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



U.S. Citizenship  
and Immigration  
Services



B3

Date: Office: TEXAS SERVICE CENTER

FILE: 

**JUL 30 2012**

IN RE: Petitioner:  
Beneficiary: 

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

If you believe the 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, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an institution of higher education/university. It seeks to classify the beneficiary as an outstanding professor or researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as an assistant professor in the field of professional counseling/psychological sciences. The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding professor or researcher.

On appeal, the petitioner submits a brief, an additional reference letter from [REDACTED] and evidence of the international circulation of journals that have published the beneficiary's work. On appeal the petitioner has also submits evidence raising a previously unclaimed eligibility criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(C), pertaining to published material in professional publications written by others about the beneficiary's work in the academic field.<sup>1</sup>

The methods vary by which a petitioner can be notified of evidentiary requirements. For example, a petitioner is considered to be on notice through the specific requirements outlined within the regulations, or through various forms of communication from United States Citizenship and Immigration Services (USCIS) to a petitioner or applicant noting an evidentiary deficiency or requesting more evidence. See *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). The regulation at 8 C.F.R. § 204.5(i)(3)(i) notified the petitioner of the specific filing requirements to demonstrate eligibility under the outstanding professor/researcher classification. In addition, the instructions to the Form I-140 petition state that the petitioner must attach evidence with the petition showing that the beneficiary "is recognized internationally as outstanding in the academic field specified in the petition" and then lists the six regulatory criteria. Finally, the director issued a request for evidence listing all of the regulatory criteria. Therefore, the petitioner must claim every criterion that the petitioner would like to be considered before the director. In instances when the petitioner was notified of the types of evidence that are required to demonstrate eligibility and was afforded the opportunity to provide the evidence prior to the issuance of an adverse decision, new eligibility claims will not be considered on appeal. *Matter of Soriano*, 19 I&N Dec. at 766.

The appellate body will make a determination based on the claims presented to the director within the initial proceedings. *Id.* at 766 (citing to *Matter of Obaigbena*, 19 I&N Dec. 533, [537] (BIA 1988) (finding that the BIA will not review or consider any evidence first offered on appeal when USCIS notified the petitioner of a deficiency and the petitioner failed to substantively respond to the notice; the BIA's review on appeal is limited to the record of proceeding before the director).

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<sup>1</sup> The remaining documents submitted on appeal have previously been submitted into the record.



If the petitioner would like for USCIS to consider claims to additional eligibility criteria, this must be accomplished through the filing of a new petition. *Id.* at 766. *Cf. Matter of Jimenez*, 21 I&N Dec. 567, 570 n.2 (BIA 1996) (finding that claims of eligibility for a waiver presented for the first time on appeal are not properly before the Board of Immigration Appeals and that the Board will not issue a determination on the matter.) Although the AAO maintains *de novo* review of appellate cases and a petitioner may supplement the record in regards to previous claims, a petitioner may not raise a previously unclaimed eligibility criterion on appeal. *Id.* at 766. Therefore, we will not consider the evidence submitted on appeal pertaining to the previously unclaimed eligibility criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(C).

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.<sup>2</sup> *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 (9<sup>th</sup> 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):

\* \* \*

(B) Outstanding professors and researchers. -- An alien is described in this subparagraph if --

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<sup>2</sup> The legal authority for this two-step analysis will be discussed at length below.

- (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], the petitioner's human resources manager, addressed to USCIS, which states that for the past three years the beneficiary

has been employed by the petitioner. He states that the beneficiary receives an annual salary of \$60,138 as a "tenure-track, fulltime, permanent faculty member currently working as an [REDACTED]." *Black's Law Dictionary* 1189 (9<sup>th</sup> 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 Mr. [REDACTED] addressed to 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 Mr. [REDACTED] the petitioner does not explain why the AAO should accept Mr. [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.<sup>3</sup> 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.<sup>4</sup> 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.*

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<sup>3</sup> 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)).

<sup>4</sup> 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.

*United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003) (recognizing the AAO's *de novo* authority).

#### IV. Analysis

##### A. Evidentiary Criteria

This petition, filed on September 26, 2011, seeks to classify the beneficiary as a professor or 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).<sup>5</sup>

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

The petitioner submitted evidence that the beneficiary was awarded the [REDACTED] (2009).

It is significant that the *proposed* regulation relating to this classification would have required evidence of a major *international* award. The final rule removed the requirement that the award be "international," but left the word "major." The commentary states: "The word "international" has been removed in order to accommodate the *possibility* that an alien might be recognized internationally as outstanding for having received a major award that is not international." (Emphasis added.) 56 Fed. Reg. 60897-01, 60899 (Nov. 29, 1991.)

Thus, the standard for this criterion is very high. The rule recognizes only the "possibility" that a *major* award that is not international would qualify. Significantly, even lesser international awards cannot serve to meet this criterion given the continued use of the word "major" in the final rule. *Compare* 8 C.F.R. § 204.5(h)(3)(i) (allowing for "lesser" nationally or internationally recognized awards for a separate classification than the one sought in this matter).

