

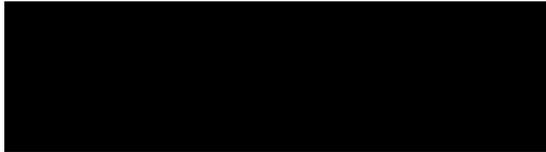
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**



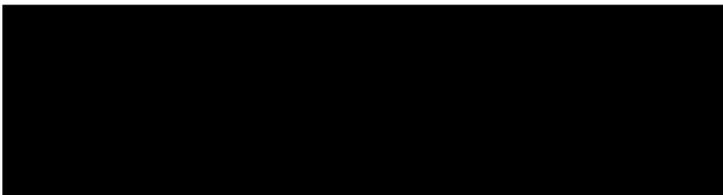
B3

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 11 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.

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 \$630. 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 researches, manufactures and sells household consumer products. 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 senior scientist. The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher.

On appeal, counsel submits a brief. For the reasons discussed below, we concur with the director that the petitioner has not demonstrated the beneficiary's eligibility for the classification sought. Beyond the decision of the director, the petitioner has also failed to submit a qualifying job offer and suggested that it might intend to employ the beneficiary in Europe.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See 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); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

## 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 29, 2009 to classify the beneficiary as an outstanding researcher in the field of dental research. 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. The beneficiary's qualifying experience is not at issue.

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>1</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>2</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

---

<sup>1</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>2</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.

the classification sought in this matter. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003) (recognizing the AAO's *de novo* authority).

## II. Analysis

### A. Evidentiary Criteria<sup>3</sup>

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

Initially, the petitioner relied on the beneficiary's receipt of a Visiting Scholar Stipend from the International Association for Dental Research (IADR) in 2002 while the beneficiary was pursuing her Ph.D. In response to the director's request for additional evidence, the petitioner asserted that the "award" was international in that researchers from 33 countries applied for the stipend. The petitioner noted the prestigious reputation of the IADR. At issue, however, is whether the stipend is a "major" prize or award for outstanding achievement.

The letter from the IADR indicates that the association decided to support the beneficiary's project based on the scientific value of her research proposal. IADR indicated that it expected the beneficiary to submit a written report after completing her research at the host laboratory and present an abstract on her results at the IADR meeting in 2003 or 2004. The petitioner also submitted the application materials from the IADR website. The materials indicate that preference is given to individuals under 35 years of age applying for the first time. An applicant must include a statement from the responsible person from the host laboratory providing a "detailed description of the areas in which the Stipend recipient will be trained."

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

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

---

<sup>3</sup> The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

The record reveals that the stipend was designed to fund future research and support a training opportunity. The stipend does not honor or recognize past achievement. As such, it is not a prize or award for outstanding achievement.

Moreover, the regulation at 8 C.F.R. § 204.5(i)(3)(i)(A) requires evidence of qualifying prizes or awards in the plural. Significantly, not all of the criteria at 8 C.F.R. § 204.5(i)(3)(i) are worded in the plural. Specifically, the regulation at 8 C.F.R. § 204.5(i)(3)(i)(D) only requires service on a single judging panel. In addition, when the regulation at 8 C.F.R. § 204.5(i) wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(i)(3)(ii) that evidence of experience must be in the form of "letter(s)." Thus, we can infer that the plural in the regulatory criteria at 8 C.F.R. § 204.5(i)(3)(i) has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.<sup>4</sup> The petitioner did not submit another prize or award.

On appeal, counsel does not assert that the stipend qualifies as a major prize or award under 8 C.F.R. § 204.5(i)(3)(i)(A). Instead, counsel asserts that it constitutes "comparable" evidence. Unlike the regulation at 8 C.F.R. § 204.5(h)(4), the regulation at 8 C.F.R. § 204.5(i)(3)(i) does not permit the submission of comparable evidence. Moreover, counsel does not explain how evidence that falls short of meeting the requirements of 8 C.F.R. § 204.5(i)(3)(i)(A) can be considered "comparable" evidence.

