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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: JAN 24 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:

[Redacted]

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, Texas Service Center, denied the employment based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a hospital and research center. 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 research associate. 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 new evidence. Counsel indicated that an additional brief or additional evidence would be submitted within 30 days. Counsel dated the appeal March 1, 2010. As of December 6, 2010, this office had received nothing further. On that date, the AAO advised the petitioner of concerns regarding the beneficiary's past association with [REDACTED] and their joint patent, submitted as valid despite its status as withdrawn. The AAO has now received the petitioner's response.

The petitioner's response notes, as acknowledged in the AAO's notice, that the petitioner was not a coauthor of [REDACTED] now retracted *Science* articles on human cloning. In response to the AAO's concern that the petitioner had submitted a World Intellectual Property (WIPO) International Application for a Korean patent with a withdrawn status, counsel asserts that the beneficiary had no knowledge of the withdrawal. The petitioner submits a letter from a Korean patent attorney confirming that Seoul National University owns the patent and could have withdrawn the patent without advising the beneficiary. The petitioner also submitted a letter from [REDACTED] confirming that journal has not retracted the beneficiary's coauthored articles with Dr. Hwang in that journal. The petitioner also submitted a similar letter from [REDACTED]

As stated in our December 6, 2010, the beneficiary's past association with [REDACTED] does not preclude the beneficiary's eligibility. Rather, it was necessary for the AAO to raise and resolve the issue. We are now satisfied that petitioner has resolved the concerns in our previous letter. For the reasons discussed below, the petitioner has demonstrated 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 July 24, 2009 to classify the beneficiary as an outstanding researcher in the field of stem cell biology. 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 field at the

international level has recognized the beneficiary's work as outstanding. The director did not question that the beneficiary has the necessary experience. At issue is the beneficiary's international recognition.

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.¹ Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the

¹ 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)).

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.² 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 Criteria

The record contains qualifying evidence that meets the plain language of the following 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 petitioner submitted evidence that the beneficiary was one of nine members of the Editorial Board of the *Journal of Embryo Transfer* in 2006, 2007 and 2008. The director acknowledged the

² 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.

beneficiary's service on the editorial board but noted that not all judging is indicative of international recognition. Finally, the director concluded that without evidence that set the beneficiary apart from his peers, such as evidence that he had served in an "editorial position," he could not meet this criterion. While the director's concerns regarding the level of the beneficiary's judging expertise would be better discussed under a final merits determination, we note here that the director provided no explanation as to why the beneficiary's membership on the editorial board is not an "editorial position." On appeal, [REDACTED] asserts that the journal selected the beneficiary for the editorial board based on his scientific achievements.

The beneficiary's service as a member of the editorial board 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 of the impact factor of the journals that have published the beneficiary's articles. While relevant, even more significant is the beneficiary's citation record. The director implied, when discussing the beneficiary's articles under 8 C.F.R. § 204.5(i)(3)(i)(F), that the beneficiary's articles have not been "widely cited." The record does not support this implication. The record contains evidence that 220 articles have cited the beneficiary's work in the aggregate.³ Moreover, several of the beneficiary's articles have individually garnered moderate citation.

³ In response to the director's notice of intent to deny, counsel asserted that, in addition to the 220 citing articles, 900 articles had otherwise referenced the beneficiary's articles. Counsel appears to be relying on the number of "references" listed for each article on the ISI Web of Knowledge website. These "references" represent the number of footnoted articles within the beneficiary's articles and do not represent references to the beneficiary's work.

██████████ the beneficiary's supervisor at the petitioning institute, praises the beneficiary's work developing protocols for the induction of neural crest stem cells and differentiated neural crest derivatives from human embryonic stem (ES) cells. ██████████ continues:

[The beneficiary's] key paper, published about a year ago in *Nature Biotechnology* . . . has already become a highly cited "classic" in the field, and has spurred many other groups in the United States and beyond to pursue this research route. This study was [the] first to demonstrate the presence of neural crest stem cells during human ES differentiation, defined the signals that promote neural crest induction in vitro, showed the prospective isolation of neural crest precursors based on surface markers and demonstrated clonally the derivation of multiple neural crest derivatives from hESC derived neural crest precursors.

[The beneficiary] has been involved in a number of additional projects such as the first successful ██████████ where he helped defining the action of thousands of chemical compounds on human ES cells. Finally, given [the beneficiary's] past experience in cell reprogramming, he was obviously also very interested in the recent breakthrough studies on induced pluripotent stem cells pioneered by ██████████ where it has become possible to convert skin cells into cells with ES cell properties. [The beneficiary] has started has started generating disease several specific human iPSC lines. Most importantly, he just completed the first major such study on a disease affecting the neural crest lineage called "familial dysautonomia" (FD). We think that his findings in ██████████ currently represent that most complete effort at modeling a human disease via ██████████ actually gaining novel insights into the pathogenesis and treatment of the disorder.

██████████ a ██████████ asserts that the beneficiary's research, published in ██████████ "revealed that human embryonic stem cell[s] can be used for understanding the developmental induction of neural crest cells." ██████████ continues: "As a direct result of these groundbreaking findings, neural crest cell derived human embryonic stem cells can be directed toward peripheral nervous system, as well as directed towards mesenchymal lineages within facial tissues." ██████████ an ██████████

██████████ raises the beneficiary's research published in *Nature Biotechnology* and asserts that this research "has been used as the milestone for similar work by other stem cell researchers throughout the U.S. including that of my own group." ██████████

██████████, and ██████████ an assistant ██████████ provide similar letters.

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.⁴ The letters in this matter, however, are specific and supported by corroborating evidence in existence prior to the preparation of the petition.

In light of the above, the petitioner has submitted 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 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.

⁴ *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).

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 beneficiary is a credited editor on a nine-member editorial board. This position is consistent with international recognition as outstanding. The beneficiary also has a publication record reflecting consistent publication in high impact journals and articles that are consistently well cited as well as extremely well cited in the aggregate.

In summary, the qualifying evidence includes an editorial position, well cited articles reporting original contributions to the field in high impact journals and well-supported letters detailing the impact of the beneficiary's work from both those with first hand knowledge of his work as well as several independent researchers who know of the beneficiary through his reputation. Such evidence 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 outstanding. 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.