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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

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 23 2011

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

ON BEHALF OF PETITIONER:

[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.

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 $[redacted] Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a designer and manufacturer of diesel engines and components. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as an electronics systems engineer. The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher.

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

I. Law

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> * * *
>
> (B) Outstanding professors and researchers. -- An alien is described in this subparagraph if --
>
> (i) the alien is recognized internationally as outstanding in a specific academic area,
>
> (ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

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

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

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

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

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

This petition was filed on June 11, 2009 to classify the beneficiary as an outstanding researcher in the field of electronics engineering. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching and/or research experience in the field as of that date, and that the beneficiary's work has been recognized internationally within the field as outstanding. The beneficiary received his [redacted] on August 5, 2006, less than three years before the petition was filed. The petitioner submitted a letter from [redacted] of Electrical and Computer Engineering at Old Dominion University. [redacted] asserts that the beneficiary worked for Old Dominion University as a Graduate Research/Teaching Assistant 20 hours per week from August 26, 2002 through August 31, 2006, 18 hours of which were spent on research exclusively. While [redacted] asserts that the beneficiary contributed to the design of course syllabi and graded student assignments, [redacted] does not suggest that the beneficiary had "full responsibility" for any class. As the petitioner has not submitted evidence of the beneficiary's qualifying teaching experience, the petitioner must demonstrate that the beneficiary's [redacted] research has been recognized within the academic field as outstanding if that

experience is to count towards the beneficiary's requisite three years of experience pursuant to 8 C.F.R. § 204.5(i)(3)(ii), quoted above.

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

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

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

The court stated that the AAO's evaluation rested on an improper understanding of the regulations.[2] Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner

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

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

II. Analysis

A. Evidentiary Criteria[4]

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

In 2005, the beneficiary received [redacted] at the American Control Conference (ACC) sponsored by the American Automatic Control Council (AACC). According to the list of winners provided by the petitioner, ACC recognized a "Best Paper Presentation" in each of at least 12 of the 18 sessions. Initially, the petitioner mentioned this recognition, but did not imply that it

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

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

rises to the level of a major prize or award in the academic field. In response to the director's request for additional evidence, the petitioner notes that the record includes a December 2005 issue of an Institute of Electrical and Electronics Engineers' (IEEE) publication, *IEEE Control Systems Magazine,* covering the AACC conference. The coverage states that in 2005 only [redacted] of the [redacted] papers submitted were even accepted for presentation at the conference. The petitioner further notes that over [redacted] registrants from [redacted] countries attended. The coverage submitted indicates that [redacted] of the registrants were students. The coverage mentions an awards reception in the Hilton Grand Ballroom where the "annual AACC award winners and ACC 2005 student best paper finalists were recognized." The coverage also includes the speech given by the recipient of the AACC Richard E. Bellman Control Heritage Award for distinguished career contributions to the theory or application of automatic control. No other awards are mentioned. The identity of the [redacted] are not listed in this magazine and it is not clear if the student best paper awards referenced in the coverage are one and the same as the best paper presentation recognition received by the beneficiary.

The record also contains a December 2004 issue of the same magazine covering the 2004 AACC Conference. This article indicates that the AACC presented the [redacted] the [redacted], the [redacted], the Control Engineering Practice Award and a single [redacted] All of these awards garner more attention than the numerous "best paper presentation" honors issued in 2005.

The petitioner submitted a letter from [redacted] an assistant professor at the University of Arizona and a session chair for the 2008 ACC. [redacted] asserts that the ACC is the leading international conference of its type and states that the session chairs select the best paper presentations awardees based on audience response, importance and originality. [redacted] concludes that, in light of the large number of papers accepted for inclusion, the beneficiary's recognition at the 2005 ACC "is a very significant achievement and constitutes international recognition for his original work."

Finally, the petitioner submitted evidence that in February 2005, Old Dominion University selected the beneficiary to receive a [redacted] Supplemental Dissertation Stipend Award. The letter praises the beneficiary as being "ranked among the best doctoral students at ODU."

The director concluded that the above awards were limited to conference attendees and students and, thus, did not rise to the level of a major award. On appeal, counsel asserts that the ACC recognition is "direct and objective evidence that [the beneficiary] is recognized internationally as outstanding, as he was recognized as one of the top researchers by experts from 35 countries." Counsel relies on unpublished decisions by this office to distinguish the beneficiary's conference award from other awards found to be insufficient, such as student paper and young investigator awards. 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.

