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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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DATE: **NOV 04 2011** Office: TEXAS SERVICE CENTER

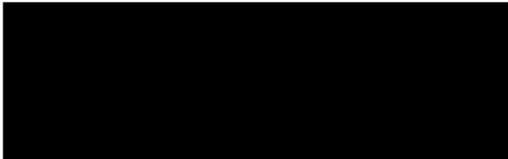


IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$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, 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 dismissed.

The petitioner is an institution of higher education/university. It seeks to classify the beneficiary as an outstanding professor pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as an assistant professor. The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding professor. The director further determined that the petitioner had not established that it had achieved documented accomplishments in an academic field.

On appeal, counsel submits a brief, evidence that was already part of the record, and new exhibits. For the reasons discussed below, the AAO acknowledges that the petitioner is a university and, thus, need not document accomplishments in an academic field as required for non-university private employers. The AAO does concur with the director, however, that the petitioner has not established that the beneficiary enjoys international recognition as outstanding.

Specifically, when the AAO simply “counts” 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 the 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 the petition, 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)).

Beyond the decision of the director, the record lacks the actual job offer issued by the petitioner to the beneficiary. 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 (9th 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. Statute

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):

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

* * *

(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.

II. Job Offer from Qualifying Employer

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.

Focusing on the language in 8 C.F.R. § 204.5(i)(3)(iii), which mirrors section 203(b)(1)(B)(iii)(III) of the Act, the director concluded that the petitioner must document three full-time researchers and the achievement of documented accomplishments.

As noted by counsel in response to the director's notice of intent to deny and again on appeal, the petitioner is a university that asserts it is offering the beneficiary a tenure-track teaching position. Thus, the petitioner is a qualifying petitioner pursuant to 203(b)(1)(B)(iii)(I) of the Act and 8 C.F.R. § 204.5(i)(3)(iii)(A). Both the Act and the regulations use the conjunction "or" in describing the types of qualifying job offers. Thus, because the petitioner is a qualifying employer pursuant to section 203(b)(1)(B)(iii)(I) of the Act and 8 C.F.R. § 204.5(i)(3)(iii)(A), it need not comply with the provisions at section 203(b)(1)(B)(iii)(III) of the Act and 8 C.F.R. § 204.5(i)(3)(iii)(C).

Nevertheless, the petitioner has not submitted its job offer to the beneficiary. Instead, the petitioner submitted letters from Alberto Castillo and an approved Form ETA 9089 Application for Permanent Employment Certification the petitioner obtained in behalf of the beneficiary. *Black's Law Dictionary* 1189 (9th 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, the letters from Mr. Castillo addressed to U. S. Citizenship and Immigration Services (USCIS) *affirming* the beneficiary's employment are not *offers* of employment within the ordinary meaning of that phrase.

In the national interest waiver context, legacy Immigration and Naturalization Service (INS), now USCIS, has interpreted the waiver of the job offer referenced in section 203(b)(2)(B) of the Act to mean a waiver of the alien employment certification. 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991). In the context of section 203(b)(1)(B) of the Act, however, there is no requirement for an alien employment certification. As such, the requirement for an offer of employment in the regulation cannot be referencing an alien employment certification. Moreover, the purpose of the alien employment certification is not to establish the existence of a tenure-track offer of employment. Rather, it demonstrates that the Department of Labor has confirmed that there not are sufficient workers who are able, willing, qualified and available and that the employment of the alien will not adversely affect the

wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a). Thus, the AAO must interpret the phrase “offer of employment” in 8 C.F.R. § 204.5(i)(3)(iii) as commonly defined. The record does not contain an offer of employment from the petitioner addressed to the beneficiary. While the AAO does not question the credibility of Mr. Castillo, the petitioner has never explained why the AAO should accept Mr. Castillo’s assertions of the terms of the offer of employment in lieu of the offer of employment itself, which is required initial evidence pursuant to 8 C.F.R. § 204.5(i)(3)(iii).

III. Beneficiary’s Qualifications

A. Law

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 September 3, 2010 to classify the beneficiary as an outstanding professor and researcher in the field of sociology. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching and/or research experience in the field as of that date, and that the beneficiary’s work has been recognized internationally within the field as outstanding. At issue in this matter is whether the petitioner has demonstrated that the beneficiary’s work has been recognized internationally within the field as outstanding.

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

- (A) Documentation of the alien’s receipt of major prizes or awards for outstanding achievement in the academic field;
- (B) Documentation of the alien’s membership in associations in the academic field which require outstanding achievements of their members;

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

(D) Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field;

(E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or

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

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

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

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

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)).

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*.

