

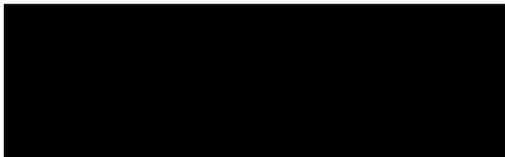
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W. MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



B3

Date: JUN 14 2012 Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
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:



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 with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an institution of higher education/university. It seeks to classify the beneficiary as an outstanding professor or researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a Research Assistant Professor in the field of medicinal chemistry. 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.

The petitioner submits a brief and additional evidence on appeal, including an additional letter from [REDACTED], the petitioner's director of human resources, and an updated citation record for the beneficiary. The petitioner has also submitted information regarding publications in which the beneficiary's work has appeared, publications for which the beneficiary has reviewed manuscripts, and publications in which the beneficiary's work has been cited.<sup>1</sup> 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

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<sup>1</sup>On appeal, the petitioner has also submitted the following: a 2009 press release from *Science Daily* mentioning the work of the beneficiary and his colleagues at [REDACTED] and a 2010 request for information from a graduate student in Turkey, both of which have previously been submitted into the record; an independent reference letter from [REDACTED]; letters documenting the beneficiary's presentation of his work at international workshops in 2008 and 2010; letters inviting the beneficiary to present his work in publications and at international conferences, dated prior to the filing of this petition on February 23, 2011; and, letters inviting the beneficiary to present his work in publications and at international conferences after the date of the filing of this petition. Regarding the letters inviting the beneficiary to present his work in publications and at international conferences after the date of the filing of this petition, since these events occurred after the time of filing they cannot now be used to establish eligibility retroactive to the February 23, 2011 filing date. See *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which CIS held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Regarding the remaining documents, it is noted that on February 25, 2011, the director issued a Request for Evidence (RFE). The RFE instructed the petitioner to submit evidence of the applicant's eligibility pursuant to section 203(b)(1)(B) of the Act. In denying the application, the director concluded that the documents submitted in response to the RFE were not sufficient to establish the applicant's eligibility. The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the application is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the application. 8 C.F.R. § 103.2(b)(14). As in the present matter, where an applicant has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Ohaigbena*, 19 I&N Dec. 533 (BIA 1988). If the applicant had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of this evidence submitted on appeal. Regardless, the AAO notes that the letter of reference from [REDACTED] contains speculation as to a future contribution, but 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.

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)).

In addition, the director determined that the petitioner had not established that it had offered the beneficiary a permanent job as of the date of filing. 8 C.F.R. § 204.5(i)(3)(iii).

## 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

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

persons full-time in research activities and has achieved documented accomplishments in an academic field.

## II. Permanent Job Offer

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.

(Emphasis added.)

The regulation at 8 C.F.R. § 204.5(i)(2), provides, in pertinent part:

*Permanent*, in reference to a research position, means either tenured, tenure track, or for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination.

On Part 6 of the petition, the petitioner indicated that the proposed employment was a permanent position. The petitioner submitted a January 18, 2011 letter from [REDACTED] Human Resources Generalist, addressed "To whom it may concern," asserting that the beneficiary has been employed by [REDACTED] since October 13, 2008, and that his current position is full-time Research Assistant Professor.

On February 25, 2011, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary. In response, the petitioner submitted a September 15, 2008 letter to the beneficiary offering him a position as a senior research associate. The letter specifies that [REDACTED] the petitioner's lab director, can only provide salary support for eight months, or until June 30, 2009, "with continuation dependent on the availability of more funds, and satisfactory work performance."

The director concluded that the September 2008 letter was not qualifying, since funding for the employment was only available for an eight-month period.

On appeal, counsel asserts that the research associate position offered the beneficiary was permanent. The petitioner has submitted the following: a September 29, 2010 letter to the beneficiary offering him a two-year full-time position as a Research Assistant Professor – Basic Science Track; and, May 2011 letters from [REDACTED] the petitioner's director of human resources, and [REDACTED]. The letter from [REDACTED] states that the beneficiary's position "is a full-time research position in which he has an expectation of regular employment. This position has consistently received outside funding and it is expected that outside funding will continue to support [REDACTED] retention in the position of Research Assistant Professor in the future. The university both intends to continue to seek such funding and has a reasonable expectation that such funding will continue. [REDACTED] has an expectation of at-will employment in this position. We have every expectation of maintaining him as an employee of the University in the future." The letter from [REDACTED] provides documentation that the beneficiary's position is expected to receive continued funding through at least 2014 from a variety of sources, including the National Institutes of Health.

