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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: Office: NEBRASKA SERVICE CENTER

JUL 02 2012

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:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 company involved in the research and development of photonic devices and systems. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a senior electro-optics 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, the petitioner submits a brief and copies of documents that have previously been submitted into the record. 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.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, pursuant to 8 C.F.R. § 204.5(i)(3)(iii).

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. 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):

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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. 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.

The petitioner has not submitted its job offer to the beneficiary. Instead, at the time of filing this petition, the petitioner submitted a letter from [REDACTED] petitioning company, addressed to United States Citizenship and Immigration Services (USCIS), which states that the beneficiary has been employed by the petitioner since December 2007 as a permanent, full-time electro-optics engineer at an annual salary of \$85,000. *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 letter from [REDACTED] addressed to U. S. Citizenship and Immigration Services (USCIS) *affirming* the beneficiary's employment is not an *offer* of employment within the ordinary meaning of that phrase. While the AAO does not question the credibility of [REDACTED] the petitioner does not explain why the AAO should accept [REDACTED] assertions of the terms of the offer of employment in lieu of the offer of employment itself. Thus, the record does not contain an offer of employment from the petitioner addressed to the beneficiary, which is required initial evidence pursuant to 8 C.F.R. § 204.5(i)(3)(iii).

III. 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.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).

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

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)).

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.

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).

IV. Analysis

A. Evidentiary Criteria⁴

This petition, filed on March 8, 2011, 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 membership in associations in the academic field which require outstanding achievements of their members

The petitioner documented the beneficiary's full membership in Sigma Xi, The Scientific Research Society. According to the materials the petitioner submitted, an individual is nominated for full membership in Sigma Xi by another full member, based upon "noteworthy achievement as an original investigator in a field of pure or applied science." This noteworthy achievement must be evidenced by "publication as a first author on two articles published in a refereed journal, patents, written reports or a thesis or dissertation." The stated criteria for full membership in Sigma Xi, reveal that the organization does not require outstanding achievements of its members.

The petitioner also asserts that the beneficiary is a member of the Institute of Electrical and Electronics Engineers (IEEE) and the International Society of Optical Engineering. However, the petitioner has not submitted evidence either to document the beneficiary's membership in these associations, or to establish that these associations require outstanding achievements of their 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).

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 served as a reviewer for *Optical Engineering*.⁵

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

This evidence qualifies 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 reference letters from eight individuals (five of whom are from the beneficiary's immediate circle of colleagues and collaborators).

The petitioner also submitted evidence of research grants supporting the beneficiary's research in 2010 and 2011. Regarding the 2010 research grant, listing as principal investigator the petitioning company's [REDACTED] research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, even if the beneficiary were listed in the research grant as the principal investigator, a research grant is principally designed to fund future research, not recognize past achievement in the academic field. Regarding the beneficiary being listed as the principal investigator in a research grant awarded by the Department of Energy on May 6, 2011, this evidence post-dated the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§103.2(b)(1)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).⁶

The petitioner has also submitted a citation record for the beneficiary, containing approximately 11 total citations to the beneficiary's work. 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.

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.

⁵In addition, the petitioner asserts that the beneficiary has served as a reviewer for *Nuclear Inst. and Methods in Physics Research, A* and *Biosensors and Bioelectronics*. However, the petitioner did not submit evidence that the beneficiary reviewed any manuscripts for these two journals.

⁶The petitioner also submitted evidence that the beneficiary is listed as the principal investigator on a grant *proposal* submitted to NASA in January 2011.

We acknowledge that the beneficiary has authored several journal articles in the academic field, and has presented his work at several international conferences and symposia, as is mentioned in 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 published materials under 8 C.F.R. § 204.5(i)(3)(i)(F)).

President and CEO of the petitioning company, states that he co-manages and supervises the beneficiary work. He states that since 2007, the beneficiary has been engaged in research into the design and development of novel silicon single photon detectors and instruments based on these detectors. He describes several of the beneficiary's research duties including the following: energetic charged particle identification in high energy and nuclear physics experiments that he says will "advance high-energy physics and nuclear medicine applications;" the research, design and development of scalable, general purpose, digital pulse processing platform, that he states will "serve science and the public by . . . unlocking efficient experimentation across a wider range of particle detectors;" and, design and development of a 2-D Laser Detection and Ranging camera system, to measure the distance and speed of a remote target. Speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole. does not explain how the beneficiary's research findings are already being applied in the field, as would be expected of a contribution to the field as a whole.

was the beneficiary's advisor during his doctoral research work at Stony Brook University from 2004 to 2007. She states that the beneficiary worked with her lab on a project to design and develop highly sensitive DNA sequencing machines based on single photon counting technology.⁷ She states that the beneficiary developed a novel circuit for detecting single photons with high efficiency, then "proposed, designed and developed single and multi-channel photon counting instruments based on the proposed novel circuit, with highest sensitivity." She states that the innovative photon counting instruments "researched, designed and developed" by the beneficiary resulted in a "10 fold improvement in the throughput and sensitivity of DNA-sequencing instruments, effectively reducing the cost of required DNA chemicals by 10 fold." does not provide examples of independent institutions of higher education/universities using the beneficiary's photon counting instruments. She also states that the beneficiary's innovative photon counting instruments can be used in many fields. However, as stated above, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole.

