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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B3

[redacted]

Date: JUL 10 2012 Office: NEBRASKA SERVICE CENTER

[redacted]

IN RE: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

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 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 professor of traditional Chinese medicine. 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.

While we are bound by the regulations to accept the body of knowledge taught at the petitioning college as its own "academic field,"[1] the larger field of medicine is international. We do not recognize any distinction between the origins of medical treatments. Specifically, while we do not question the recent popularity of so-called complementary or alternative medicine, we will not consider "traditional" or "alternative" medicine as a separate field from "conventional" medicine.

> There is only scientifically proven, evidence-based medicine supported by solid data or unproven medicine, for which scientific evidence is lacking. Whether a therapeutic practice is 'Eastern' or 'Western,' is unconventional or mainstream, or involves mind-body techniques or molecular genetics is largely irrelevant except for historical purposes and cultural interest.

Fontanarosa PB, Lundberg GD, "Alternative Medicine Meets Science," *Journal of the American Medical Association* 280: 1618-1619, 1998. This does not mean that we are hostile to treatments termed "traditional," "alternative" or "complementary," but it does mean that we will not narrow the beneficiary's field to traditional Chinese medicine. Thus, the petitioner must demonstrate the beneficiary enjoys international recognition as outstanding within the general medical community.

On appeal, the petitioner has submitted a brief, and an additional reference letter from Dr. Heiner Fruehauf.[2] For the reasons discussed below, the AAO concurs with the director that the record fails

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[1] *See* 8 C.F.R. § 204.5(i)(2). The record satisfactorily establishes that the petitioner is accredited by the Accrediting Commission for Acupuncture and Oriental Medicine (ACAOM).

[2] On appeal the petitioner has also submitted documents previously submitted into the record. On appeal the petitioner has also submitted the following: an October 14, 2011 review by [redacted], Chengdu University of Traditional Chinese Medicine, China, regarding the beneficiary's conference presentation at the "International Conference in Modern Medicine"; reference letters from colleagues of the beneficiary, [redacted] a testimonial letter from [redacted], who states she has been the beneficiary's patient for four years; and, documents entitled "I.E.M. Treatment Invented by [redacted] – consider to apply patent." Regarding the reference letters, testimonial letter and patent application documents, the AAO notes that on December 21, 2010, the director issue a Request for Evidence (RFE) which instructed the petitioner to submit evidence of the beneficiary's eligibility pursuant to section 203(b)(1)(B) of the Act. In denying the application, the director concluded that the documents submitted in response to the RFE were not sufficient to establish the beneficiary's eligibility. The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the application is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and

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.[3] *Employment-Based Immigrants,* 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)).

I. Law

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

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

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(12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the application. 8 C.F.R. § 103.2(b)(14). As in the present matter, where the petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Ohaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of this evidence submitted on appeal. Regardless, the AAO notes that the letters of reference, testimonial letter and patent application documents do not identify an original research contribution made by the beneficiary to the field as a whole, or provide evidence of his recognition beyond his own circle of collaborators. Regarding the submitted review of the beneficiary's conference presentation, the AAO notes that the reviewer does not state the date of the beneficiary's conference presentation, although the review is dated after this petition's filing date. If the beneficiary's conference presentation took place after the filing date of this petition, this document 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). If the date of the beneficiary's conference presentation took place prior to this petition's filing date, for the reasons previously stated, this evidence should have been submitted in response to the director's request for evidence and the AAO need not, and does not, consider the sufficiency of this evidence submitted on appeal.

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

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

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

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

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

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." [4] 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

[4] The regulation at 8 C. F. R. 204.5(i)(2) defines "academic field" as "a body of specialized knowledge offered for study at an accredited United States university or institution of higher education." The AAO additionally finds, regarding the field of traditional Chinese medicine in which the beneficiary claims international recognition in this petition, the petitioner has not submitted evidence establishing that this field meets the definition of "academic field" set forth in the regulation.

> (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.[5] 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.[6] While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court's reasoning persuasive to the classification sought in this matter. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See* 8 C.F.R. §

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[5] 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)).

[6] 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.

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 [7]

This petition, filed on December 21, 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 received the Qiu Shi Postgraduate Scholarship on December 14, 2005, during his doctoral studies at Chengdu University of Traditional Chinese Medicine, China.[8]

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.