The petitioner submits a letter from [redacted] at Princeton University, who states that the ACC is an important and competitive conference. [redacted] further asserts that the mere selection

to present at the conference is significant and the recognition afforded the beneficiary's presentation distinguishes him as "the best of the best."

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).

The implication that experts from 35 countries selected the beneficiary's work as superior to others in the field is inconsistent with the record. As stated above, the individual session chairs at the ACC selected the best paper presentation in their own session, resulting in at least 12 such awards at this conference. Moreover, the coverage of the conference in the IEEE publication did not even mention these awards unless they are actually the student awards referenced in the IEEE article, in which case the award is merely a student award. Regardless, the IEEE article did not identify the recipients of the best paper presentation awards although IEEE did cover the other awards issued by the AACC at the conference, listing those awardees by name.

Without evidence that the academic field recognizes the significance of the several ACC Best Paper Presentation awards issued annually, such as coverage of the selection of the awardees in the general or trade media, we cannot conclude that the awards are "major" as contemplated in the commentary to the final rule. 56 Fed. Reg. at 60899.

Moreover, the regulation at 8 C.F.R. § 204.5(i)(3)(i)(A) requires evidence of major 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. For example, the regulation at 8 C.F.R. §§ 204.5(i)(3)(D) only requires service on a single judging panel. Thus, we can infer that the plural in the remaining regulatory criteria 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.[5]

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[5] *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).

As stated above, on appeal counsel does not challenge the director's conclusion that a student stipend is not a major award. As the record does not establish that this stipend is recognized beyond Old Dominion University, we concur with the director. Thus, even if we accepted that the best paper presentation award at the ACC was a "major" award, and we do not, the petitioner has not established that the beneficiary has received another major prize or award.

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

> *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*

On appeal, counsel does not challenge the director's conclusion that articles which cite the beneficiary's work are either primarily about the author's own work or provide a general overview of recent work in the field. We concur with the director that articles containing brief footnoted references to the beneficiary's articles cannot be considered published material about the beneficiary's work.

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

The petitioner submitted evidence that the beneficiary has reviewed manuscripts submitted for presentation at conferences. 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 an original "research contribution." Had the regulation contemplated merely the submission of original research, it would have said so, and not have included the extra word "contribution." Moreover, the plain language of the regulation requires that the contribution be "to the academic field" rather than an individual laboratory or institution.

The record contains seven published articles, additional conference presentations, reports and the beneficiary's dissertation. The petitioner submitted evidence that the publications only accept original 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.

On appeal, counsel asserts that there is no required number of citations. While we concur with this assertion, it is still the petitioner's burden to demonstrate that the beneficiary's scholarly articles are indicative of the beneficiary's contributions to the academic field as a whole. Initially, the petitioner submitted evidence that six of the beneficiary's articles had been cited between one and six times. Of the six citations of the beneficiary's 2005 ACC presentation, three are self-citations by the beneficiary or his coauthors. All of the four citations of the beneficiary's 2008 article are self-citations by the beneficiary or his coauthors. Four of the five citations of the beneficiary's presentation at the 42nd IEEE Conference on Decision Control are self-citations by the beneficiary or his coauthors. One of the two citations of the beneficiary's 2004 conference presentation is a self-citation by the beneficiary. The remaining cited articles were each cited once by the beneficiary himself. While self-citation is a normal and expected process, it cannot demonstrate the beneficiary's influence beyond his own laboratory.

The petitioner also submitted a dissertation at Old Dominion University that cites the beneficiary's work. Once again, this citation does not demonstrate the beneficiary's influence beyond the institution where he studied for his Ph.D.

The record includes a 2007 issue of the National Aeronautics and Space Administration (NASA) Scientific and Technical Aerospace Reports. This publication provides "one of the largest collections of aeronautical and space science" scientific and technical information (STI). It includes an abstract of the beneficiary's 42nd IEEE Conference on Decision and Control presentation. While this compendium of NASA-related research may include the beneficiary's work, as stated above, this presentation was ultimately only cited once by an independent research group. The NASA publication appears to be more of an index or reference tool of research in a specific area rather than a juried selection of work that has already contributed to an academic field.

In response to the director's request for additional evidence, the petitioner submitted three independent citations, all of which predate the filing of the petition and, thus, will be considered. The first citation, appearing in an article by researchers at NASA, the University of Louisiana and Syracuse University, merely cites the beneficiary's work as an example of additional work on performance analysis of recoverable flight control systems using hybrid dynamical models. The other citations, both by [redacted] cites the beneficiary's work as one of multiple articles for the proposition that assessing and correctly identifying failures in real-time is a complicated issue. While the number of citations that is significant may vary from field to field, the petitioner has not established that the beneficiary's citation record, by itself, is indicative of or consistent with a contribution to the academic field as a whole.

