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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B3

Date: JUL 17 2012 Office: NEBRASKA SERVICE CENTER



IN RE:



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 semiconductor solutions. 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 circuit design 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. The petitioner has not submitted any additional evidence on appeal. 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):

* * *

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] which states that the beneficiary has been employed by the petitioner since August 13, 2010 as a permanent, full-time Senior Circuit Design Engineer. The petitioner's letter does not state the beneficiary's annual salary. *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 April 20, 2011, seeks to classify the beneficiary as 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. Publication in research is the norm, rather than the exception.

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

In his appeal brief, counsel asserts at page 6, “Petitioner has not offered evidence to prove that Dr. FAN meets the requirement of ‘published material in professional publications written by others about the alien’s work in the academic field’. . . 8 C.F.R. § 204.5(i)(3)(i)(D)(sic)⁵. . . Instead, evidence was offered towards 8 C.F.R. § 204.5(i)(3)(i)(F).” However, in the Form I-290, Notice of Appeal, counsel states “The Service has mischaracterized the level to which published material by other researchers must rise, to meet the ‘publications by others’ criteria.” Regardless of this incongruity in counsel’s statements on appeal regarding whether the petitioner is offering evidence in support of this criterion, the AAO finds that the petitioner has not submitted qualifying

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

⁵ The AAO notes that the correct section should be stated as 8 C.F.R. § 204.5(i)(3)(i)(C).

evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(i)(3)(i)(C). The petitioner submits evidence that one of the beneficiary's articles has been cited one time. In response to the director's April 22, 2011 request for evidence (RFE), counsel asserts, "many of [REDACTED] most important works were only published during approximately the past year and have not had adequate time to be cited and built upon by other scientists." The fact is, however, that 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). A petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998).

A citation is evidence of the impact and influence of the article cited. Nevertheless, the article citing the beneficiary's work is still primarily about the author's research, not the beneficiary and his research. Thus, the citation cannot be considered published material about the beneficiary's work and cannot serve to meet this criterion. The citation will be considered below, however, as evidence relating to whether the beneficiary meets the scholarly articles criterion set forth at 8 C.F.R. § 204.5(i)(3)(F).

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 reviewed [REDACTED]

[REDACTED] The petitioner has submitted a June 2, 2010 reference letter from Dr. Patrick Girard, editor-in-chief of JOLPE, stating that the beneficiary is on the editorial review board of that publication. However, the petitioner has not submitted evidence that the beneficiary reviewed any manuscripts as a member of the editorial board of VOLPE.⁶

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 nine individuals (eight of whom are from the beneficiary's immediate circle of colleagues and collaborators).

⁶ The petitioner submitted documentation that in December 2009 the beneficiary reviewed one manuscript for VOLPE as a regular reviewer, but no evidence that the beneficiary was a member of the editorial board at that time.

The petitioner's letter at the time of filing this petition, and reference letters from colleagues and collaborators state the beneficiary's new design concepts won a research grant in the amount of \$600,000. The petitioner has not submitted documentation of the date the research grant was awarded or the principal investigator on the grant. The AAO notes that 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.

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 journal articles in the academic field, and has presented his work at several international conferences, as is mentioned in the reference letters.⁷ 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)).

states that he was the beneficiary's doctoral advisor at the Illinois Institute of Technology. He states that the beneficiary has attained international recognition in the field of low power and electrostatic discharge (ESD) protection integrated circuit [IC] design, and that his expertise "lies in the monolithic implementation of circuits for low power and high-speed applications in silicon." He states that the beneficiary has led "cutting-edge" research on "designs for next generation wireless communications in silicon" and that the beneficiary designed several advanced integrated circuits which made a "significant contribution to the

⁷The AAO notes that the petitioner has also submitted several articles authored by the beneficiary which were published after the petition's filing date. However, since the dates of these events took place after the date of filing the petition on April 20, 2011, they 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).

development of . . . future high-quality high-speed wireless multimedia communications.” However, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole. [REDACTED] 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.

[REDACTED] states that he is currently employed by [REDACTED]. According to a letter submitted by the petitioner at the time of filing this petition, the beneficiary previously worked for [REDACTED]. He states that the beneficiary, as a “core designer” for light emitting diode (LED) drivers, created and implemented a new analog-to-digital converter [ADC] topology that “saves up to 95% power.” He states that the beneficiary designed a temperature sensor for LED drivers which, “saves more than 90% power with better performance.” He also states that the beneficiary is a key designer [REDACTED] charger products, which “won the industry’s prestigious EDN Innovation Award which honors engineering excellence among unique, state-of-the-art electronic products.” Although [REDACTED] states the contribution the beneficiary has made to Freescale Semiconductor, as stated above, the plain language of the regulation requires that the contribution be “to the academic field” rather than an individual laboratory or institution. In addition, [REDACTED] states that [REDACTED] charger chip, for which the beneficiary was a key designer, has been used in a line of Toshiba televisions. However, the petitioner has not documented this utilization of the beneficiary’s research findings. Regardless, while notable, a single example of a company utilizing the beneficiary’s work in a product line is not evidence of a contribution to the field as a whole.