B. Analysis

1. Evidentiary Criteria

The petitioner initially asserted that the beneficiary was submitting qualifying evidence under five of the six criteria. The director determined that the petitioner had submitted qualifying evidence under four of the criteria. For the reasons discussed below, the AAO finds that the petitioner has only submitted qualifying evidence under two of the criteria.

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

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 director concluded that the beneficiary's research grants, student fellowships (which fund future research rather than recognize past achievements), local award from the petitioning university, travel award to finance attendance at a workshop and poster award do not qualify as major prizes or awards for outstanding achievement in the academic field. Counsel does not challenge that conclusion on appeal. Accordingly, the petitioner has abandoned that claim. See *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005); *Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *9

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.

(E.D. N.Y. Sept. 30, 2011). Nevertheless, upon review, the AAO concurs with the director's conclusion that the petitioner did not submit qualifying evidence that meets the plain language requirements of this criterion, set forth 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 has never asserted that it was submitting evidence that meets the plain language requirements of this criterion, set forth at 8 C.F.R. § 204.5(i)(3)(i)(B), and the record contains no relevant evidence that relates to this criterion.

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 director concluded that the petitioner had submitted evidence that meets the plain language requirements for this criterion. The petitioner submitted several articles that cite the beneficiary's work as one of numerous footnoted references. Articles which cite the beneficiary's work, however, are primarily about the author's own work or recent work in the field generally and are not the beneficiary's work. As such, they cannot be considered published material about the beneficiary's work.

The record does contain an article in *Baylor University Medical Center Proceedings* and three manuscripts by [REDACTED] Yale University that, while not entirely focused on the beneficiary's work, do discuss his work at length. The petitioner submitted evidence suggesting that one of Dr. Shultz' papers is a "discussion paper" prepared for the Institute for the Study of Labor although the actual pages of the article contain no evidence of publication either in print or online. Thus, the record contains no evidence that these manuscripts constitute "published" material in professional publications.

The article in the *Baylor University Medical Center Proceedings* is entitled "Facts and Ideas from Anywhere" and includes a section entitled "Body Mass Index in Union Army Veterans and White Male Americans 80 Years Later" exclusively discussing the beneficiary's work. The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) requires evidence of published material in professional publications 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. Moreover, 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, the AAO can infer that the plural in any regulatory criterion 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.⁴

⁴ 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

As the petitioner submitted only a single published article that is even arguably “about” the beneficiary’s work, 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)(C).

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 he has reviewed manuscripts submitted for publication as a peer reviewer. The AAO concurs with the director that this evidence qualifies under the plain language of the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(D).

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

The petitioner submitted the beneficiary’s scholarly articles, citations to those articles and positive reference letters from members of the beneficiary’s field. The independent references provide little explanation for how they learned of the beneficiary’s work. The director concluded that the record establishes that the beneficiary has made original scientific or scholarly research contributions to his 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.” See *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). Moreover, the plain language of the regulation requires that the contributions be “to the academic field” rather than an individual laboratory, institution or research center.

With regard to the beneficiary’s scholarly articles, the regulations include a separate criterion for scholarly articles at 8 C.F.R. § 204.5(i)(3)(i)(F). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly articles.

In discussing the articles that cite the beneficiary’s work, counsel focuses on the number of citations in the aggregate. The record, however, does not establish that any one of the beneficiary’s articles has garnered more than moderate citation. Moreover, the citing authors mostly cite the beneficiary’s work for background material rather than as the foundation of the research reported in the citing article. For

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).

example, a research team in Switzerland cited the beneficiary's work in a 2010 edition of the *European Journal of Clinical Nutrition*. The authors, however, only cite the article as one of five articles for the proposition that the "u-shaped relationship between [Body Mass Index (BMI)] and morbidity and mortality (Waler 1984) is well documented and extremely low and high BMI values are associated with poor health and greater mortality risk." Another study in Switzerland, published in the *Swiss Medical Weekly* in 2008, distinguishes the authors' study from the beneficiary's work by asserting that the authors are using less biased data.

As stated above, [REDACTED] discusses the beneficiary's 2005 article at length in three manuscripts, asserting that the beneficiary performed a much needed replication of Waler's association between BMI and health over time. As also noted above, however, these manuscripts bear no indicia of publication or other peer-review. Finally, the *Baylor University Medical Center* devotes a two-paragraph section to the beneficiary's 2005 article. While notable, the record contains no evidence of the circulation of this publication. The "Facts and Ideas From Anywhere" article covers topics from the cost of the Iraq war to the fact that married couples now make up the minority of U.S. households. Thus, this article does not demonstrate the beneficiary's contribution to the field of sociology. As will be discussed in more detail below, it also fails to demonstrate the beneficiary's contribution to the field as a whole rather than a limited awareness of his work in the State of Texas where the beneficiary works and where Baylor University is located.

