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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

Date: **APR 19 2012** Office: TEXAS SERVICE CENTER

FILE: 

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:

SELF-REPRESENTED

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 or researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a research associate in the field of human colorectal cancer. The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding professor or researcher.

On appeal, the petitioner submits a brief and documentation of an additional number of citations to the beneficiary's research.¹ For the reasons discussed below, the AAO concurs with the director that the record fails to establish that the beneficiary enjoys international recognition as outstanding in the academic field. 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 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, set the beneficiary apart in the academic community through eminence and distinction based on international recognition, the purpose of the regulatory criteria.² *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):

* * *

¹ On appeal, the petitioner also submits documentation regarding the following: the beneficiary has been invited to judge the 2011 Regional Science and Engineering Fair conducted by the petitioner's center for community outreach and development; the beneficiary has had additional abstracts/presentations accepted for presentation at conferences conducted in 2011 and 2012; and, the beneficiary and has published additional articles in professional publications in the field, and will have an article published as a book chapter in October 2011. These events, however, occurred after the date of filing this petition and cannot be considered evidence of the beneficiary's eligibility after that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). For the same reason, the AAO will not consider citations to articles published after the date of filing this petition.

² 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. International Recognition

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

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

(B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;

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

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

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

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

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under a similar classification set forth at section 203(b)(1)(A) of the Act. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion. With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while 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.³ Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

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

Id. at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination.⁴ 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

³ 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)).

⁴ 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.

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).

III. Analysis

A. Evidentiary Criteria

This petition, filed on August 18, 2010, seeks to classify the beneficiary as a professor or researcher who is recognized internationally as outstanding in his academic field. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(i)(3)(i).

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

The petitioner submitted evidence that the beneficiary was awarded the following: AACR-Ortho Biotech Oncology Scholar-in-Training Award from the American Association for Cancer Research (AACR) (2010); Certificate of Award from Pondicherry University in 2004; and Best Poster Award from Jawaharlal Institute of Postgraduate Medical Education and Research (JIPMER)(2003).

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).

Regarding the AACR-Ortho Biotech Oncology Scholar-in-Training Award (2010), the petitioner submitted a letter which shows that the beneficiary received this award, and an accompanying cash prize of \$1,000, for a scientific abstract. The documentation states that this award is open to young scientists who are also members of the AACR, and that the award recipient must then present the awarded abstract at the AACR Annual Meeting. The documents further state that the cash award is meant to defray the cost of the beneficiary's attendance at the annual meeting. The AAO agrees with the director that a travel award to finance attendance at an AACR conference, for a competition

limited to AACR members, does not qualify as a major prize or award for outstanding achievement in the academic field.

The remaining two awards are for *academic* achievement, not for accomplishments in a field of endeavor. While 8 C.F.R. § 204.5(i)(3)(A) references outstanding achievements in one's academic field, 8 C.F.R. § 204.5(i)(2) defines "academic field" as "a body of specialized knowledge offered for study." Academic study is not a field of endeavor, academic or otherwise. Rather, academic study is training for a future career in an academic field. As such, awards in recognition of academic achievement are insufficient. Academic awards are simply not evidence of international recognition in the field. Rather, they represent high academic achievements in comparison with one's fellow students.

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

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

The director concluded that the beneficiary's membership in the American Society of Clinical Oncology (ASCO), and the American Association for Cancer Research (AACR) does not qualify as evidence of the beneficiary's membership in associations which require outstanding achievements in the academic field.

According to the materials the petitioner submitted, the beneficiary is an associate member of the AACR. The materials state that associate membership is open to graduate students, medical students and residents, and clinical and post-doctoral fellows enrolled in programs that could lead to careers in cancer research. In addition, an applicant for associate membership must be nominated by a current active, emeritus or honorary member in good standing.

According to the materials the petitioner submitted, the beneficiary is an associate member of the ASCO. The materials state that associate membership is health professionals with a doctoral degree, participating in a subspecialty training program in oncology, "or another field that would lead to eligibility for active or active-allied membership." In addition, an applicant for associate membership must submit a membership application and a copy of board certification or international equivalent license.

Other than the AACR's requirement of nomination, the petitioner did not submit evidence that the above associations require anything other than the beneficiary having attained certain educational requirements to become an associate member of these organizations. The educational requirements of these organizations are not outstanding achievements. In addition, the requirement of nomination, alone, does not establish that the AACR requires outstanding achievements of its associate members. Therefore, the record does not establish that the AACR and the ASCO require outstanding achievements of their associate members.

