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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]

B3

DATE: JUL 3 0 2012 Office: DALLAS FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[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, Dallas, 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 of English. The director determined that the petitioner had met two of the six criteria, but failed to establish the beneficiary had attained the outstanding level of achievement required for classification as an outstanding professor.

On appeal, counsel, on behalf of the petitioner, submits a brief. Counsel states that the petitioner agrees with the director's determination on all statutory requirements on this instant petition except for the "international recognition" determination. Counsel asserts that the director erred in his decision and rendered a final merits determination inconsistent with the statutory requirements and case law.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB,* 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See e.g., Soltane v. DOJ,* 381 F.3d 143, 145 (3d Cir. 2004).

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
>
> (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.[1] 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.[2] 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*, 381 F.3d at 145; *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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[1] 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)).

[2] 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

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

The petitioner submitted evidence of an All-American Scholar Award, seven graduate scholarship awards from Morgan State University and three certificates of congratulations/appreciation from Morgan State University. The director determined that the petitioner had not established that the awards are recognized as major awards in the beneficiary's field and, therefore, the petitioner failed to the submit qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(A). The director stated that awards based on educational achievement or other traits deemed praiseworthy by the awarding organization does not constitute nationally or internationally recognized awards for excellence in the field of endeavor. The beneficiary's graduate scholarship awards and certificates of congratulations/appreciation do not qualify as qualify as major prizes or awards for outstanding achievement in the academic field.

On appeal, counsel asserts that the beneficiary's receipt of The United States Achievement Academy (USAA), All-American Scholar Award satisfies this criterion. Counsel asserts that non-profit USAA Scholarship Foundation awards 400 national education cash grants, winners are determined by an independent selection committee, and selection criteria include, but are not limited to, a 3.0 minimum grade point average, academic performance, and leadership qualities. Counsel failed to submit supporting documentation. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Notwithstanding, if counsel's assertions are taken at face value, the USAA awards 400 cash grants to nominated individuals in any field as long as they have a minimum grade point average, among other criteria. A major prize or award not only should be issued by a nationally recognized and distinguished entity, but also be a major prize or award for which the most renowned and experienced members of the field compete. The record fails to establish that the All-American Scholar Award is recognized as major in the beneficiary's field of endeavor which the most renowned assistant professors aspire to win. In addition, the record does not contain any objective evidence regarding the significance of the awards, such as national media coverage of the announcement of the awardees.

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

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

The petitioner submitted evidence of his membership in the Wasafiri 100 Club. The director determined that the petitioner failed to submit evidence that membership with this association requires outstanding achievements of its members as judged by recognized national or international experts. The record reflects that the beneficiary, along with 99 other individuals, was offered a free one year subscription of Wasafiri in exchange for promotion of the magazine to colleagues, students and friends. While the beneficiary was nominated to receive the free subscription, the record does not reflect the nomination process or that it required outstanding achievements in the beneficiary's academic field.

Based on the above, the petitioner did not submit qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(i)(3)(i)(B).

On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005). Accordingly, the petitioner has not established that this criterion has been met.

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 submitted evidence of articles written by others that review the beneficiary's work in the field. The director concluded that the articles mention the beneficiary in passing, but fail to discuss the merits of his work, his standing in the field, or any significant impact that his work had on the field are not persuasive and cannot be considered published material about the beneficiary's work. On appeal, counsel asserts that beneficiary's work has been reported by academic and professional media outlets.

Of the five articles submitted, three articles only briefly list the beneficiary as a 1) prize recipient, 2) speaker in a symposium, and 3) Ph.D. graduate from his university. These published articles were not about the beneficiary's work in the field, but rather about the organization, university or symposium. The articles fail to discuss the beneficiary's work in any substantial way.

Of the remaining two articles, The English Graduate Organization Newsletter article provides a brief review of the beneficiary's dissertation defense and the Kenya Monitor article provides a brief summary of the beneficiary's book. Published material must be printed in professional or major trade publications or other major media. To qualify as a major media, the publication should have significant national or international distribution. Evidence of published material should clearly identify the circulation and intended audience of the publication, as well as the title, date and author of the material. The record fails to contain evidence of the circulation and intended audience of the publications.

In light of the above, the articles are not 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 did submit qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(i)(3)(i)(D). The record contains documentation establishing the beneficiary has served as a reviewer and served on Editorial Boards and Committees. Accordingly, the director determined, and the AAO concurs, that the petitioner met this criterion.

Evidence of the alien's original scientific or scholarly research contributions to the academic field.

The petitioner submitted letters of recommendation, evidence of conference presentations and a radio station interview. The director determined that the petitioner failed to demonstrate that the beneficiary's research has contributed original scientific or scholarly research contributions to 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 said, the plain language of the regulation does not simply require original research, but original "research contributions." Had the regulation contemplated merely the submission of original research, it would have said so, and not have included the extra word "contributions." *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). Moreover, the plain language of the regulation requires that the contributions be "to the academic field" rather than an individual laboratory or institution.