As discussed above, the beneficiary is also the recipient of one of at least 12 best paper presentation awards issued at the 2005 ACC. As with scholarly articles, awards fall under a separate regulatory criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(A), discussed above. For the reasons discussed above,

this award cannot serve as qualifying evidence under that criterion. Moreover, as the award is selected by a session chair based on audience reception, importance and originality at the time of presentation, we cannot conclude that the award recognizes the impact the work has already had in the field. Rather, the award appears, at best, recognition of the work's potential. As discussed above, this presentation ultimately garnered only three independent citations, all of which cite the beneficiary's work as an example of other work in the field or the complexity of the issues involved rather than relying on the beneficiary's work as the foundation for the citing author's work.

The petitioner also submitted several reference letters supporting the petition. [redacted] a [redacted] at Tsinghua University, discusses the beneficiary's Master's degree research at that institution. Specifically, [redacted] explains that the beneficiary modeled and analyzed a regional economic system. [redacted] asserts that the beneficiary's model successfully predicted future economic trends in the region and that the beneficiary published his results. [redacted] does not explain how this model is being used in the academic field or how it relates more than tangentially to the beneficiary's current work on control system modeling.

[redacted] an associate professor at Old Dominion University, coauthored all of the beneficiary's Ph.D. research. [redacted] explains that the beneficiary focused on "mathematically modeling the effects of atmospheric neutrons on safety critical digital flight control systems." [redacted] explains that commercial airlines are normally exposed to neutron radiation that can cause a single event upset (SEU), "defined as transient errors induced by radiation which produce a malfunction at some level in the system." According to [redacted], such errors are posing greater safety concerns as embedded digital hardware becomes more commonplace in commercial aircraft control systems. [redacted] states that his research group was tasked with evaluating and quantifying the level of risk posed by SEU through a contract with NASA, which is supporting Honeywell's development of a Recoverable Computer System (RCS). [redacted] asserts that the beneficiary "played a central role in this undertaking." Specifically, the beneficiary was "the first to mathematically model neutron interactions with electronic devices at the *system level*." (Emphasis in original.) According to [redacted], "these models were successfully validated using data collected from neutron experiments at the Los Alamos Neutron Science Center while the control systems were performing their intended tasks."

[redacted] explains that the beneficiary's work "enables control system manufacturers like Honeywell, Inc., to predict how proposed fault-tolerant computer architectures are likely to function in a harsh environment before costly hardware experiments are conducted." [redacted] concludes that the beneficiary's work "has resulted in a less expensive and accelerated design cycle and furthers the important national interest of enhancing flight safety." [redacted] further concludes that the beneficiary's work is not only applicable to the analysis and verification of safety critical digital control systems prevalent in the commercial aviation industry, but also transferable to other applications requiring highly reliable computer control in harsh environments such as the automobile and nuclear power industry."

[redacted] does not identify the entity that used the beneficiary's models to develop a less expensive and accelerated design cycle. Moreover, [redacted] does not assert that the beneficiary's models have already been used by independent research teams to analyze or verify safety critical digital controls systems in aviation or other areas requiring highly reliable computer control in harsh environments.

[redacted] a computer systems analyst for Lockheed Martin, explains that he worked with the beneficiary on the Honeywell RCS supported by NASA. [redacted] explains that the beneficiary's role "was to implement a real-time version of a commercial aircraft simulation to support hardware-in-the-loop testing of the Honeywell RCS computer programmed as an autopilot." [redacted] further explains that the beneficiary analyzed the data as part of his graduate research. [redacted] then discusses two of the beneficiary's contributions to the project. First, [redacted] asserts that the beneficiary revealed the core characteristics of the RCS, a completely new prototype design. According to [redacted], the beneficiary accomplished this work by designing "several sets of calibration tests of the RCS to investigate and analyze these characteristics" and implementing "a repeatability test to prove experiments conducted on the RCS can be repeated at a later time if the same conditions are present." In addition, [redacted] asserts that the beneficiary "performed an 'upset trigger' test to demonstrate that the RCS only response to the rising (or positive) edge of an upset."