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

*Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members*

The petitioner did not initially address this criterion. The director's request for additional evidence advised that, if applicable, the petitioner should submit evidence of qualifying memberships and the constitutions and bylaws of the relevant associations. In response, the petitioner asserts that the petitioner is a member of "Leading Dental Associations" and has served in the role [REDACTED]

USCIS may not impose novel substantive or evidentiary requirements other than those set forth at 8 C.F.R. § 204.5. See *Kazarian*, 596 F.3d at 1221, citing *Love Korean Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir.2008). At issue for the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B) are the requirements for membership. Whether the association is "leading" and what role the alien played for the association are irrelevant.

<sup>4</sup> See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at \*10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

The petitioner submitted evidence of the beneficiary's membership in IADR and the German Association of Oral Implantology (DGI). According to the bylaws, Article 6, IADR is open to "[a]ny individual who is interested in dental research." The petitioner did not submit the membership requirements for DGI although the materials reflect that it is Europe's largest implantology association. The petitioner also submitted evidence that the beneficiary served as Councilor for the Cincinnati Section of the American Association for Dental Research (AADR). The association's bylaws, however, reflect that the association is open to anyone "interested in Dental Science and Dental Research." We reiterate that the beneficiary's role as Councilor for a local section is not relevant to the plain language requirements set forth at 8 C.F.R. § 204.5(i)(3)(i)(B), which looks only at the membership requirements.

On appeal, counsel does not contest the director's conclusion that the beneficiary's memberships are not qualifying memberships as defined at 8 C.F.R. § 204.5(i)(3)(i)(B).

As the record does not reflect that the beneficiary is a member of associations that require outstanding achievements of their members, 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)(B).

*Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation*

The petitioner initially indicated that it was submitting evidence of published material in professional publications that cite the petitioner's research. This assertion does not match the regulatory language at 8 C.F.R. § 204.5(i)(3)(i)(C). Thus, in the request for additional evidence, the director advised that the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) requires that the published material be "about" the beneficiary's work and that citations do not meet this requirement. In response, the petitioner indicated that it was submitting published material in professional publications that "relies" on the beneficiary's work. Once again, this statement uses very different language than the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C). As such, the petitioner never used the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) in discussing the citations of the beneficiary's work. Moreover, the petitioner did not expressly contest the director's statement that citations, while relevant when considering the impact of the beneficiary's articles, cannot be considered published material about the beneficiary's work.

The director concluded that the petitioner has not claimed the beneficiary meets this criterion and that the record lacked qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C). On appeal, counsel asserts that the director erred in law and fact by overlooking the petitioner's "repeated discussion and the numerous exhibits documenting published material regarding the Beneficiary's work." (Bold and underline emphasis omitted.) Counsel then discusses some of the individual citations and concludes that the director's "error" under this criterion warrants reopening and reconsideration "as it is impossible to say how the Service would have decided this Petition in the first instance had it properly considered all of the evidence properly before it." (Bold and underline emphasis omitted.)

As noted by the director in the request for additional evidence, the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) requires that the published material be "about" the beneficiary's work. "Published material" refers to articles, not individual footnotes, sentences or paragraphs within those articles. The citing articles are several pages in length, report the results of the authors' own work and only cite the beneficiary's work in a single sentence or paragraph. The petitioner has never explained how these articles can be considered to be "about" the beneficiary's work when the authors wrote these articles to report the results of their own work. We concur with the director that these citing articles are not, in fact, "about" the beneficiary's work.

In light of the above, the director's conclusion that the petitioner did not submit any qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) is both legally and factually correct.

*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 did not initially indicate that it was submitting any evidence relating to this criterion. In response to the director's request for additional evidence, the petitioner submitted a letter from [REDACTED] and one of the beneficiary's former collaborators, advising that the journal had invited the beneficiary to review manuscripts submitted to the journal. [REDACTED] however, does not indicate when the beneficiary began serving as a reviewer for the journal. The petitioner also submitted one of the beneficiary's reviews, but the review is undated. Significantly, [REDACTED] provided a letter of support initially and, while confirming that he was an editor of the journal, did not mention the beneficiary's service as a reviewer for that journal. The petitioner must establish the beneficiary's eligibility as of the date of filing the petition. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Without evidence that the beneficiary served as a reviewer prior to the date of filing, July 29, 2009, we cannot consider this evidence.