The petitioner submitted numerous letters of support from eleven of the beneficiary's peers and colleagues in order to establish original contributions. On appeal, counsel asserts that the beneficiary has contributed original and outstanding findings, which have been widely noted by leading scholars and experts in his field in five countries.

The expert witnesses discuss the beneficiary's credentials, accomplishments and in general attest to the beneficiary as an extraordinary researcher, professor and scholar. For example, Professor Ngugi wa Thiong'o states that the beneficiary has made "major contributions in the field of World Literature, and particularly Postcolonial Literature." He describes the beneficiary's published book as "an insightful analysis" and "it raises critical awareness about inter-connectedness." Dr. Charles Cantalupo discusses the beneficiary's publications and describes the beneficiary's work as "vital to these areas of specialized study." Clement Akassi, Ph.D., states that the beneficiary's article "is to be viewed as an important contribution to the field of Postcolonial Literature cause it is the first time that the interaction of literatures of indigenous Africans with that of Indian immigrants is being evaluated." Chege Githiora,

Ph.D. states the beneficiary's "paper opens a new chapter in African literature because it marks the very first time that the oral literature of immigrant Indians in East Africa is discussed."

The expert witnesses describe the beneficiary's work and notable achievements at varying levels. While the expert letters broadly state the beneficiary's contributions to the field, they fail to provide specific examples of how the beneficiary's work has impacted the academic field. A few of the witnesses reference the impact of the beneficiary's contribution to the field by virtue of his recognition and requests for his service. Dr. Khorana states that the beneficiary's work is "critical to the field of postcolonial literature, which is exemplified by his recent invitations to serve as a reviewer and his receipt of national and international attention". Dr. Akassi states that the beneficiary's book is internationally recognized as evidenced by the fact that it is being sold in bookstores, including some university stores, across the globe and it has been stacked by many libraries. It is clear that the beneficiary's work has received attention; however, the witnesses fail to state how the beneficiary's work has specifically impacted subsequent work in the academic field. Given this, the letter provides minimal probative value as evidence of the beneficiary's original research contributions to the academic field.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. 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)).

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 evidence of books, book chapters, and several journal articles authored by the beneficiary. The director determined, and the AAO concurs, that 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 at least 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)).

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."

On appeal, counsel asserts that the director erred in his decision and rendered a final merits determination inconsistent with the statutory requirements and case law. As stated above, the petitioner submitted qualifying evidence to meet the criteria set forth at 8 C.F.R. §§ 204.5(i)(3)(i)(D) and (F). Given this, the AAO will consider the evidence submitted in connection with those criteria.

The record contains documentation establishing the beneficiary has served as a reviewer and served on Editorial Boards and Committees. The fact that the beneficiary served on the Editorial Board and of *Sankofa: A Journal of African Children's and Young Adult Literature,* and as a reviewer on a few journals, such as *Journal of Narrative Theory, etc.*, is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian*, 2010 WL 725317 at*5. We find that this service as a "judge" reflects minimal recognition of the beneficiary beyond his own circle of collaborators.

In addition, we cannot ignore that journals are peer reviewed and rely on many individuals to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. No evidence was provided on the selection of the judging board or how the beneficiary was selected to participate in the review of the submitted articles. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed manuscripts for a journal that credits a small, elite group of referees or received independent requests from a substantial number of journals, the petitioner cannot establish that the beneficiary's judging experience is indicative of or consistent with international recognition.

Regarding the beneficiary's authorship of scholarly books or artilces, the record contains evidence of books, book chapters, and several journal articles authored by the beneficiary. As previously discussed, the petitioner submitted evidence of articles written by others that mention the beneficiary in passing, but fail to discuss the merits of his work, his standing in the field, or any significant impact that his work had on the field are not persuasive and cannot be considered published material about the beneficiary's work. Given this, the record contains little evidence that the beneficiary's books, book chapters or articles have been cited or other comparable evidence that demonstrates the beneficiary's publication record is consistent with international recognition.

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. Therefore, regardless of the academic field, the AAO cannot conclude that publication in scholarly journals in connection with a doctoral degree or university employer is indicative of or consistent with international recognition.

The beneficiary's citation history is a relevant consideration as to whether his published articles are indicative of recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. The record fails to contain 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 qualifying evidence of the beneficiary's research, his service as a judge of the work of others in the same or an allied academic field and his publication history, 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.

C. Conclusion

The petitioner has shown that the beneficiary is a talented professor, who has won the respect of his collaborators and colleagues, while securing some degree of exposure for his work. The record, however, stops short of elevating the beneficiary to the level of an alien who is internationally recognized as an outstanding researcher or professor. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

For the above stated reasons, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) 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.