The petitioner documented that a professor at Georgetown University assigned one of the beneficiary's articles as required reading. While notable, a single example of a professor assigning the beneficiary's work is not evidence of a contribution to the field as a whole.

The beneficiary obtained his [REDACTED] from the University of Chicago in August 2006 under the direction of [REDACTED]. Upon graduating, the beneficiary began working for the petitioner as an assistant professor. His research grants fund collaborations with [REDACTED] Chair of the Sociology Department at the petitioning university, and [REDACTED] Chair of the Department of Health Management and Policy at the University of North Texas Health Science Center.

[REDACTED] confirms that the beneficiary served as his research assistant and asserts that he supports the beneficiary's "application for permanent resident in the United States." [REDACTED] notes that National Institutes of Health funded the project on which the beneficiary worked "since 1991," long before the beneficiary came to the University of Chicago. Regardless, most if not all research receives funding from somewhere. Not all research results in contributions to the field as a whole. [REDACTED] explains that the beneficiary's project used over 15,000 variables that influence the aging process among 48,000 union army men. [REDACTED] concludes that the beneficiary "distinguished himself by quickly mastering the complex dataset and produced a series of important papers and memoranda." [REDACTED] does not explain how this work has contributed to the field as a whole.

[REDACTED] asserts that the beneficiary's study of the assimilation process of Mexican Americans constitutes an "important contribution." [REDACTED] explains that the issue is important because of

the number of Mexican immigrants and “questions as to whether Mexican immigrants assimilate into the U.S. mainstream at the same pace as other immigrant populations.” [REDACTED] notes that the beneficiary presented the work at the 2009 Annual Meeting of the American Sociological Association and will publish a manuscript about this work in the *Social Science Quarterly*. [REDACTED] does not explain, however, how the beneficiary’s findings have contributed to the field other than to assert generally that the “study has been well received by the sociology society in the U.S.”

[REDACTED] also praises the beneficiary’s ability to secure funding. While funding is essential to a researcher’s efforts to pursue studies, funding in and of itself does not guarantee that the final results of the study will constitute a contribution to the field as a whole.

Finally, [REDACTED] discusses the beneficiary’s recent research on the use of Mexican health services by Hispanics living in Texas. [REDACTED] concedes, however, that the beneficiary had yet to publish this research. 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). The AAO cannot gauge the impact of research that has yet to be published or otherwise widely distributed.

[REDACTED] asserts that he is able to evaluate the beneficiary’s contribution because their areas of research are closely connected. [REDACTED] fails to acknowledge that he is listed as one of the beneficiary’s collaborators on a grant application and that he is one of the beneficiary’s coauthors. Thus, [REDACTED] is not an independent reference. [REDACTED] notes that the beneficiary has authored articles on the use of complementary medicine by immigrants, discovering that the level of use of complementary medicine by immigrants increases with length of stay and English proficiency, eventually approaching the level of use by Americans. [REDACTED] does not explain the significance, implications or applications of this study.

According to [REDACTED], the beneficiary also revealed substantial racial and ethnic disparities in awareness of genetic testing for cancer risk. While [REDACTED] asserts that “[d]iverse, culturally competent approaches are needed to improve awareness” among these groups, he fails to explain how the beneficiary’s research has resulted in work towards that goal.

[REDACTED] asserts that the beneficiary contributed to the South Texas Border Health Disparities Center by securing grant money and more recently as director of the center where he has “been able to take the Center to a different level.” As an example, [REDACTED] asserts that the beneficiary has arranged guest lecturers. [REDACTED] asserts that the beneficiary “has ensured that the Center can serve as an effective interdisciplinary platform where scholars from all over the United States can exchange and develop their work on border and Latino health.” Without additional evidence of the impact of this center on the field as a whole, the petitioner cannot establish that the beneficiary’s contributions to the center go beyond the center itself and the locality it serves.

██████████ an associate professor of Sociology at the University of Utah, asserts that his evaluation is based on a review of the beneficiary's research record. According to his curriculum vitae, ██████████ received his master's degree and ██████████ from the University of Chicago. According to the beneficiary's curriculum vitae ██████████ and the beneficiary have coauthored pending articles. ██████████ asserts that the beneficiary's research study on mortality in Union army soldiers is important because it demonstrates the impact of risk exposures and occupational careers on mortality differentials and because the results can be compared with other research on historical trends. ██████████ does not identify any research team pursuing such comparative studies. ██████████ further asserts that the beneficiary has demonstrated that the optimal BMI for men has shifted upwards. ██████████ concludes that the beneficiary is the first researcher to establish this link from historical data. While the record adequately establishes that the beneficiary's work is original, or it would not be appropriate for publication, at issue is whether it has already contributed to the field as a whole. ██████████ does not explain how the field is using the beneficiary's results.