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

[8] The petitioner has submitted many documents that are copies of the beneficiary's work or are related to the beneficiary's educational/employment history, which are from foreign language documents for which the petitioner has submitted English translations. The AAO notes that the beneficiary is the translator for many of these documents. The regulation at 8 C.F.R. § 103.2(b)(3) states, "*Translations.* Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." Since the translations do not contain certifications both that the translator was competent to translate from Chinese into English and that the translations are complete and accurate, there is no indication that any of the translations have been properly certified by the translator in the manner required by the regulation. Because the petitioner failed to submit certified translations of the documents, this evidence will not be accorded any weight in this proceeding.

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 beneficiary having received the Qiu Shi Postgraduate Scholarship, the documentation reflects the scholarship award was based upon the following selection criteria: candidates must "be ideological progress (sic) in school," abide by the laws and regulations of the state and the school and participate in school activities; school performance must be "outstanding"; candidates should obtain certain academic grade and test scores; and, candidates should obtain at least two of the following criteria since admission to school: the publication of one paper, as first or second author, in an academic journal; publication of academic works as an editorial board member; or, participation in certain research projects, or having obtained a national patent or particular award. The documentation states that the Qiu Shi Postgraduate Scholarship is available to 10 doctoral students. The documentation reflects that the beneficiary competed with his fellow doctoral students, not with the most experienced and recognized members of the field. 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. Such 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)(i)(A).

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

The petitioner has submitted evidence that the beneficiary is a member of the following organizations: Chinese Association of Chinese Medicine; Chinese Association of Integrative Medicine (CAIM); Chinese Association of Acupuncture and Moxibustion (CAAM); and, the American Association of Acupuncture and Oriental Medicine.

However, the petitioner has not submitted evidence that any of 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 reviewed approximately 50 manuscripts for *Chinese Medicine Magazine* and approximately 24 manuscripts for *World*

Chinese Medicine Magazine. 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 submitted the following: evidence that the beneficiary is listed as a co-inventor on a patent issued in China in 1999; and, reference letters from eight individuals (seven of whom are from the beneficiary's immediate circle of colleagues 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.

This office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm'r. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* The record does not contain evidence that the beneficiary has attracted media attention or investment based on his patented innovation, or evidence of significant implementation of the patented innovation. Thus, the impact of the innovation is not documented in the record.

We acknowledge that the beneficiary has authored several journal articles in the academic field, was on the editing committee of two books, 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 articles and books under 8 C.F.R. § 204.5(i)(3)(i)(F)).

[redacted], a professor of traditional Chinese medicine at the petitioning college, states that he met the beneficiary 20 years ago, at Chengdu University of Traditional Chinese Medicine, China, and hired the beneficiary to work at the petitioning college in 2006. [redacted] has provided two letters of reference. He states that the beneficiary has made original contributions in the areas of traditional Chinese medicine pediatrics and internal medicine, which will help find

alternative solutions for modern health problems such as childhood obesity, juvenile diabetes, Attention Deficit Disorder (ADD) and inner ear ailments. While discusses the potential applications for the beneficiary's research, he does not provide examples of how the beneficiary's research has already been applied in the academic field.

, a member of the faculty at the petitioner's School of Classical Chinese Medicine, states that he has worked with the beneficiary for several years. He has submitted four reference letters. He states that the beneficiary "primarily created" clinical techniques called "Internal Ear Moxibustion" and "Warm Index Finger Moxibustion," while also acknowledging that these techniques were "popular in Classical Chinese Medicine." does not provide examples of independent researchers or research institutions using the beneficiary's techniques, as would be expected of a contribution to the academic field as a whole. He also states that the beneficiary is one of the few physicians he has found who can interpret and teach the traditional Chinese medical classics. While describes the contributions the beneficiary has made to the petitioning college, he does not provide specific examples of research contributions the beneficiary has already made to the academic field.

is the dean of the petitioner's School of Classical Chinese Medicine. She states that the beneficiary is one of a select group of individuals who have received "specialized lineage-style training accompanied by vigorous self-study," to become a scholar "of the classical texts of Chinese medicine (a prerequisite for which is being fluent in classical Chinese), who can translate this knowledge to a Western audience, and who can use this knowledge as the foundation for teaching the core courses that comprise our Master of Acupuncture and Master of Science of Oriental Medicine curricula." While describes the contributions the beneficiary has made to the petitioning college, she does not provide examples of research contributions that the beneficiary has already made to the academic field as a whole.