Regarding the [REDACTED], the director concluded that the petitioner had not demonstrated that the criteria used to select the recipients of this award satisfy the requirements of this criterion. The documentation states that the criteria used to grant this award *may* include the following: strong interpersonal skills; availability to advisees, faculty or staff; frequency of contact with advisees; appropriate referral activity; use and dissemination of appropriate information sources; evidence of student access rate, by advisor or department; advisee or unit evaluations (summary data); caring, helpful attitude toward advisees, faculty and staff; meeting advisees in informal settings; participation in and support of intrusive advising to build strong relationships with advisees; monitoring of student progress toward academic and career goals; mastery of institutional regulations, policies and procedures; ability to

<sup>5</sup> The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

engage in, promote and support development advising; participation in and support of advisor developmental programs; and, perception by colleagues of nominee's advising or advising administration skills. In addition, the documentation shows the award is open to individuals serving as an academic advisor or faculty advisor, employed by an accredited post-secondary institution, in the geographic region that includes Alabama, the Caribbean, Florida, Georgia, Mississippi and Puerto Rico. Upon review of the selecting criteria, we are not persuaded that the beneficiary's inclusion in this regional honor was based upon outstanding achievement in the academic field, indicative of international recognition in the field. We therefore find that this award does not constitute a major award.

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

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

The director concluded that the beneficiary's membership in the [REDACTED], the [REDACTED], the [REDACTED], and the [REDACTED] does not qualify as evidence of the beneficiary's membership in associations which require outstanding achievements in the academic field.

According to the materials the petitioner submitted, the beneficiary is a member of the [REDACTED]. The materials state that membership is open to individuals who hold a master's degree or higher in counseling or a closely related field from an accredited college or university.

According to the materials the petitioner submitted, the beneficiary is a member of the [REDACTED]. The materials state that membership is open to individuals who are employed by accredited higher-education institutions in the academic advising and/or counseling field.

The petitioner also submitted materials that show the beneficiary is a member of the [REDACTED]. The materials state that membership is open to individuals who satisfy the following criteria: a master's degree or higher in counseling; documentation of required semester hours of graduate-level credit, including required content-area and field experience; a passing score on the [REDACTED]; and, documentation of post-graduate counseling experience and supervision.

In addition, the petitioner submitted materials that show the beneficiary is a member of the [REDACTED]. The materials state that membership is open to counselor educators, supervisors and students.

From a review of the membership criteria of these associations, the AAO agrees with the director that the petitioner did not submit evidence that the above associations require anything other than the beneficiary having attained certain educational requirements to become a member of these

organizations. The educational requirements of these organizations are not outstanding achievements. Therefore, the record does not establish that the [REDACTED], the [REDACTED], the [REDACTED] and the [REDACTED] 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*

As evidence that the beneficiary has participated, 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 documentation that at the time of filing this petition the beneficiary is serving in petitioner's counseling department as the chairperson on three doctoral dissertation committees, and is serving as a member on two additional doctoral dissertation committees. This evidence qualifies under the plain language of the criterion set forth at 8 C.F.R. § 204.5(i)(3)(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 eleven individuals, all of whom are from the beneficiary's immediate circle of mentors, 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.

We acknowledge that the beneficiary has authored several articles in journals in the academic field. If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly articles. In addition, even if we considered the original nature of the beneficiary's research to qualify it under the criterion at 8 C.F.R. § 204.5(i)(3)(i)(E), and we do not, whether or not the contributions are indicative of the beneficiary's international recognition in the field is a valid consideration under our final merits determination. (We will consider the articles under 8 C.F.R. § 204.5(i)(3)(i)(F)).

[REDACTED] director of the student advisement center at [REDACTED], has submitted two reference letters. She states that she was the beneficiary's supervisor for two years at [REDACTED]

██████████. She states that the beneficiary's graduate research project was "extremely useful for the administrators to make some policy changes for student retention rates." She also states that the beneficiary developed original and innovative tools for use in advising students of the university, such as an academic success plan, an advisement prescription card and a Major choice worksheet. Although she describes how the beneficiary's work has benefitted the university, she does not state how the beneficiary's work or tools have already contributed to the academic field as a whole.

██████████, a psychiatrist with ██████████, Alpharetta, Georgia, states that the beneficiary is working with him as a consultant, "providing individual, family psychotherapy and marriage counseling services." He describes the beneficiary's duties with ██████████ and states that the beneficiary designed original treatment tools exclusively for mental health patients. Although he states that the beneficiary's clinical tools "benefitted several clients at ██████████", he does not state that the beneficiary's treatment tools have already contributed to the academic field as a whole.