Second, [redacted] asserts that the beneficiary conducted comprehensive theoretical performance analysis of the RCS, modeling the RCS and flight control system using a stochastic hybrid model and designing a series of simulated neutron experiments performed at NASA to validate his model. The beneficiary's model and the data retrieved "predicted that the RCS can correct single-event upsets induced by atmospheric neutrons during high-altitude flight operations." While [redacted] predicts that the beneficiary's work "can" improve the reliability of aircraft flight control electronics and "can" be extended to other applications such as nuclear power stations, he provide no examples of the beneficiary's models being used by independent researchers.

Finally, [redacted] asserts that the petition should be approved because immigration "has been a way the United States has kept its engineering competitiveness when there has been a shortfall of native citizens enrolling in the difficult studies necessary to meet the demands of an advanced economy for advance technology workers." The issue of whether similarly-trained workers are available in the United States, however, is an issue under the jurisdiction of the Department of Labor. *New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 (Comm'r. 1998).

[redacted] an electronics engineer at NASA, explains that he also worked on the NASA project analyzing safety-critical avionics systems. According to [redacted] the project "required the development of novel techniques to assess the ability of a state-of-the-art recovered flight control system to reduce the effects of single-event upsets caused by atmospheric neutrons." [redacted] explains that the beneficiary made significant contributions "to the research project" by developing a stochastic hybrid system to model the flight control system. [redacted] continues:

> [The beneficiary] utilized a jump-linear system to model the Boeing 737 aircraft with and without recovery processes, and applied stochastic finite-state automation to model the recovery processes of the aircraft control system. He developed a mathematical theory to calculate the tracking performance analytically, and further designed a set of experiment at the NASA Langley Research Center to validate the stochastic hybrid model in a simulated neutron environment. [The beneficiary's] research methodologies were highly productive and original, while also advancing the national interest in aviation safety.

We note that the petitioner is seeking to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Act rather than seeking a waiver of the alien employment certification process in the national interest for an advanced degree professional pursuant to section (203)(b)(2) of the Act.

[redacted] notes that the beneficiary published and presented the above research and asserts that he cited the beneficiary's work in a request for funding. Ultimately, however, [redacted] merely speculates that the beneficiary's research "will provide an important blue print and design tool for future avionics systems, and particularly, safety critical digital control systems used in commercial aviation." Such speculation, while based on [redacted] expertise in the field, is not evidence that the beneficiary has already contributed to the academic field rather than to a single project.

On appeal, [redacted] provides an additional letter. In his new letter, [redacted] asserts that through the publication and presentation of the beneficiary's work, he is now "known as one of the world's experts on Fault Tolerant Electronic Control Systems." Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[6] Moreover, USCIS need not accept primarily conclusory assertions.[7] More specifically, [redacted] asserts that much of the research that he and other engineers perform in the area of fault tolerant electronic control systems at NASA "is informed by [the beneficiary's] work, as he invented some of the mathematical tools used in the design of critical digital control systems that aid in helping commercial airplanes to operate safely." While the models are clearly useful to the agency that funded the beneficiary's work, [redacted] statement does not demonstrate a wider influence of the beneficiary's models. Moreover, the record contains no general or trade media coverage of the significance of the new models being used at NASA for fault tolerant electronic control systems.

[redacted] a member of the beneficiary's [redacted] dissertation committee at Old Dominion University, provides similar information to that discussed above. [redacted] explains that the beneficiary's model is the first to be applied in real-time neutron experiments to analyze flight safety issues. We do not contest that the beneficiary's work is "original" in that he is not simply duplicating research performed by others, which would not even secure him a Master's degree. At issue is whether

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[6] *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

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

his original models, as of the date of filing, had already contributed to the academic field as a whole. [redacted] asserts generally that the beneficiary's model "enabled the aviation industry to avoid costly and time-consuming experiments." [redacted] does not identify an airline manufacturer now using the beneficiary's models and the record contains no letters from any official of an airline company confirming that the beneficiary's models have saved them money. [redacted] then speculates that the beneficiary's stochastic model "can be used by system designers to evaluate the radiation robustness of future control architectures in aviation and other safety critical applications." Once again, [redacted] provides no examples of system designers using the beneficiary's models. Finally, [redacted] asserts that the beneficiary's work "has provided the Federal Aviation Administration with highly important certification guidelines for failure rates of light-ready digital control hardware." These guidelines are not part of the record and the petitioner did not submit a letter from an official at the Georgia Institute of Technology. These guidelines are not part of the record and the petitioner did not submit a letter from an official at the Federal Aviation Administration explaining how they are using the beneficiary's work.