[REDACTED] France, states that he has known of the beneficiary’s accomplishments since the end of 2009, although he does not indicate how he became aware of the beneficiary’s work. He states that the beneficiary’s doctoral research project in high speed low power ADC topology demonstrates that “the impulse radio ultra wideband communication system can be designed.” 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 as a result of the beneficiary’s design work at Freescale, the company won an EDN innovation award in 2009.⁸ As stated above, the plain language of the regulation requires that the contribution be “to the academic field” rather than an individual laboratory or institution. [REDACTED]

[REDACTED] he invited the beneficiary to be [REDACTED] “based upon [REDACTED] successful academic and industry experiences.” However, [REDACTED] does not provide specific examples of research institutions utilizing the beneficiary’s research findings, nor does he explain how the beneficiary’s work has already impacted the academic field.

[REDACTED] states that he met the beneficiary in 1997 as a colleague at the University of Electronic Science and

⁸ The AAO notes that [REDACTED] uses almost identical language to [REDACTED] in stating that [REDACTED] innovation awards which only honor unique, state-of-the-art electronics products of the year.”

Technology of China. He states that the beneficiary designed the dual channel [REDACTED] charger, which he states provides the highest performance for the lowest cost. However, [REDACTED] does not explain how the beneficiary's work has already impacted the field, as would be expected of a contribution to the field as a whole. He also states that the beneficiary's research results in high performance circuits with ESD protection "can be converted to high performance product easily." As stated above, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole.

[REDACTED] states that he has known the beneficiary since 2005, when [REDACTED] was a visiting scholar at Illinois Institute of Technology. He states that the beneficiary's doctoral research "proposed a novel AC/DC coupled structure to improve the ADC accuracy at very low power to make the impulse radio ultra wide band (IR-UWB) communication system realistic." He also states that as part of the beneficiary's doctoral research, [REDACTED] was implemented by him which provide (sic) extreme (sic) high sampling speed for a 10 bits resolution." He also states that the beneficiary's doctoral research proposed novel ESD structures for different applications. However, [REDACTED] does not provide specific examples of independent research institutions using the beneficiary's research findings. He states that the beneficiary will make outstanding accomplishments in the circuit design field. As stated above, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole.

[REDACTED] Beijing, China, states that he supervised the beneficiary's master's degree research at Tsinghua University beginning in 2001. He states that the beneficiary "is an expert and pioneer in high speed and ESD protection design field," although he does not explain how the beneficiary's work has already impacted the academic field. He also states "I am pretty sure he will make a series of breakthroughs in the short future." As stated above, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole.

[REDACTED] Corporation (SMIC), California, states that he met the beneficiary in 2005 when SMIC collaborated with the beneficiary's graduate research group at the Illinois Institute of Technology. He states that the beneficiary's graduate work may have wider applications and "may be applicable to US semiconductor IC industry." As stated above, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole.

Brian Horng, a senior design manager at the petitioning company, states that the beneficiary has shown extraordinary design ability working in Power Management Integrated Circuit design and has already made "breakthrough progress." Although [REDACTED] states that the beneficiary has made research contributions to the petitioning company, as stated above, the plain language of the regulation requires that the contribution be "to the academic field" rather than an individual laboratory or institution.

██████████ states that he completed his doctoral thesis under the same advisor as the beneficiary at University of California at Riverside, and the beneficiary helped him in completing his doctoral research. The witness admits that his academic background “is not strong enough to judge ██████████ work.”

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 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 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).

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).

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.

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 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

The fact that the applicant is a credited member of the editorial board of the VOLPE, while notable, is not by itself indicative of international recognition as outstanding. In addition, as stated above, the petitioner has not submitted evidence that the beneficiary reviewed any manuscripts as a member of VOLPE's editorial board. 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. The fact that the beneficiary was among the first to make a new discovery carries little weight. 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.

Of far greater importance in this proceeding is the impact the beneficiary's work has already had on the overall academic field. The record does not contain evidence that independent experts have consistently cited or relied upon the beneficiary's work, nor does the record contain 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.

The petitioner has provided, as evidence to establish the impact of the beneficiary's work, [REDACTED] [REDACTED], which includes four journals that have published the beneficiary's work. The impact of a given journal is not persuasive evidence of the impact of every article published in that journal. While evidence that the petitioner's work is widely cited can serve to establish the impact of this work, the record does not contain evidence that independent experts have consistently cited the petitioner'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 F. 3d at 1122. The petitioner has submitted one article containing a citation to the beneficiary's work. This minimal 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.