On appeal, counsel asserts that the director ignored the beneficiary's role as an alternate chair for one session at a conference and her role [REDACTED]. Counsel asserts that as alternate chair, the beneficiary "oversaw the research presentations of six independent experts who presented." Counsel further describes the beneficiary's role as councilor for a local section of the AADR as "leading." The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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 no evidence that the beneficiary served as the judge of the work of others either as an alternate session chair or as a local section councilor.

The record contains no qualifying evidence under the plain language of the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(D) that predates the filing of the petition.

*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.

As discussed above, the petitioner submits evidence that the beneficiary's work has been cited. Counsel makes several assertions about the nature of the citations. As stated above, however, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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.

Counsel asserts that a citation in [REDACTED] article demonstrates that he modeled the design of his study after the beneficiary's previous research. According to the biographies at the end of the article, however, [REDACTED] is an employee of the petitioning company in London. He cites two of the beneficiary's articles, one of which he coauthored. As such, his citation does not demonstrate the beneficiary's influence beyond her immediate circle of collaborators.

Counsel next asserts that [REDACTED] and coauthors cite to the beneficiary as "one of the dental field's authorities on the effects of bleaching on the surface and subsurface of tooth enamel or dentin." (Bold and underline emphasis omitted.) Counsel mischaracterizes the citation. [REDACTED] cites the beneficiary's work as one side of a controversy. Specifically, the beneficiary found no significant surface or subsurface ultrastructural or chemical effect in enamel or dentin from peroxide bleaching. In the same paragraph, however, [REDACTED] asserts that his own study confirmed the results of the other side of the controversy, namely that "the production of enamel surface changes." The article concludes: "previous bleaching with 30% carbamide peroxide increases the amount of CA<sup>+2</sup> extracted from enamel by etching with phosphoric acid."

Counsel also singles out [REDACTED] article and [REDACTED] article as evidence that the beneficiary's work served as a basis for additional work in Japan and Switzerland. The citations do not support counsel's assertion. [REDACTED] merely cites the beneficiary's work as one of seven articles confirming that carbamide peroxide and hydrogen peroxide are often used in the bleaching of teeth to treat discoloration. [REDACTED] includes a table summarizing 52 studies, one of which is the beneficiary's study. The following discussion does not single out the beneficiary's work.

██████████ and coauthors cite the beneficiary's article as the sole authority for the proposition that zinc ion, a documented bacteriostatic agent, has been used in oral health products for plaque reduction. The cited article by the beneficiary, however, reported that white light-illuminated adaptation of an established digital plaque image analysis technique reflects that SnF/SHMP dentrifice was more effective than a ZnCit/SMFP dentrifice in the prevention of overnight plaque growth. ██████████ tested the antiplaque efficacy of a new 2 percent zinc citrate fluoride dentrifice using a disclosing solution followed by a plain water rinse rather than the beneficiary's white light-illuminated technique. Thus, ██████████ citation does not document the beneficiary's notable influence on the work of others.

The most extensive citations are in articles by coauthors or other researchers at the petitioning company and do not demonstrate the beneficiary's influence beyond that company. The remaining citations not discussed above cite the beneficiary's work as one of several similar studies for a single proposition. For the reasons discussed above, the beneficiary's publication record, by itself, is not indicative of contributions to the field as a whole.

The beneficiary has also presented her work. As with articles, while presentations can establish the dissemination of the beneficiary's work, it is the petitioner's burden to establish that the presentations have influenced the field. The record contains no evidence of widespread citation or other evidence of independent researchers utilizing the beneficiary's presentations in their own work.

In response to the director's request for additional evidence, the petitioner submitted evidence that the beneficiary has authored an online continuing education course available at [dentalcare.com](http://dentalcare.com), a site that heavily references the petitioning company and its dental products.<sup>5</sup> The course has been available as of 2006, prior to the date of filing. The Internet page includes links for state requirements, suggesting that the courses listed on this page can be used to fulfill state requirements for continuing educations for dentists. The page also contains the following disclaimer: "Participants must always be aware of the hazards of using limited knowledge in integrating new techniques or procedures into their practice. Only sound evidence-based dentistry should be used in patient therapy." The petitioner also submitted draft components for a second continuing education course but no evidence that this second course was available as of the date of filing the petition.