The AAO finds that the record establishes that the expectation of continued funding for the beneficiary's employment is reasonable, and that the petitioner has established that it had offered the beneficiary a permanent job as of the date of filing.

### **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

<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.

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 (9<sup>th</sup> Cir. 2003) (recognizing the AAO's *de novo* authority).

#### IV. Analysis

##### A. Evidentiary Criteria

This petition, filed on February 23, 2011, seeks to classify the beneficiary as a researcher who is recognized internationally as outstanding in his academic field. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(i)(3)(i).

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

The petitioner submitted evidence that the beneficiary received a two-month post-doctoral fellowship to Pohang University of Science and Technology, South Korea (December 2001 to February 2002), and was being considered for inclusion in the Marquis *Who's Who in Science and Engineering* (11<sup>th</sup> Edition)(2011-2012).

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).

The director concluded that the beneficiary's having received a post-doctoral fellowship and being considered for inclusion in the 2011-2011 volume of Marquis *Who's Who in Science and Engineering* (11<sup>th</sup> Edition)(2011-2012) do not qualify as major prizes or awards for outstanding achievement in the academic field. In response to the director's request for evidence, counsel conceded, "the evidence submitted does not establish that the awards are considered major, and therefore that this criterion has not been met." 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)(A).

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

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

The petitioner documented the beneficiary's membership in the American Chemical Society and his full membership in the University of California – Berkeley Chapter of Sigma Xi, The Scientific Research Society.

According to the materials the petitioner submitted, an individual is nominated for full membership in Sigma Xi by another full member, based upon “noteworthy achievement as an original investigator in a field of pure or applied science. This noteworthy achievement must be evidenced by publication as a first author on two articles published in a refereed journal, patents, written reports or a thesis or dissertation.” The bylaws state that “membership in the society is neither linked to the possession of any degree nor contingent upon belonging to some other organization.” The stated criteria for full membership in Sigma Xi, without additional educational requirements, reveal that the organization does not require outstanding achievements of its members.

In addition, the petitioner has not submitted evidence to establish that the American Chemical Society requires outstanding achievements of its 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).

*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 has submitted an updated citation record for the beneficiary, containing approximately forty-seven total citations to the beneficiary's work, and copies of articles containing citations to the beneficiary's work.<sup>5</sup>

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<sup>5</sup>Approximately 19 of the citations to the beneficiary's work are from foreign language articles for which the petitioner has submitted English translations. The regulation at 8 C.F.R. § 103.2(b)(3) states, “*Translations.* Any document containing foreign language submitted to [CIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.” There is no indication that any of the translations have been properly certified by the translator in the manner required by the regulation. Because the

The regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) requires evidence of published material about the beneficiary's work. Upon review, the published material which cites the beneficiary's work is primarily about the author's own work, or 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. However, 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 F3d at 1122. The citation history will be considered below in our final merits determination.

The petitioner has also submitted an article published on February 24, 2009 in *Science Daily* which mentions the work of the beneficiary and his colleagues at [REDACTED]. 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, this article is a press release that does 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 manuscripts for the following: *European Journal of Organic Chemistry*; *European Journal of Medicinal Chemistry*; *Arabian Journal of Chemistry*; *Journal of Chemical Biology*; *Bioorganic & Medicinal Chemistry Journal*; *Molecular Diversity Journal*; and *Royal Society of Chemistry Journal*.

The petitioner has also submitted evidence that the beneficiary has reviewed manuscripts as a credited member of the editorial board of the *Journal of Thermodynamics & Catalysis – Open Access* (OMICS Publishing Group).

This evidence qualifies under the plain language of the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(D). Pursuant to the reasoning in *Kazarian*, 596 F. 3d at 1122, however, the nature of these duties may be and will be considered below in our final merits determination.

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

As evidence relating to the beneficiary's original scientific or scholarly research contributions to the academic field, the petitioner submitted the following: a patent application filed by the petitioner in

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petitioner failed to submit certified translations of the documents, this evidence will not be accorded any weight in this proceeding.

which the beneficiary is listed as a co-inventor;<sup>6</sup> reference letters from ten individuals, (five of whom are from the beneficiary's immediate circle of coauthors, collaborators and colleagues); a letter from a graduate student in Turkey requesting information concerning the beneficiary's work; and, letters from four graduate students in India requesting employment with the beneficiary's research laboratory.

The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(E) does not require that the beneficiary's contributions themselves be internationally recognized as outstanding. That being said, the plain language of the regulation does not simply require original research, but an original "research contribution." Had the regulation contemplated merely the submission of original research, it would have said so, and not have included the extra word "contribution." Moreover, the plain language of the regulation requires that the contribution be "to the academic field" rather than an individual laboratory or institution.