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

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

The petitioner has submitted several press releases referring to the work of the beneficiary and his colleagues, published in several publications which include *Science Daily*, *NCI Cancer Bulletin*, *ProHealth Care*, *Medical News Today*, *e! Science News*, and *The Birmingham News and Colon & Colorectal Cancer*. The petitioner has also submitted several articles containing citations to the beneficiary's work.⁵

The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) requires evidence of published material about the beneficiary's work. The AAO notes that several of the press releases do not contain the name of the author of the material, as required by the plain language of this regulatory criterion. Although this published material refers to the beneficiary's work, it is primarily about recent work in the field generally, and not about the beneficiary's work. As such, it cannot be considered published material about the beneficiary's work. Published material which cites the beneficiary's work is primarily about the author's own work, or recent work in the field generally, and not about the beneficiary's work. As such, it cannot be considered published material about the beneficiary's work. However, 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 F3d at 1122. The citation history will be considered below in our final merits determination.

In light of the above, the articles are not 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 the beneficiary served as a judge in the petitioner's Regional Science and Engineering Fair (UAB-CORD)(2010) for the petitioner's center for

⁵ On appeal, counsel asserts that a citation to the beneficiary's work in an article by the Wisconsin Comprehensive Cancer Control Program is evidence indicating the implementation of the beneficiary's research findings into the cancer center's programs. The AAO notes that the petitioner has not submitted that portion of the article which references the beneficiary's work, or testimony from an expert witness that the cancer center used the beneficiary's research methods or research results. Without additional evidence, the petitioner cannot support its assertions both that the beneficiary made a significant research contribution to the center, and that the beneficiary's contributions go beyond the center itself and the locality it serves.

community outreach development.⁶ The documents provided by the petitioner show that at the UAB-CORD the beneficiary acted as a judge of the work of the science projects of local K-12 students. The petitioner also submitted documents that the beneficiary judged the Science Fair held at Our Lady of Fatima Catholic School (2010) in Birmingham. While this documentation establishes that the beneficiary has judged the science projects of secondary school students, it does not qualify under the plain language of the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(D). The petitioner also submitted documentation showing that the petitioner served as a judge at the petitioner's Graduate Student Research Days (2010). This evidence does qualify under the plain language of the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(D). Pursuant to the reasoning in *Kazarian*, 596 F.3d at 1122, however, the nature of these duties may be and will be considered below in our final merits determination.

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

As evidence relating to the beneficiary's original scientific or scholarly research contributions to the academic field, the petitioner has submitted the beneficiary's scholarly articles, citations to those articles and positive reference letters from 17 individuals (eight of whom are from the beneficiary's immediate circle of coauthors and collaborators). 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 being 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.

We acknowledge that the beneficiary has authored several articles in journals in the academic field and has presented his work at several conferences, as is mentioned in several of the reference letters. 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 addition, even if we considered the original nature of the beneficiary's research to qualify it under the criterion at 8 C.F.R. § 204.5(i)(3)(i)(E), and we do not, whether or not the contributions are indicative of the beneficiary's international recognition in the field is a valid consideration under our final merits determination. (We will consider the articles under 8 C.F.R. § 204.5(i)(3)(i)(F)).

Regarding citations to the beneficiary's articles, 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 F3d at 1122. The citation history will be considered below in our final merits determination.

⁶ As stated above, on appeal the petitioner also submits documentation that the beneficiary also was a judge at UAB-CORD (2011). This judging took place after the date of filing and cannot be considered evidence of the beneficiary's eligibility after that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

██████████, submitted two reference letters on the beneficiary's behalf. He states that he met the beneficiary in 2005 when the beneficiary joined the petitioner's laboratory as a post-doctoral scholar. ██████████ states that the beneficiary works designing new strategies for "evaluations of clinical utility of genetic and phenotypic abnormalities of genes . . . for colorectal cancer." He states that the beneficiary identified a novel genetic variant of the tumor suppressor p53 as a high risk factor of aggressive tumor progression in African American patients. He also states that the beneficiary identified MUC4 as a prognostic molecular marker for colorectal cancer, and demonstrated that increased expression of this mucin was associated with poor survival in patients with early-stage colorectal adenocarcinomas. ██████████ also states that the beneficiary's research has challenged existing guidelines regarding the required number of lymph nodes for adequate staging of colorectal cancer. He states that the beneficiary's contributions will aid in early detection, diagnosis and prediction of patient survival, and will aid in predicting and assessing the efficacy of cancer chemotherapeutic agents.

