

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  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

B3

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: FEB 18 2011

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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.

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 on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a manufacturer of automobiles. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a researcher. 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 professor or researcher.

On appeal, counsel submits a brief and additional evidence. While counsel relies on authorities that are not binding or persuasive and mischaracterizes a recent Federal Ninth Circuit Court decision, we find that the evidence in the aggregate, including that submitted on appeal, establishes 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,
  - (II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

The regulation at 8 C.F.R. § 204.5(i)(3) states that a petition for an outstanding professor or researcher must be accompanied by:

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from current or former employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

This petition was filed on March 22, 2010 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 international community in the beneficiary's field has recognized the beneficiary's work as outstanding. At issue is whether the petitioner has demonstrated the beneficiary's international recognition 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 response to the director's request for additional evidence and again on appeal, counsel relies on unpublished decisions by the AAO; *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994); and a July 30, 1992 correspondence memorandum from [REDACTED], Acting Assistant Commissioner, to the then Director of the Nebraska Service Center, [REDACTED]. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Moreover, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Finally, [REDACTED] issued his correspondence memorandum in response to an inquiry from [REDACTED] and makes clear that he is discussing his personal inclinations. Moreover, in contrast to official policy memoranda issued to the field, correspondence memoranda issued to a single individual do not constitute official U.S. Citizenship and Immigration Services (USCIS) policy and will not be considered as such in the adjudication of petitions or applications. Although the correspondence may be useful as an aid in interpreting the law, such letters are not binding on any USCIS officer as they merely indicate the writer's analysis of an issue. *See* Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).<sup>1</sup>

More persuasive authority, however, now exists, as acknowledged by counsel on appeal. 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). On appeal, counsel asserts that by finding that the alien in *Kazarian* met two criteria rather than the three required for aliens of extraordinary ability, the court concluded that an alien with those achievements would qualify under section 203(b)(1)(B) of the Act. Counsel seriously mischaracterizes the court's decision, which, as explained below, found that while the evidence submitted in that case met the technical plain language of the requirements for two regulatory criteria, the AAO raised legitimate concerns about the significance of that evidence but that the AAO should have confined those concerns to a separate discussion.

---

<sup>1</sup> Although this memorandum principally addresses letters from the Office of Adjudications to the public, the memorandum specifies that letters written by any USCIS employee do not constitute official USCIS policy.

More specifically, 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).

---

<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

*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 record contains numerous requests for the beneficiary to review manuscripts submitted for consideration by journals, including a foreign journal, and international conferences. Some of the requests to review manuscripts for international conferences are from experts at institutions outside the United States. The record confirms the beneficiary's completion of many of these reviews. We concur with the director that this evidence qualifies under the plain language of the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(D).

*Evidence of the alien's original scientific or scholarly research contributions to the academic field.*

The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(E) does not require that the beneficiary's contributions themselves be internationally recognized as outstanding. That said, the plain language of the regulation does not simply require original research, but original "research contributions." Had the regulation contemplated merely the submission of original research, it would have said so, and not have included the extra word "contributions." Moreover, the plain language of the regulation requires that the contributions be "to the academic field" rather than an individual laboratory or institution.

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

The petitioner submitted evidence that the beneficiary's articles have garnered citations in the field. While we concur with the director that self-citations by coauthors cannot demonstrate the beneficiary's impact beyond his immediate circle of colleagues, many of the citations are from independent research teams, including teams outside the United States. Moreover, some of the independent citations are notable. For example, a 2009 research team in Harbin, China, cites one of the beneficiary's articles for an explanation of [REDACTED] theory and another of the beneficiary's articles for the framework the authors are applying in the citing article.

[REDACTED] advisor at The Ohio State University and a member of the National Academy of Engineering, discusses the petitioner's doctoral and postdoctoral research at The Ohio State University. Specifically, [REDACTED] asserts that the petitioner worked on Defense Advanced Research Projects (DARPA) funded projects relating to autonomous vehicles (AVs). The beneficiary's

responsibility was to "design a numerical resource allocation algorithm to dynamically determine an optimal assignment of military ordnance to enemy targets." [REDACTED] explains that the beneficiary "designed a hierarchical method that combines optimization and feedback control, where satisfactory solutions with repetitive implementation can adapt to a[n] ever changing environment." [REDACTED] asserts that [REDACTED] decision software against teams from other universities including the Massachusetts Institute of Technology (MIT), Stanford and the University of California at Berkeley and that The Ohio State University's software to which the beneficiary contributed outperformed the software developed at these other institutions.

[REDACTED] further asserts that the beneficiary, an expert in game theory, was among the first to consider realistic scenarios where AV teams are tasked to suppress a cluster of "intelligent" mobile targets as a multi-player pursuit-evasion (PE) differential game. [REDACTED] asserts that the beneficiary incorporated these game theories into a research proposal that the Army Research Office funded for Phase I and Phase II. [REDACTED] concludes that this work "proved the existence of solutions, and also provided a computation procedure, which has been viewed as the only systematic method available that can solve a multi-player game optimally."