This office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm'r. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* While the patent application states that the rights to the patent have been assigned to the petitioner, the petitioner does not indicate that it has licensed or marketed the beneficiary's patent-pending innovation. Thus, the impact of the innovation is not documented in the record.

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

██████████ a senior scientist and manager at Southern Research Institute in Birmingham, Alabama, states that the beneficiary worked for Southern Research Institute for four years as a post-doctoral research associate. He states that the beneficiary made a significant contribution to the development of medications for the treatment of drug addiction, although he does not describe the

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<sup>6</sup>The petitioner has also submitted foreign language documents without accompanying translations, pertaining to two additional patents. The petitioner has submitted a summary in English of the documents, which summary lists the beneficiary as a co-inventor. As stated above, the regulation at 8 C.F.R. § 103.2(b)(3) requires the submission of complete certified English language translations for all foreign language documents. Thus, we will not consider the foreign language documents.

beneficiary's contribution. [REDACTED] does not provide examples of institutions of higher education/universities using the beneficiary's research findings or explain how those findings are already being applied in the field, as would be expected of a contribution to the field as a whole. He states that the beneficiary "possesses breadth of knowledge, research skills and intellectual capacity that place him among a select few early-career scientists poised to make significant contributions to the U.S.-driven fight to combat AIDS." However, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole.

[REDACTED], an assistant professor of biochemistry at Emory University in Atlanta, Georgia, states that he does not know the beneficiary personally, but bases his evaluation of the beneficiary's original scientific or scholarly research contributions to the field on the beneficiary's curriculum vitae (C.V.), his publications, "and other documents evidencing his accomplishments."<sup>7</sup> He does not indicate how he learned of the beneficiary's work. He states that the beneficiary's research reported "the enzymatic syntheses of trissacharide and derivatives of [REDACTED] in a large scale, and a novel purification process to remove the monossacharide from the reaction mixture using immobilized yeast." He states that the beneficiary's research work "not only supported enough glycoconjugate compounds for research, but also builds up a novel method to achieve such kind of compounds in grams scale." [REDACTED] does not explain how the beneficiary's research results and methods are already being applied in the field. He states that the beneficiary's research developed a way to manipulate bacteria to grow mutant sugar molecules on their cell surfaces. He states that "such sugar molecules will be used in potent vaccines." 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 states that the beneficiary's work with the petitioner focuses on an important glycoprotein, gp41, that mediated the fusion process between HIV and human cells. He states that the beneficiary's research has discovered a series of small molecule-indole compounds that inhibit that glycoprotein, opening a new research field in that area. Although [REDACTED] describes the beneficiary's current research projects, he does not provide examples of independent research institutions using the beneficiary's techniques, or explain how the beneficiary's work has impacted the field.

[REDACTED] a viral immunologist at the New York Blood Center, states that he does not know the beneficiary personally, but bases his evaluation of the beneficiary's original scientific or scholarly research contributions to the field on the beneficiary's publications, "and other documents evidencing his accomplishments." He does not indicate how he learned of the beneficiary's work. [REDACTED] states that the beneficiary's research work developing compounds as gp41 inhibitors is "crucial for the advancement of research in HIV related studies" and "holds tremendous promise for better therapy for this devastating disease." As stated above, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole. In addition, [REDACTED] states that the beneficiary's research work developing gp41 inhibitors is so important that he cited the beneficiary's work in an article published in

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<sup>7</sup> The petitioner submitted the beneficiary's C.V. at the time of filing an immigrant petition for a national interest waiver on September 14, 2010.

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*ChemMedChem* in November 2010. ██████████ and his co-author cite the beneficiary's article as one example, albeit a novel one, of small-molecule inhibitors of gp41.

██████████ a physicist working at the French Atomic Energy and Alternative Energies Commission in France, states that he does not know the beneficiary personally, but bases his evaluation of the beneficiary's original scientific or scholarly research contributions to the field on the beneficiary's publications. He does not indicate how he learned of the beneficiary's work. He states that the beneficiary's research "provided the first explicit definition of a low molecular weight inhibitor of the glycoprotein gp41, and represents a significant advance in methodology for structure-based drug design of non-peptide fusion inhibitors." He does not explain how the beneficiary's research results are already being applied in the field. He states that the beneficiary's research can be applied to the investigation of other viruses with a similar fusion mechanism to HIV "and can lead to a variety of protein-protein interactions targets." 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 states that he has relied on the beneficiary's work "in conducting and supporting some of my research projects," but he does not indicate what work of the beneficiary's he has utilized in his own research. In addition, ██████████ states that he cited the beneficiary's work in an article published in *Journal of the American Chemical Society* in February 2010. The petitioner has submitted an abstract of ██████████ article which does not contain the citation to the beneficiary's work.

