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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

[redacted]

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Date: JUL 17 2012 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: Beneficiary: [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 a company involved in the design and manufacture of semiconductor memory devices and related products. 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 solar process 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)).

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

[1] 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." 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 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).

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[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.

III. Analysis

A. Evidentiary Criteria[4]

This petition, filed on June 17, 2011, seeks to classify the beneficiary as researcher who is recognized internationally as outstanding in her 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 membership in Marquis's *Who's Who in Science and Engineering* and in *IEEE.*

The director concluded that the petitioner failed to establish that these organizations require outstanding achievements of their members. Counsel does not challenge that conclusion on appeal. Accordingly, the petitioner has abandoned that claim. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005); *Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *9 (E.D. N.Y. Sept. 30, 2011).

Nevertheless, upon review, the AAO concurs with the director's conclusion that the petitioner did not submit qualifying evidence that meets the plain language requirements of this criterion, set forth at 8 C.F.R. § 204.5(i)(3)(i)(B).

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

The petitioner submits evidence that three of the beneficiary's articles have been cited a total of thirteen times, and provides copies of the citing articles. Citations are evidence of the impact and influence of the article cited. Nevertheless, upon review the articles citing the beneficiary's work are still primarily about the author's research, not the beneficiary and her research. Thus, the citations cannot be considered published material about the beneficiary's work and cannot serve to meet this criterion. However, the beneficiary's citation history 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 F3d at 1122. The citation history will be considered below in our final merits determination.

The petitioner also submitted several published articles that briefly discuss the beneficiary's work and that of her colleagues at the University of Delaware. The articles refer to work sponsored by the Defense Advanced Research Projects Agency (DARPA) and a program called Very High

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

Efficiency Solar Cells (VHESC), and mention co-principal researchers [redacted] and [redacted]. The articles do not mention the beneficiary. The articles, in Forbes.com, msnbc.com, Signal online, Space Daily, UDaily and Technology Solar Cells, also discuss the recent work of others in the solar energy field. The regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) requires evidence of published material about the beneficiary's work. Although this published material refers to the beneficiary's work, it is primarily about recent work in the field generally, and not about the beneficiary's work. As such, it cannot be considered published material about the beneficiary's work.

In addition the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) requires that the published material shall include the title, date, and author of the material. However, some of these articles are university press releases that do not include the author of the material.

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)(C).

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

The petitioner submitted evidence that the beneficiary has reviewed two manuscripts for the journal *Progress in Photovoltaics: Research and Applications.*[5]

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 the following: a patent application confirmation in which the beneficiary is listed as the inventor; and, reference letters from fifteen individuals (four of whom are from the beneficiary's immediate circle of colleagues and collaborators).

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 petitioner has not submitted evidence that the rights to the patent-pending innovation have been assigned, that any entity has licensed or marketed

[5] The petitioner also submitted evidence that the beneficiary was requested to review manuscripts for *Physica Status Solidi – RapidResearch Letters* and the 34th IEEE Photovoltaic Specialists Conference (2009). However, the petitioner has not submitted evidence that the beneficiary reviewed any manuscripts in response to these requests.

the beneficiary's patent-pending innovation, or other evidence of significant implementation of the patent-pending innovation. Thus, the impact of the innovation is not documented in the record.

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 and a book chapter in the academic field, and has presented her work at several international conferences, 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)).

the beneficiary's doctoral advisor , has submitted three reference letters. She states that the beneficiary worked on the Very High Efficiency Solar Cells (VHESC) project, funded by the Defense Advanced Research Projects Agency (DARPA). She states that the VHESC program "is led by the University of Delaware and has 16 participating organizations." She states the "overall objective of the VHESC project was to develop 50% efficient Solar Cells for the U.S. Army." She lists the beneficiary's research contributions as follows: the beneficiary showed that commercial passivation tools could be used for surface passivation on very thin silicon wafers; the beneficiary designed and made ultrathin, freestanding silicon solar cells using existing tools; and, the beneficiary developed a new surface chemical passivation mechanism for ultrathin or standard solar cells for improved efficiency and reduced cost. She states that the beneficiary's research findings benefitted the VHESC project. Although states that the beneficiary's research contributions benefitted the University of Delaware, she does not provide specific examples of independent research institutions utilizing the beneficiary's research findings, nor does she explain how the beneficiary's work has already impacted the academic field.

Sydney, Australia, states that he met the beneficiary at an international conference in the academic field. He states that the beneficiary's work "will impact thin-film solar energy development worldwide." However, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole. Although he states that the beneficiary's research contributions have influenced research activities in the area of

photovoltaics, 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.

a research professor at Arizona State University, states that he worked with the beneficiary for nearly three years during her doctoral studies at the University of Delaware. He also states that he is her co-author on scientific publications. He has submitted two reference letters. He states that the beneficiary's research in improving the surface passivation and open circuit voltage in ultra-thin solar cells "will determine the path-forward towards improved efficiency and lower cost of the commercial solar cells." 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 ultra-thin freestanding silicon solar cell that the beneficiary designed and fabricated "showed the capability of using the existing commercial solar cell fabrication technique for very thin silicon solar cells" while maintaining the voltages. does not provide specific examples of independent research institutions utilizing the beneficiary's research findings, or state that the beneficiary's technique has already influenced the field such that it can be considered a contribution to the field as a whole.

of Delaware, states that he became acquainted with the beneficiary during her doctoral studies at that university. He states that the beneficiary's doctoral research made important contributions to characterizing and simulation modeling of very high performance solar cell structures. He does not provide specific examples of independent research institutions utilizing the beneficiary's research findings. He also states that the beneficiary "has the potential to make significant contributions in the field of alternative energy particularly for the generation of electricity." 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.

states that he met the beneficiary at a workshop in the academic field in 2008. He states that the beneficiary's research on the carrier density at the surface of the silicon device "will benefit the photovoltaic research community in the quest toward thinner devices." 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.