On appeal, counsel asserts that the dental course is based on the beneficiary's research and cites an unpublished decision by the AAO that referenced "course reading lists from courses in the United States and abroad listing the beneficiary's work as required or recommended reading." The beneficiary is an author of the course and is listed in the acknowledgements. We do not contest that her research contributed to this course. The petitioner, however, has not established the significance of the course.

Counsel incorrectly cites the AAO decision as "established law" and "precedential." The decision referenced by counsel is unpublished. 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.

---

<sup>5</sup> We accessed [www.dentalcare.com](http://www.dentalcare.com) on December 23, 2010, and confirmed that the site is the petitioning company's portal for dental professionals.

Regardless, the beneficiary's creation of her own continuing education course, sponsored by her employer, carries far less weight than several independent professors selecting an author's work as required or recommended reading. Specifically, the record contains no evidence how many continuing education courses exist, how continuing education courses are certified as acceptable for credit or how many individuals have taken the beneficiary's course. Without such supporting evidence, the mere existence of the course has little evidentiary value.

The remaining evidence consists of letters. [REDACTED] Medical University of Warsaw, discusses the beneficiary's research at that institution. [REDACTED] asserts that the beneficiary "conducted some of the earliest studies on the effectiveness and safety of bleaching procedures," concluding that [REDACTED] did not soften or etch surface enamel or root dentin. [REDACTED] continues that the beneficiary "also introduced a novel technique to assess the safety of bleaching gels," combining [REDACTED] [REDACTED] notes that the beneficiary published articles reporting on this technique and presented fourteen conference papers. [REDACTED] concludes that the beneficiary's work is "crucial for maintaining dental health in light of the increasing use of at-home bleaching and whitening systems." [REDACTED] however, does not provide examples of independent researchers using the beneficiary's novel technique.

[REDACTED] indicates that he collaborated with the beneficiary on orthodontic research that they presented at conferences. [REDACTED] asserts that the beneficiary "demonstrated that the Plaque Glycolysis and Regrowth Method (PGRM) effectively evaluate which substances are able to slow down the metabolic process that produces pyruvic and lactic acid." [REDACTED] explains that this work is important for patients where over-production of acid is leading to disease and for orthodontic patients where hygiene management is difficult. [REDACTED] concludes that the beneficiary "validated the PGRM protocol for use on children undergoing fixed orthodontic therapy and demonstrated that the method is sensitive to differentiation on among acid-caused diseases across a population." While [REDACTED] concludes that this work "paved the way for future studies" using PGRM, he does not identify a single current PGRM study that is applying the beneficiary's work.

[REDACTED] also discusses the beneficiary's study on the effectiveness of antimicrobial mouth rinse on plaque acidogenic virulence. [REDACTED] explains that the beneficiary "demonstrated that the antibacterial mouth rinse significantly inhibits glycolysis, the metabolic process that breaks down carbohydrates and sugars into acid." [REDACTED] notes that the beneficiary presented this work and concludes that it has "deepened the scientific community's understanding of how to prevent or retard plaque and acid formation." [REDACTED] however, provides no examples of this work being used by dental researchers or dentists.

Finally, [REDACTED] discusses the beneficiary's work on root canal preparation and obturation. Specifically, [REDACTED] states:

[The beneficiary] provided a crucial evaluation of the indications and contraindications for methods of canal preparation used internationally, including mechanical systems, ultrasonic systems, and lasers. She also analyzed the methods of root canal obturation

such as the single point technique, thermoplastic techniques, and thermo-mechanical techniques. These articles displayed [the beneficiary's] mastery of this important area of oral health and evidence of her continuous contribution to increasing international knowledge of cutting-edge technologies in dentistry.

Once again, [redacted] provides no examples of how the beneficiary's work is being applied in root canal practice or by dental researchers.