According to [REDACTED], based on the beneficiary's successful research with PE game study, the Air Force Research Lab (AFRL) "challenged" the beneficiary to "solve mission-planning problems involving intensive uncertainties such as search, surveillance and reconnaissance." [REDACTED] concludes: "Starting with a two-player stochastic game, [the beneficiary] managed to overcome the two major challenges from inherent uncertainties and the multiplicity of players."

The record also contains letters from more independent sources. [REDACTED], an associate professor at the University of New Orleans, explains that his group has been working on a space tracking problem with multiple targets that faced tremendous challenges. [REDACTED] asserts that one of the beneficiary's articles "inspired us to formulate the multi-tracking under a game theoretic framework." [REDACTED] further explains that using the beneficiary's approach provided a powerful tool to solve the problem and that the group's results "have been highly acknowledged by the program manager in the Air Force."

[REDACTED] a professor at the University of Seville, Spain, asserts that his team had developed a model predictive control (MPC) in a game situation. [REDACTED] concludes: "Inspired by [the beneficiary's] discovery of improving structure of a cost-to-go function at terminal, we became aware that it is possible to modify his method for game problems to improve the [REDACTED] performance in our own control applications."

[REDACTED], an Emeritus Professor at the University of Nevada, asserts that one of his own projects, funded by the U.S. Navy, "is to infer the threat intent using spatial and temporary information gathered by networked autonomous vehicles." [REDACTED] concludes: "Inspired by [the beneficiary's] game formulation, we modeled the problem under a game framework, where action and counteraction of the UAVs and threats are both considered." [REDACTED] explains that using the beneficiary's tools,

his team solved the inference problem with better prediction performance than other methods. [REDACTED] affirms that the beneficiary's theory sped up [REDACTED]'s own work and broadened the scope of that work.

[REDACTED], the petitioner's [REDACTED] explains how the beneficiary is contributing to the petitioner's research on drivers' potential reactions to the road ahead. For example, the beneficiary "has taken a full responsibility in developing control algorithms to extract the key road information from the [REDACTED] and calculate the gear selection command." [REDACTED] concludes: "The success of the industry first GPS-assisted driver predictive transmission shift schedule system developed by [the beneficiary] has immediately drawn considerable interest and provides a realistic hope for the company and the automotive industry to develop an efficient 'smart' vehicle in the future."

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)).

Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.<sup>4</sup> These experts supporting this petition, however, have not merely reiterated the regulatory language for this criterion, they have clearly described how the beneficiary's scientific contributions are both original and of major significance in the field. Several of these experts have explained how

---

<sup>4</sup> *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

they are currently using the petitioner's findings in their own work. The remaining evidence of record also supports the letters.

In light of the above, the petitioner has established that the beneficiary's research is not only original but has also contributed to the field as a whole. Thus, the petitioner has submitted qualifying evidence that meets the plain language requirements set forth 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. As noted by counsel on appeal, the authorship of scholarly articles in qualifying journals by itself meets 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 or more 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), (E) and (F). The next step, however, is a final merits determination that considers whether the evidence is consistent with the statutory standard in this matter, international recognition as outstanding. Section 203(b)(1)(B)(i) of the Act.

#### *B. Final Merits Determination*

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

The nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. We cannot ignore that scientific journals 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. Nevertheless, the numerous independent requests from international experts are certainly consistent with a conclusion, supported by other evidence of record, that the beneficiary enjoys international recognition as outstanding.

Regarding the beneficiary's original research, 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." That said, the record contains letters and citations from international experts that not only know of the beneficiary's work but have applied it to their own projects.

While the beneficiary has published articles, the Department of Labor's Occupational Outlook Handbook, provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See [REDACTED], accessed February 10, 2011 and incorporated into the record of proceedings. 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. Contrary to counsel's assertion on appeal that the mere authorship of published scholarly articles is significant, the beneficiary's citation history is a relevant consideration as to whether the articles are indicative of the beneficiary's recognition beyond his own circle of collaborators. See *Kazarian*, 596 F. 3d at 1122. That said, as discussed above, the beneficiary's articles have garnered citations from around the world.

In light of the above, our final merits determination reveals that the beneficiary's qualifying evidence in the aggregate, including evidence not discussed in this decision, does 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

Upon careful consideration of the evidence offered with the initial petition, and later on appeal, we conclude that the petitioner has satisfactorily established that the beneficiary enjoys international recognition as an electrical engineer. The petitioner has overcome the objections set forth in the director's notice of denial, and thereby removed every stated obstacle to the approval of the petition.

The record indicates that the beneficiary meets at least two of the six criteria listed at 8 C.F.R. 204.5(i)(3)(i). Based on the evidence submitted, it is concluded that the petitioner has established that the beneficiary qualifies under section 203(b)(1)(B) of the Act as an outstanding researcher.

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 met that burden. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.