██████████ submitted two reference letters on the beneficiary's behalf. He states that he met the beneficiary in 2005 when the beneficiary joined the petitioner's laboratory as a post-doctoral scholar working with ██████████. He states that the beneficiary's identification of MUC4 as a prognostic molecular marker for early-stage colorectal cancer could be used to detect aggressive forms of cancers within early stages that require aggressive treatment to improve patient survival. He also states that the beneficiary's research findings regarding p53 "should have a high impact in clinical practice and guide the clinician in advising follow-up of patients with adenocarcinomas which may exhibit as more aggressive phenotype and may aid in avoiding unnecessary colonoscopic visits by low risk patients."

██████████ has known the beneficiary since he was a postdoctoral fellow in the petitioner's laboratory. He states that the beneficiary's research regarding the tumor suppressor gene called p53 "holds the potential to revolutionize the existing treatment strategies for colon cancer."

██████████ knows the applicant as a colleague at the petitioner's institution. He states that the beneficiary is the first to evaluate the prognostic value of MUC4 mucin in colorectal cancer, and that this research "has had a direct implication for the identification and treatment of colon cancer patients with aggressive tumors." He states that the beneficiary's research involving the molecular basis of existing racial/ethnic disparities in colorectal carcinomas will be very useful "in planning protocols and guidelines for management of colorectal carcinoma."

██████████ states that he worked with the beneficiary on a research project investigating racial disparity in colon cancer, while ██████████ was collaborating with ██████████ has also co-authored works with the beneficiary. He states that the beneficiary's research regarding the prognostic value of the cancer biomarker MUC4 mucin in colorectal cancer has been accepted for publication. He also states that the beneficiary's research regarding a novel genetic variant of the tumor suppressor p53 as a high risk factor of aggressive tumor progression in African American patients has been published in "several mainstream publications". He states that the beneficiary

“has played a central and critical role in many of the published findings which have the potential to change the future of cancer medicine.” However, while 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.

states that he has known the beneficiary for more than 10 years, and “had the opportunity to closely interact with him for a five year period during his residency training at JIPMER (Jawaharlal Institute of Postgraduate Medical Education and Research)”, in Pondicherry, India. He also notes that that the beneficiary’s research (regarding the prognostic value of the cancer biomarker MUC4 mucin in colorectal cancer, and his research regarding a novel genetic variant of the tumor suppressor p53 as a high risk factor of aggressive tumor progression in African American patients) has been accepted for publication. He states that the beneficiary’s published work will have a lasting effect on the way cancer physicians deliver personalized care for their patients, although he does not state how the beneficiary’s research has already contributed to the field as a whole.

states that he met the beneficiary when the beneficiary was a postdoctoral researcher, and worked with him on a research consortium grant between the petitioner and Morehouse School of Medicine; he states that the beneficiary made “a very significant contribution to the research effort of both institutions.” He does not state how the beneficiary’s research has already contributed to the field as a whole. He states that he has published abstracts and manuscripts with the beneficiary, and that he and the beneficiary currently have “manuscripts under review and in preparation at this time.” He states that the beneficiary has gained much attention for his research finding regarding p53 as a high risk factor of aggressive tumor progression in African American patients. Although he describes the beneficiary’s research challenging existing guidelines regarding the required number of lymph nodes for adequate staging of colorectal cancer as “another great achievement in the cancer research field”, he does not explain how others in the field are applying these results. He states that the beneficiary’s research activities “will lead to novel findings that will enhance the work in his field worldwide.” However, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole.

an employee of the petitioner, is one of the beneficiary’s co-authors.⁷ He states that the beneficiary’s research findings have provided critical insight into the prognostic significance of key cancer biomarkers, and can be used for early detection of poor prognostic forms of colon cancer. Although discusses the potential applications for the beneficiary’s research, he does not provide any examples of specific individuals or entities that have relied upon the beneficiary’s research results. He does not provide examples of independent research institutions using the beneficiary’s research methods or research results.

⁷ The AAO notes that in their letters Dr. Katkooi, Dr. Ding use almost identical language, regarding the beneficiary’s research regarding racial and ethnic disparities in colorectal cancer outcomes, stating the beneficiary’s work “in unraveling the molecular basis of this disparity will be invariably useful to our National Health Organization in planning and designing protocols and guidelines for management . . .”