The petitioner provided four letters from references with no apparent relationship to the beneficiary, ██████████ Director of the Population Research Center at the University of Texas at Austin; ██████████ Saenz, a professor at Texas A&M University; and ██████████ an assistant professor at the University of Michigan. ██████████ and ██████████ provide information similar to that discussed above, praising the beneficiary's publication record, ability to secure grants and results without explaining how the beneficiary's results are being applied in the field.

██████████ discusses the beneficiary's work on Black-White disparities in mortality. Specifically, during the 20th Century, the disparity remained the same in absolute terms but expanded over time in relative terms. ██████████ asserts that the beneficiary was the first to provide a potential explanation for the disparity. ██████████ however, does not explain how others in the field are applying these results.

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

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

information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The letters considered above primarily contain bare assertions of widespread recognition and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions have influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.⁵ Considering the letters and other evidence in the aggregate, the record does not establish that the beneficiary's research, while original, can be considered a contribution to the field as a whole.

In light of the above, the petitioner has not submitted evidence that meets the plain language requirements of the criterion 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 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 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.

2. 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)).

⁵ *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).

On appeal, counsel notes that the regulation at 8 C.F.R. § 204.5(i)(3)(i)(D) requires only evidence of judging without additional requirements about the nature of the judging. While true, the director did not question that the beneficiary submitted qualifying evidence under that criterion. The nature of the beneficiary's judging experience, however, is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators in the final merits determination. *See Kazarian*, 596 F. 3d at 1122.

Counsel discusses the prestige of the journals for which the beneficiary has reviewed manuscripts and notes that the journals assign manuscripts to reviewers with expertise in the subject area. The AAO does not question that journals assign peer-review to those members of the field with "expertise" in the subject area. Certainly no journal would ask a chemist to review a physics paper. Scientific journals, however, are peer reviewed and rely on many scientists to review submitted articles. In fact, the petitioner submitted a list of approximately 250 reviewers who reviewed manuscripts during a single year at the *American Journal of Sociology*. This large number of reviewers is not consistent with a finding that serving as a reviewer is indicative of international recognition as outstanding. Rather, 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, the petitioner cannot establish 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." Significantly, the petitioner submitted only one independent reference from a member of the field outside of the State of Texas.

While the beneficiary has published articles, the Department of Labor's Occupational Outlook Handbook, (accessed at www.bls.gov/oco on October 28, 2011 and incorporated into the record of proceedings), 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. 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.

On appeal, counsel references the distinguished nature of the journals that published the beneficiary's articles. While such publication demonstrates the promising nature of the beneficiary's work, more persuasive evidence is how the beneficiary's work was received upon publication. Moreover, the beneficiary's citation history is a recognized relevant consideration when evaluating the beneficiary's recognition in the field. *See Kazarian*, 596 F.3d at 1122. On appeal, counsel asserts that other researchers have reviewed the beneficiary's work and used it to build upon their own research. A review of the citations themselves, however, does not support that conclusion. Rather, the beneficiary's work was cited as general background material, often in conjunction with other references.

██████████ and the *Baylor University Medical Center Proceedings* did address the beneficiary's work at length. The record, however, contains insufficient evidence that ██████████ manuscripts are published. On appeal, counsel asserts that the *Baylor University Medical Center Proceedings* is an influential journal. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner submitted material from the journal's website indicating it is available through PubMed Central and listing the journal's awards. These materials do not establish the circulation, distribution or electronic reach of *Baylor University Medical Center Proceedings*. Counsel also discusses the author's achievements as a cardiologist. Counsel does not explain how that expertise is relevant to the beneficiary's field of sociology. As stated above, the university is in Texas, the same state where the beneficiary is employed. The article in that publication, which covers several unrelated stories, mentions the beneficiary's work but is simply not indicative of or consistent with international recognition as outstanding in the field of sociology. The record contains no evidence that the beneficiary's articles have been cited at a level 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 significant 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. The independent references do not indicate that they learned of the beneficiary's work through his international reputation. Indeed, the record lacks evidence that a significant number of members of the academic field outside of the beneficiary's immediate circle of colleagues are even aware of his work. As stated above, the record contains only a single letter from an independent reference outside of the State of Texas.

IV. Conclusion

The petitioner has shown that the beneficiary is a talented researcher, who has won the respect of his collaborators, employers, and mentors. 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.