The Netherlands, states that he met the beneficiary in 2010 at a conference in the academic field. He states that the beneficiary proposed improvements in chemical passivation method for silicon wafers which are simple, work at room temperature and are inexpensive. Although he states "I strongly believed that her excellence in chemical surface passivation scheme for PV [photovoltaic] use will benefit our research group", he does not state that his research group has utilized the beneficiary's chemical passivation method, or that the beneficiary's technique has already influenced the field such that it can be considered a contribution to the field as a whole.

at the Australian National University, Canberra, Australia, states that he met the beneficiary at a conference in the

academic field when she was a doctoral student. He states that the beneficiary's analysis of liquid solution passivation of silicon wafers helped his solar energy research group advance their own research.

states that he became acquainted with the beneficiary when she used his test equipment during her doctoral research. He states that the beneficiary's doctoral research "extended the use of the Suns-Voc technique to apply to high-efficiency III-V solar cells, and that the beneficiary's research is relevant the Concentrator photovoltaics field developing in the United States. He states that the beneficiary also performed detailed studies of surface passivation on silicon. does not state that the beneficiary's technique has already influenced the field such that it can be considered a contribution to the field as a whole.

states that he has known the beneficiary for five years, although he does not indicate how he became acquainted with the beneficiary's work. He states that the beneficiary was the first researcher to develop a free-standing ultra-thin hetero-junction silicon solar cell, but he does not explain how the beneficiary's work has already impacted the academic field. He also states that the beneficiary used an uncommon passivation scheme for silicon solar cells. He states that his group at BP Solar is using the beneficiary's procedures for chemical passivation in their current research.

in Washington, D.C., states that he has known the beneficiary for four to five years and has interacted with her at various conferences in the academic field, although he does not indicate how he became acquainted with the beneficiary's work. The AAO notes that large portions of reference letter contain almost identical language to the reference letter of He states that the beneficiary was the first researcher to develop a free-standing ultra-thin hetero-junction silicon solar cell and a novel passivation scheme for silicon solar cells, but he does not explain how the beneficiary's work has already impacted the academic field.

states that he first met the beneficiary at a conference in the academic field when the beneficiary was a doctoral student. He states that the beneficiary was the first researcher to develop a free-standing ultra-thin silicon solar cell a surface passivation scheme for silicon solar cells using hydroquinone. He does not explain how the beneficiary's work has already impacted the academic field. He states that the beneficiary's research findings have been "particularly useful to us in performing some of the research in my labs."

Newark, New Jersey, states that one of his graduate students performed research in replicating the beneficiary's surface passivation scheme for silicon solar cells. He states that the beneficiary's passivation scheme, and her response to his student's inquiries concerning her work "has benefitted by research group in furthering our research."

at the Institute for Energy Technology, states that the beneficiary's passivation research findings, and her response to his inquiries concerning her work, "helped me advance our research findings."

states that the beneficiary's work on silicon surface passivation technology is very important to those involved in solar cells. He does not explain how the beneficiary's work has already impacted the academic field.

, states that his research efforts in surface passivation for solar cells have benefitted from the beneficiary's research findings, and her response to his inquiries concerning her work.

While notable, examples of six independent researchers utilizing the beneficiary's work in their research, at the Australian National University, BP Solar in Maryland, NREL in Washington, D.C., a graduate student at the New Jersey Institute of Technology, Newark, New Jersey, a graduate student at the Department of Solar Energy at the Institute for Energy Technology, Kjeller, Norway, and an engineer at Canadian Solar, China, respectively, are not evidence of a contribution to the field as a whole.[6]

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

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[6] The AAO notes that use almost identical language in stating that they have used the beneficiary's research findings " to advance our own research" or "to advance our research efforts in the area."

(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. While the record adequately establishes that the beneficiary's work is original, or it would not be appropriate for publication, at issue is whether it has already contributed to the field as a whole. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[7] 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 and a book chapter in the academic field, and has presented her 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)).

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[7] *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 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 reviewed two manuscripts for the journal *Progress in Photovoltaics: Research and Applications*. 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. The petitioner having documented six independent researchers who have utilized the beneficiary's work in their research, while notable, 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 addition, the 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 her work.

The petitioner has also provided, as evidence to establish the impact of the beneficiary's work, for some of the journals that have published the beneficiary's work, listing the impact factor and/or rank of those journals. The impact of a given journal is not persuasive evidence of the impact of every article published in that journal. The fact that a journal has a high overall impact factor does not imply that any one article in that journal has had a proportionate impact. 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. 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 petitioner submits evidence that three of the beneficiary's articles have been cited a total of thirteen times. In addition, a review of the citing articles reveals that they do not substantively discuss the beneficiary's work, but cite it as one among many other authorities. This moderate level of citation is not sufficient to demonstrate that the beneficiary's published work has been widely cited or relied upon, 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 and a book chapter 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 her collaborators, employers, and mentors, while securing some degree of exposure for her 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.

IV. 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.

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.