⁷ An online search reveals that presented her work using the technology platform Genometrica in DNA sequencing at a 2010 molecular medicine tri- conference, stating that she is both an associate professor at Stony Brook and a research consultant for Genometrica corporation. In addition, an online outline of publication "Novel 32-channel single photon spectrometer for detection of nano-particles" states that her research at Stony Brook is supported by

states that over several years of his work at [REDACTED] the beneficiary has been a valuable collaborator for BioPhotonics Corporation, in the development of single photon detection systems “to enable the superior performance of our instruments.”⁸ He also states that the beneficiary’s “vast experience in cutting-edge DNA sequencing systems allowed him to formulate a powerful and cost-effective approach to the design of fluorescence detection modules implemented in our instruments,” making it possible to develop “DNA sequencing instruments with superior performance and low cost.” [REDACTED] states that DNA sequencing instruments based upon the beneficiary’s research at [REDACTED] are “currently in the stage of the preparation for manufacturing.” He also states that designs proposed by the beneficiary “facilitated the development of the world’s first portable DNA-sequencing instruments for research labs and companies.” However, [REDACTED] does not provide examples of independent institutions of higher education/universities using the type of DNA-sequencing instruments referred to by him.

[REDACTED], a senior research scientist in electro-optics systems, [REDACTED] Bangalore, India, states that he does not personally know the beneficiary, “but I have followed his research works because my own research here at [REDACTED] is closely related and based on [REDACTED] research findings published in his Ph.D. thesis. . . This is the reason I came in contact with him, through e-mails, back in 2008.” He states that the beneficiary’s thesis greatly helped his own research work “towards designing Photon Counting Laser Ranging Instrument,” and provided him “very useful insight about single photon counting instruments.” However, [REDACTED] use of the beneficiary’s doctoral research data does not demonstrate the beneficiary’s contribution to the field as a whole.

[REDACTED] states that he managed the beneficiary’s work when the beneficiary was a summer intern in 2006, and has managed his work since December 2007. He states that the beneficiary is the “key driver in the research and development of Voxel’s next-generation silicon photomultiplier (SiPM) devices. He states that the petitioning company is the only U.S.-based company selling SiPM’s, which he states are fast replacing traditional photomultiplier tubes, representing “an opportunity for economic growth.” He also states that the beneficiary is the lead designer and developer of instruments that can be integrated with these detectors for light detection and ranging (LIDAR) for scientific and defense applications. However, as stated above, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole. He also states that the beneficiary led the development of a multi-channel time-to-digital converter product “which was released by Voxel for commercial sales last year.” However, [REDACTED] does not provide specific examples of research institutions using the multi-channel time-to-digital converter product or utilizing the beneficiary’s findings, nor does he explain how the beneficiary’s work has already impacted the field, as would be expected of a contribution to the field as a whole.

⁸ A search of the website for [REDACTED] states that in [REDACTED] was founded and acquired by [REDACTED]

██████████ Lugano, Switzerland, states that the beneficiary's research at ██████████ is a key component of our recently released commercial line of products, Genometricalab, which is an automated line of equipment for molecular biology."⁹ However, he does not provide examples of Genometricalab being used at independent research institutions, nor does he explain how the beneficiary's work has already impacted the academic field. He also states that Genometrica is working on the development of a novel instrument for diagnostics based upon the beneficiary's research. However, as stated above, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole.

██████████ a staff scientist at ██████████ states that he does not know the beneficiary personally, "but I have become well acquainted with his extraordinary personal achievements in silicon photomultiplier (SiPM) research." He states that in the "very new" area of SiPM's, the beneficiary has already found a new application of SiPM detectors to DNA-sequencing, and "also proved it experimentally." However, ██████████ does not explain how the beneficiary's work is already being applied in the field.

██████████ a professor of electronics at Politecnico di Milano in Italy, states that he became acquainted with the beneficiary's work while serving as the guest editor of *IEEE Journal of Selected Topics in Quantum Electronics*. He states that the beneficiary's work "was very interesting as it was the first experimental demonstration of the application of SPAD [Single Photon Avalanche Diodes] to highly sensitive, high-performance DNA-sequencing." He also states that the beneficiary's research "opened up more choice of detectors for DNA-sequencing and formed the basis for high-throughput, multi-channel DNA-sequencing systems." However, ██████████ does not suggest that the beneficiary's research findings are currently in use, or are becoming one of the "widely accepted standard techniques" as would be expected of a contribution to the 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. 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

⁹ As noted above, an online search regarding ██████████ the beneficiary's doctoral advisor, reveals that she presented her work using the technology platform Genometrica in DNA sequencing at a 2010 molecular medicine tri- conference, stating that she is both an associate professor at Stony Brook and a research consultant for ██████████. In addition, an online outline of ██████████ publication "Novel 32-channel single photon spectrometer for detection of nano-particles" states that her research at Stony Brook is supported by ██████████

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 is original or can be considered a contribution to the field as a whole.

In light of the above, the AAO finds that 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 evidence that the beneficiary has authored several journal articles in the academic field, and has presented his work at several international conferences and symposia.

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.

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

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); *Ayyr 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).

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 submitted evidence that the beneficiary has served as a reviewer for *Optical Engineering*. The AAO cannot ignore the fact that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. Without other 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."

The Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at www.bls.gov/oco on January 28, 2010 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.

Further, [REDACTED] independent references, do not indicate that they learned of the beneficiary's work through the beneficiary's 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.

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 a citation record containing approximately 11 citations to the beneficiary's work. This moderate level of citation is not sufficient to demonstrate that the beneficiary's published work has 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, participating in the widespread peer review process 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 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. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

V. Conclusion

Review of the record does not establish that the beneficiary is internationally recognized as an outstanding researcher. 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.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved.

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

ORDER: The appeal is dismissed.