editions are destined to become the industry standard and will have a lasting impact on [REDACTED] fuel cell research." Once again, speculation that future editions of the beneficiary's code will become the industry standard does not create a presumption that the beneficiary has already contributed to the academic field.

[REDACTED] currently a professor at the [REDACTED] who was recently at the [REDACTED] discusses the beneficiary's work applying adaptive finite element method to numerical relativity to numerical simulation of black hole binary system in order to achieve a high degree of adaptivity and high accuracy. While [REDACTED] asserts that this paper "influenced other groups in the States that focus on numerical simulation of black hole binaries," he does not identify these "groups." The only independent citation of this work provided merely cites the paper as one of six examples of a collaboration between analysts and numerical relativists to address finite elements.

██████████ asserts that the petitioner has been published and submitted proposals to the National Science Foundation (NSF) and the petitioner. As stated above, the regulations contain a separate evidentiary category of evidence for scholarly articles, 8 C.F.R. § 204.5(i)(3)(i)(F). ██████████ further asserts: "Due to his extraordinary research on cell simulation, he has been awarded a competitive grant" from the petitioner. A grant, however, is designed to fund future work rather than to recognize past contributions. USCIS need not accept primarily conclusory assertions.⁵ ██████████ provides no examples as to how this work has contributed to the academic field as a whole.

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

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

The letters considered above primarily contain bare assertions of widespread recognition and vague claims of contributions without 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.⁶ The independent letters do not suggest the authors have applied the beneficiary's work and one of these letters implies greater accomplishments than those indicated in ██████████ letter, who has first hand knowledge of this 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.

⁵ *See 1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

⁶ *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.*, 745 F. Supp. at 15.

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

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

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

In light of the above, the petitioner has submitted evidence that meets two of the criteria that must be satisfied to establish the minimum eligibility requirements for this classification. Specifically the petitioner submitted evidence to meet the criteria set forth at 8 C.F.R. §§ 204.5(i)(3)(i)(D) and (F). The next step, however, is a final merits determination that considers whether the evidence is consistent with the statutory standard in this matter, international recognition as outstanding. Section 203(b)(1)(B)(i) of the Act.

B. Final Merits Determination

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

The nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. See *Kazarian*, 596 F. 3d at 1122. In response to the director's request for additional evidence, [REDACTED] confirms that the beneficiary has been a reviewer for the publication and that the editorial committee confirms that referees are "true authorities in their field of expertise." The record does not contain evidence that the beneficiary had reviewed manuscripts for this journal prior to the date of filing. Nevertheless, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, while editors obviously match manuscripts with reviewers demonstrating knowledge of the manuscript's subject matter, 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 <http://www.bls.gov/oco/ocos027.htm>, 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 www.bls.gov/oco/ocos066.htm, accessed 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, as supplemented by material referenced by the director and incorporated by this office, establishes that only one of the beneficiary's articles had garnered any notable attention in the field through citations. A single moderately cited article as of the date of filing is not evidence indicative of or consistent with international recognition as outstanding.

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 consistent widespread 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.