[redacted] explains that he knows the beneficiary through his collaborations with the petitioning company. [redacted] asserts that his collaboration has "benefited greatly from her efficiency." [redacted] asserts that the beneficiary demonstrated that the different bleaching techniques were equally safe. As stated above, however, one of the articles that cites the beneficiary's work asserts that this conclusion is still controversial and reached a different conclusion. [redacted] then states that the beneficiary's "objective imaging technique is now accepted by industry and has been standardized for use throughout the company." The record, however, contains no evidence of any other research team or dentist using the beneficiary's imaging technique.

[redacted] reiterates some of the information discussed above and also discusses the beneficiary's "important contributions to the use of Digital Plaque Image Analysis (DPIA)." [redacted] explains that prior to the use of DPIA, dentists relied on subjecting grading of plaque levels. According to [redacted], the beneficiary assessed the strength of different products by capturing ultra violet images of disclosed plaque in subjects. [redacted] concludes that the beneficiary provided "internal standardization of the DPIA test protocol" and "a novel and consistent method to measure dental plaque across broad patient populations and a way for researchers to normalize their data." [redacted] does not state that the beneficiary developed DPIA. Notably, the beneficiary's 2008 article in the [redacted] collection standards used in four previous studies cited in footnotes 17 through 20. The earliest of the cited articles, authored by researchers other than the beneficiary, is dated in 2000. [redacted] does not identify specific published standards based on the beneficiary's work or provide examples of independent researchers relying on the beneficiary's DPIA standards.

Finally, [redacted] concludes generally that the beneficiary is "among the top one to two percent of all researchers in her field." USCIS need not accept primarily conclusory assertions.<sup>6</sup> [redacted] discusses the beneficiary's IADR stipend, the research discussed above, the importance of the beneficiary's area of research, the beneficiary's publications and presentations and her course. While [redacted] praises the beneficiary's research, including the research underlying her course, he does not provide specific examples of its use. For example, he does not indicate how many individuals have taken the beneficiary's course or explain how these students have applied her research. [redacted] does not claim to have independently applied the beneficiary's work in his own work.

---

<sup>6</sup> *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

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

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

The letters considered above primarily contain bare assertions of widespread recognition and vague claims of contributions without providing specific examples of how those contributions have influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.<sup>7</sup> The petitioner submitted only a single independent letter and this letter does not suggest the author has applied the beneficiary's work. The petitioner also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements 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. Thus, the petitioner has submitted evidence that qualifies under 8 C.F.R. § 204.5(i)(3)(i)(F).

In light of the above, the petitioner has not submitted evidence that meets two of the criteria that must be satisfied to establish the minimum eligibility requirements for this classification. Specifically the petitioner submitted evidence to meet only the criterion set forth at 8 C.F.R. §§ 204.5(i)(3)(i)(F). We

---

<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); *Ayvr 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.

will, however, consider whether the evidence submitted 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)).

Even if the petitioner had established that she had reviewed manuscripts for a journal prior to the date of filing, 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 her own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. While we acknowledge [REDACTED] assertion that the journal invited the beneficiary to review manuscripts based on her international reputation, [REDACTED] is one of the beneficiary's collaborators. Thus, the invitations to review manuscripts do not demonstrate the beneficiary's recognition beyond her circle of collaborators. Moreover, [REDACTED] does not back up his assertion with statistics demonstrating that the journal boasts a small, credited panel of reviewers. 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. 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. Demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research is not useful in setting the beneficiary apart in the academic community through eminence and distinction based on international recognition. 56 Fed. Reg. at 30705. Research work that is unoriginal would be unlikely to secure the beneficiary a master's degree, let alone classification as an outstanding researcher. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

While the beneficiary has published articles, the Department of Labor's Occupational Outlook Handbook provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See [www.bls.gov/oco/ocos066.htm](http://www.bls.gov/oco/ocos066.htm)*, accessed December 23, 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 a 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.* Further, the OOH states specifically

with respect to the biological sciences that a "solid record of published research is essential in obtaining a permanent position performing basic research, especially for those seeking a permanent college or university faculty position." See [www.bls.gov/oco/ocos047.htm](http://www.bls.gov/oco/ocos047.htm). 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 beneficiary's articles are indicative of the beneficiary's recognition beyond her own circle of collaborators. See *Kazarian*, 596 F. 3d at 1122. The record contains no evidence that the beneficiary's articles have been cited at a level consistent with international recognition as outstanding or other comparable evidence that demonstrates the beneficiary's publication record is consistent with international recognition as outstanding.