[redacted] a professor at the Georgia Institute of Technology, is an independent reference. [redacted] however, provides information similar to that discussed above. [redacted] does not claim to be using the beneficiary's models at the Georgia Institute of Technology. Rather, he speculates that the beneficiary's models "may be applied by engineers to estimate the safety margins for control systems currently in operation, perhaps leading to a safer and more reliable commercial aviation system."

On appeal, the petitioner submits another independent letter from [redacted] asserts that his opinion is based on his review of "documents written by and pertaining to" the beneficiary. [redacted] does not suggest that he was familiar with the beneficiary or his work prior to being asked to provide an opinion. [redacted] essentially reviews the evidence of record and concludes that it demonstrates the beneficiary's international recognition as outstanding. For example, [redacted] notes that the beneficiary has been published and discusses the prestige of the journals that have carried the beneficiary's work. We will not presume a contribution from the journal in which an article appeared; rather, it is the petitioner's burden to demonstrate the influence of the individual article. [redacted] does not suggest that he has personally used the beneficiary's models.

In light of the above, the petitioner has not established that beneficiary's Ph.D. research has been sufficiently influential to be considered a contribution to the academic field. Moreover, as the record does not reflect that the beneficiary's Ph.D. research is recognized in the academic field as outstanding, it cannot be included as part of the requisite three years of experience pursuant to 8 C.F.R. § 204.5(i)(3)(ii). For this reason alone, the petition may not be approved.

A few of the above authors briefly discuss the beneficiary's work for the petitioner although the petitioner does not provide letters from its own experts providing a first hand description of the beneficiary's work there. [redacted] states:

> Since joining the [petitioner's] research team, [the beneficiary] has been focusing his research on performance assessment and improvement of diesel engine electromechanical subsystems, including sensors and actuators, control modules, and

> harnesses. Through his systematic studies, an Exhaust Manifold Pressure sensor false alarm issue was resolved, and the robustness of electronic control modules has been obviously improved.

While this information suggests that the beneficiary has contributed to his employer, this information does not explain how the beneficiary's work for the petitioner constitutes a contribution to the academic field as a whole.

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

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

The letters considered above primarily contain bare assertions of widespread recognition and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions have influenced the field. As stated above, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[8] The petitioner submitted only two independent letters and these letters do not suggest the authors have applied the beneficiary's work. The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

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

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[8] *Fedin Bros. Co.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41; *Avyr Associates, Inc.*, 1997 WL 188942 at *5. Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.

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

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

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

B. Final Merits Determination

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

The nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. We cannot ignore that conference presentations are peer reviewed and rely on many scientists to review submitted papers. For example, the information about the conferences for which the beneficiary has served as a reviewer indicates that more than 1,000 submissions are received, all of which must be peer reviewed. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed manuscripts for a journal that credits a small, elite group of referees, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the beneficiary's judging experience is indicative of or consistent with international recognition.

Regarding the beneficiary's original research, as stated above, it does not appear to rise to the level of a contribution to the academic field as a whole. According to the Department of Labor's Occupational Outlook Handbook, OOH, electronics engineers design, develop, test, and supervise the manufacture of electronic equipment. *See* http://www.bls.gov/oco/ocos027.htm, accessed September 16, 2010 and incorporated into the record of proceeding. Demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research is not useful in setting the beneficiary apart in the academic community through eminence and distinction based on international recognition, the

purpose of the regulatory criteria. 56 Fed. Reg. at 30705. Research work that is unoriginal would be unlikely to secure the beneficiary a master's degree, let alone classification as an outstanding researcher. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

While the beneficiary has published articles, the OOH provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See* www.bls.gov/oco/ocos066.htm, accessed September 16, 2010 and incorporated into the record of proceeding. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field.

Moreover, the beneficiary's citation history is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. The record contains no evidence that the beneficiary's articles have been cited by a significant number of independent research teams or other comparable evidence that demonstrates the beneficiary's publication record is consistent with international recognition.

In light of the above, our final merits determination reveals that the beneficiary's qualifying evidence, participating in the widespread peer review process and publishing articles that have not garnered signficant citations or other response in the academic field, does not set the beneficiary apart in the academic community through eminence and distinction based on international recognition, the purpose of the regulatory criteria. 56 Fed. Reg. at 30705.

III. Conclusion

The petitioner has shown that the beneficiary is a talented and prolific researcher, who has won the respect of his collaborators, employers, and mentors, while securing some degree of international exposure for his work. The record, however, stops short of elevating the beneficiary to the level of an alien who is internationally recognized as an outstanding researcher or professor. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.