██████████, director of the ██████████, Mableton, Georgia, states that he has been a colleague of the beneficiary's at the ██████████ for the past year. He states that he worked with the beneficiary on a doctoral dissertation committee, and that the beneficiary has "extensive knowledge about research methodology in the mental health counseling field." Although he states that the beneficiary's work has been of benefit to the ██████████ he does not state that the beneficiary's work has already contributed to the academic field as a whole.

██████████, ██████████, Alpharetta, Georgia, states that the beneficiary is working with her as a contractor, providing "original customized treatment interventions for several clients in the mental health counseling field." She describes the beneficiary's duties with ██████████. Although she states that the beneficiary's "innovative and original counseling skills and intervention strategies helped our clients at ██████████ tremendously," she does not state that the beneficiary's work has already contributed to the academic field as a whole.

██████████, an associate professor at the ██████████ has submitted two reference letters. She states that she has been the beneficiary's supervisor for the past three years. She states that the beneficiary is an asset to the ██████████, exhibiting "exceptional academic knowledge, responsibility, integrity and character" in her work as a professor, faculty advisor, colleague, doctoral dissertation committee member and member of additional committees within the ██████████. Although she describes how the beneficiary's work has benefitted the ██████████, she does not state that the beneficiary's work has already contributed to the academic field as a whole.

██████████, associate chair of the counseling department at the ██████████, states that she has been the beneficiary's colleague for four years. She states that under the beneficiary's direction the ██████████ has "successfully implemented new course material to enhance

our program.” Although she states that the beneficiary’s “teaching, professional practice and research contributions have added to the academic arena and community,” she does not provide examples of specific contributions or explain how those contributions have impacted the academic field rather than simply the work of the beneficiary's employer.

██████████ is an associate professor in the counseling department at the ██████████ ██████████. She states that the beneficiary furthers the interest of the counseling department and the ██████████ in being an excellent academician who works well with colleagues and the administration, and “is invested in the students she serves.” Although she describes how the beneficiary’s work has benefitted the ██████████, she does not state that the beneficiary’s work has already contributed to the academic field as a whole.

██████████, an undergraduate academic advisor at the ██████████, states that he has worked with the beneficiary since 2007. He states that the beneficiary was integral in piloting a new advising-in-the-classroom initiative, but he does not provide examples of independent research institutions using the beneficiary's initiative. He also states that the beneficiary led a program to help struggling probationary students return to good standing. Although he describes how the beneficiary’s work has benefitted the ██████████ he does not state that the beneficiary’s work has already contributed to the academic field as a whole.

██████████, an advising administrator at the ██████████ ██████████ Atlanta, Georgia, states that she first met the beneficiary in 2007 when she was her colleague at the student advising center at ██████████. She states that the beneficiary’s commitment to research, especially in the area of reinstatement of students after academic warning or suspension, will prove extremely valuable to the mission of the ██████████ in supporting the academic support and retention of such students. However, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole.

The petitioner also provided positive references letters from two additional colleagues of the beneficiary at ██████████, Dr. ██████████, assistant professor, and ██████████, associate athletic director, which provide information similar to that discussed above. However, they do not explain how the beneficiary’s work has impacted the academic field rather than simply the work of ██████████.

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.<sup>6</sup> Considering the letters in the aggregate, the record does not establish that the beneficiary's work can be considered a contribution to the field as a whole.

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

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

The petitioner submitted several articles authored by the beneficiary in professional journals in the academic field. 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*

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<sup>6</sup> *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).

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 has submitted evidence that the beneficiary is serving as the chairperson on three doctoral dissertation committees, and is serving as a member on two additional doctoral dissertation committees, all at the [REDACTED]. The fact that the beneficiary serves as a dissertation committee member for the petitioner is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond her own circle of collaborators. We find that this service as a "judge" reflects no recognition of the beneficiary beyond her collaborators.

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

While the beneficiary has published several articles in journals in the academic field, the Department of Labor's Occupational Outlook Handbook (OOH) provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See* [www.bls.gov/oco/ocos066.htm](http://www.bls.gov/oco/ocos066.htm) (accessed June 23, 2011 and incorporated into the record of proceeding). The OOH expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field.

While such publication demonstrates the promising nature of the beneficiary's work, more persuasive evidence is how the beneficiary's work was received upon publication. The record contains no evidence that the beneficiary's articles have been widely cited or other comparable evidence that demonstrates that the beneficiary's publication record is consistent with international recognition.

In light of the above, the final merits determination reveals that the beneficiary's qualifying evidence, very limited participating in judging and publishing articles that have not garnered widespread citations or other response in the academic field, does not set the beneficiary apart in the academic community through eminence and distinction based on international recognition, the purpose of the regulatory criteria. 56 Fed. Reg. at 30705.

The petitioner has shown that the beneficiary is a talented assistant professor of psychological sciences/counseling, 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 or professor. 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 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.

For the above stated reasons, considered both in sum and as separate grounds for denial, 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.