In light of the above, our final merits determination is that the petitioner has not established that the beneficiary is recognized internationally as an outstanding researcher. The beneficiary's stipend based on her research proposal was designed to further her training rather than as recognition of past accomplishments. Serving as Councilor for a local section of a professional association does not demonstrate any recognition beyond that local section. Participating in the widespread anonymous peer review process at the request of a collaborator does not demonstrate the beneficiary's international recognition. The letters primarily make conclusory statements about the impact of the beneficiary's research without providing specific examples of that impact. The beneficiary's presentations and publications have not garnered significant citations or other response in the academic field. Thus, none of the evidence sets 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. Job Offer

The regulation at 8 C.F.R. § 204.5(i)(3)(iii) provides that a petition must be accompanied by:

An *offer* of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

- (A) A United States university or institution of higher learning *offering* the alien a tenured or tenure-track teaching position in the alien's academic field;
- (B) A United States university or institution of higher learning *offering* the alien a permanent research position in the alien's academic field; or
- (C) A department, division, or institute of a private employer *offering* the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

(Emphasis added.) *Black's Law Dictionary* 1189 (9<sup>th</sup> ed. 2009) defines "offer" as "the act or an instance of presenting something for acceptance" or "a display of willingness to enter into a contract on specified terms, made in a way that would lead a reasonable person to understand that an acceptance, having been sought, will result in a binding contract" and defines "offeree" as "[o]ne to whom an offer is made." In addition, *Black's Law Dictionary* defines "offeror" as "[o]ne who makes an offer." *Id* at 1190.

In light of the above, the ordinary meaning of an "offer" requires that it be made to the offeree, not a third party. As such, regulatory language requiring that the offer be made "to the beneficiary" would simply be redundant. Thus, a letter addressed to U. S. Citizenship and Immigration Services (USCIS) *affirming* the beneficiary's employment is not a job *offer* within the ordinary meaning of that phrase.

The regulation at 8 C.F.R. § 204.5(i)(2), provides, in pertinent part:

*Permanent*, in reference to a research position, means either tenured, tenure track, or for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination.

On Part 6 of the petition, the petitioner indicated that the proposed employment was a permanent position. The petitioner submitted a letter from the petitioner addressed to USCIS, affirming that the petitioner has offered the beneficiary a permanent position. This document does not constitute a job offer from the petitioner to the beneficiary.

In response to the director's request for additional evidence, the petitioner asserted that the beneficiary "is currently leading the orthodontic research program at Mainz University in Germany, as well as the expansion of [the petitioner's] clinical capability to develop the next generation of dental products at clinical sites across Eastern and Western Europe." The petitioner further indicates that it expects 30 percent of all dental studies to occur in Europe and that the beneficiary will lead the petitioner in these studies. As such, it is not clear that the petitioner is offering the beneficiary a permanent position in the United States.

The petitioner has not submitted the primary required initial evidence, the original job offer predating the filing date of the petition. Confirmations after the fact are not evidence of eligibility as of the date of filing the petition. *See generally* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. The petitioner has not complied with the regulation at 8 C.F.R. § 103.2(b)(2) regarding the submission of secondary evidence. Specifically, the petitioner has not demonstrated that the original job offer does not exist or is unavailable. While we do not question the credibility of those who have confirmed the beneficiary's employment, counsel has not sufficiently explained why we should accept attestations about the terms and conditions in a document in lieu of the document itself. Without the initial job offer, we cannot consider the petitioner's explanations about the terms and conditions set forth in that job offer.

#### **IV. Conclusion**

The petitioner has shown that the beneficiary is a competent researcher, who has won the respect of her collaborators, employers, and mentors, while securing some degree of international exposure for her work. The record, however, stops short of elevating the beneficiary to the level of an alien who is internationally recognized as an outstanding researcher. In addition, the petitioner has not submitted a qualifying job offer. Therefore, for the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved.

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.