The petitioner also provided positive references letters from nine individuals with no apparent relationship to the beneficiary: [REDACTED], research associate professor at the National University of Singapore, who has submitted two reference letters; [REDACTED], associate research scientist at Yale University School of Medicine; [REDACTED], professor at Charles Drew university of Medicine and Science; [REDACTED], assistant professor at Tuskegee University; [REDACTED], associate professor at University of Malaya; [REDACTED], [REDACTED], assistant professor at University of Minnesota in Minneapolis; [REDACTED], [REDACTED] Plastic Surgery Center in Cyprus⁸; [REDACTED], professor at University of Nebraska Medical Center; and, [REDACTED] Yakkanti, of Boys Town National Research Hospital in Texas. These reference letters provide information similar to that discussed above, praising the beneficiary's publication record and results without explaining how others in the field are applying the beneficiary's results.⁹

While the references discuss the potential applications for the beneficiary's research contributions, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole. In addition, they do not explain how those contributions have impacted the academic field rather than simply the work of the beneficiary's employer. 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. [REDACTED] thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who obtains a Ph.D. or has been accepted for publication has made a contribution of major significance. The record does not establish that the beneficiary's work represents a groundbreaking advance in his field.

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).

⁸ The AAO notes that [REDACTED] lists his specialty as plastic surgery. Although [REDACTED] states that he has reviewed the beneficiary's finds "to stay informed of findings from the top of each field of medicine" and because "many of my patients request plastic surgery as a result of cancer complications", the AAO finds that [REDACTED] is not competent to express an opinion regarding the extent to which the beneficiary's research contribution has impacted the beneficiary's academic field. Further, the AAO notes that [REDACTED], and [REDACTED] do not state how they became aware of the beneficiary's work.

⁹ The AAO notes that in their letters [REDACTED] use almost identical language, stating that the beneficiary's research work "is in great demand in the biomedical field like pre-clinical validation trials and developing novel methods for the diagnosis and treatment of cancer. His scientific expertise and his dedication to translational cancer research will be invaluable for the US research community."

The opinions of experts in the field are not without weight and have been considered above. United States Citizenship & Immigration Services (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 the AAO has 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.¹⁰ Considering the letters 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 qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(i)(3)(i)(E).

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

The petitioner submitted several articles authored by the beneficiary in professional journals in the academic field. The petitioner has also submitted evidence that the beneficiary authored a book chapter and has presented his work at several conferences. 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, 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.

¹⁰ *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.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

B. Final Merits Determination

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

The 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. The petitioner has submitted evidence that the beneficiary has served as a judge at events either sponsored by the petitioning institution or located in proximity to the petitioning institution. The AAO agrees with the director that, 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, or received independent requests from a substantial number of journals, the AAO cannot conclude that the beneficiary's judging experience is indicative of or consistent with international recognition.

Regarding the beneficiary's original research, as stated above, it does not appear to rise to the level of a contribution to the academic field as a whole. Demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research is not useful in setting the beneficiary apart in the academic community through eminence and distinction based on international recognition. 56 Fed. Reg. at 30705. Research work that is unoriginal would be unlikely to secure the beneficiary a Master's degree, let alone classification as an outstanding researcher. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

While the beneficiary has published several articles authored by the beneficiary in journals in the academic field and has presented his work at several conferences, the Department of Labor's Occupational Outlook Handbook (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 June 23, 2011 and incorporated into the record of proceeding). The OOH 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.

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. As stated above,

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 petitioner has submitted several articles containing citations to the beneficiary's work. 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. A review of the citations themselves reveals that the beneficiary's work was cited as general background material, often in conjunction with other references. The record contains no evidence that the beneficiary's articles have been widely cited or other comparable evidence that demonstrates that the beneficiary's publication record is consistent with international recognition.

In light of the above, the final merits determination reveals that the beneficiary's qualifying evidence, very limited participating in judging and publishing articles that have not garnered widespread 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 petitioner has shown that the beneficiary is a talented cancer researcher, who has won the respect of his collaborators, employers, and mentors, while securing some degree of 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.

IV. Conclusion

Review of the record does not establish that the beneficiary is internationally recognized as an outstanding researcher or professor. Therefore, the petitioner has not established the beneficiary's eligibility pursuant to section 203(b)(1)(B) of the Act and the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.