, the former president of Chengdu University of Traditional Chinese Medicine, states that she has known the beneficiary for more than 28 years, and was familiar with the beneficiary's work during his ten years of study at Chengdu University. She states that the beneficiary demonstrated "an outstanding ability to perform acupuncture by using various classical techniques," and has "created Chinese medicine treatments for childhood obesity (which may also be applied to treat adult obesity cases.) does not provide examples of how the beneficiary's acupuncture techniques and Chinese medicine treatments for obesity have already impacted the academic field, or provide examples of independent researchers or research institutions using those techniques and treatments.

, dean of the Chinese Medicine Depart at the Canadian Institute of Traditional Chinese Medicine, Canada, states that he has known the beneficiary since 1980, when they were classmates. He states that the beneficiary has presented some innovative methods of treatment for autism spectrum disorder cases, and cases with childhood obesity, hypertension, insomnia, cancer and "how to minimize the side effects from chemical drugs through Chinese medicine, etc." does not describe the novel methods of treatment which he credits to the beneficiary,

nor does he provide any examples of how the beneficiary's innovations are already being applied in the academic field.

, director of the pediatric department of The Teaching Hospital of Chengdu University of Traditional Chinese Medicine, China, states that he has known the beneficiary since 1981 when the beneficiary was studying for a bachelor's degree there. He states that the beneficiary possesses "expertise in the field of acupuncture and Chinese medicine research," and has "successfully improved many cases of childhood obesity, acute bronchopneumonia, nephritic syndrome, ADHD and autistic cases." does not describe the beneficiary's treatment method, nor provide examples of independent research institutions using the beneficiary's technique, nor assert that the beneficiary's technique is becoming one of the "widely accepted standard techniques" as would be expected of a contribution to the academic field as a whole.

, Program Director for Holistic Rehab. Of Autism, The University of Hong Kong, states that he has known the beneficiary "for several years through a series of national Oriental Medicine conventions and conferences." He states that the beneficiary has an "exceptional ability to design and complete teaching programs and research projects involving acupuncture therapeutics," and has demonstrated "an outstanding ability to perform acupuncture by using various classical techniques." He states that the beneficiary has developed "unique approaches to treat obesity" and developed a special moxibustion treatment called J-T warm finger moxibustion, which states is a "huge innovation for modernizing moxibution (sic) treatment in TCM." does he provide any examples of how the beneficiary's innovations or techniques are already being applied in the academic field. Although states that the beneficiary's "papers have been cited frequently by other research fellows in the field of TCM [traditional Chinese medicine]," neither the petitioner nor has submitted any articles containing citations to the beneficiary's work. He also states that the beneficiary is "currently the commissioner of the Association of Integration of Chinese and Western medicine." However, neither the petitioner nor has submitted any evidence in support of the beneficiary's commissionership in this association.

, an adjunct faculty member at the petitioning college, has submitted two references, using language identical to two reference letters of , faculty member at the petitioning college. states that the beneficiary "primarily created" clinical techniques called "Internal Ear Moxibustion" and "Warm Index Finger Moxibustion," while also acknowledging that these techniques were "popular in Classical Chinese Medicine." does not provide specific examples of research contributions the beneficiary has already made to the academic 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).

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 academic field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[9] 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 academic 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, was on the editing committee of two books, 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).

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[9] *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).

The next step, however, is a final merits determination that considers whether the evidence is consistent with the statutory standard in this matter, international recognition as outstanding. Section 203(b)(1)(B)(i) of the Act.

B. Final Merits Determination

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

The nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond her own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. The petitioner submitted evidence that the beneficiary has reviewed approximately 50 manuscripts for *Chinese Medicine Magazine* and approximately 24 manuscripts for *World Chinese Medicine Magazine.* 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. The record establishes the beneficiary's moderate record of peer review (approximately 74 articles manuscripts.) However, 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 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 authored several journal articles, has been on the editing committee of two books, and has presented his work at international conferences, 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.

In addition, the petitioner has not submitted any articles containing citations to the beneficiary's work. 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.

Further, [redacted], an independent reference, does not indicate that he 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.

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 professor of traditional Chinese medicine, who has won the respect of his colleagues and, employers, 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.