We acknowledge that the citations of ██████████ and ██████████ reflect some reliance on the beneficiary's work. However, this minimal reliance cannot, by itself, establish that the beneficiary's research constitutes a contribution to the field as a whole. Rather, the citation evidence of ██████████ and ██████████ indicates that the beneficiary's work is part of a growing interest in the field of gp41 research.

██████████ a professor of chemistry and biochemistry at ██████████ was the beneficiary's doctoral advisor at that institution. He states that the beneficiary's doctoral research focused on inhibitors of PLA2, a membrane protein involved in inflammatory response and thus involved researching potential anti-inflammatory agents. He states that the beneficiary's research developed a method of producing a compound known to be a PLA2 inhibitor with less reaction steps and increased yield, resulting in a patent. He states that the beneficiary also contributed to the identification of a novel inhibitor of PLA2, using the molecular modeling software AutoDock, which resulted in a second patent.<sup>8</sup> However, ██████████ provides no examples of any pharmaceutical company or independent academic laboratory pursuing the production of PLA2 inhibitors using the beneficiary's methodology.

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<sup>8</sup>As stated above, the petitioner has submitted foreign language documents without accompanying translations, pertaining to these two patents. The petitioner has submitted a summary in English of the documents, which summary lists the beneficiary as a co-inventor. As stated above, the regulation at 8 C.F.R. § 103.2(b)(3) requires the submission of complete certified English language translations for all foreign language documents. Thus, we will not consider ██████████ reference to the foreign language documents.

██████████ chief of the protein nuclear magnetic resonance (NMR) section at the NIH, states that he does not know the beneficiary personally, but bases his evaluation of the beneficiary's original scientific or scholarly research contributions to the field on the beneficiary's publications. He does not indicate how he learned of the beneficiary's work. He states that the beneficiary's research has "discovered a series of small molecule-indole compounds as inhibitor of gp41 through a structure-based drug design process." He states that the beneficiary's research has "opened new research directions in this field and have additionally revealed structure information of an NMR complex consisting of one indole compound and gp41." He states that the beneficiary's research is "crucial in assessing the mechanism of binding action." Although ██████████ characterizes the beneficiary's research findings as "a major breakthrough," he does not provide specific examples of research institutions using the beneficiary's models and techniques, or explain how the beneficiary's work has already impacted the field.

██████████ professor of biochemistry and chemistry at ██████████ served as the beneficiary's postdoctoral research advisor in 2007. He states that the beneficiary has made important and innovative contributions to the field of medicinal chemistry in "his scholarly work using novel structure-based drug design and NMR techniques, and glycochemistry using chemo-enzymatic synthesis techniques." ██████████ does not explain how the beneficiary's work in this area has already influenced the field such that it can be considered a contribution to the field as a whole.

██████████ Chief Scientific Officer at the biopharmaceutical firm ██████████ in Atlanta, states that he met the beneficiary at a professional conference in 2009. He states that the beneficiary's research involving the identification and development of small molecule inhibitors of the gp41 protein, "has offered valuable insight into the relative strengths and weaknesses of new potential anti-HIV molecules, and provides a basis for future investigations on how to improve our approaches to block the activity of gp41 of HIV." ██████████ speculation that the beneficiary's research findings will lead the way for others to use his findings does not establish that the beneficiary's work has already contributed to the field as a whole.

██████████ a molecular scientist at Shanxi University, China, states that he does not know the beneficiary personally, but bases his evaluation of the beneficiary's original scientific or scholarly research contributions to the field on the beneficiary's publications. He states that in 1998 and 1999, when the beneficiary was a doctoral student at ██████████, his research group successfully synthesized compounds "using infrared spectroscopy and elementary analysis" and "determined the crystal structure of zinc (II) complex using the single crystal X-ray diffraction method." Although ██████████ states that he and a doctoral student "drew upon ██████████ work" in their research, ██████████ does not explain how the beneficiary's work has already impacted the field as a whole.

While we acknowledge a letter from ██████████ at the petitioning university, the letter is similar to those discussed above.

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>9</sup> 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 withdraws this portion of the director's decision, and 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.*

We acknowledge that the beneficiary has authored several journal articles in the academic field. The petitioner has also submitted evidence that the beneficiary has presented his work at several international conferences and symposia.

Thus, the petitioner has submitted evidence that qualifies under 8 C.F.R. § 204.5(i)(3)(i)(F).

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<sup>9</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).

In light of the above, the petitioner has submitted evidence that meets two of the criteria that must be satisfied to establish the minimum eligibility requirements for this classification. Specifically the petitioner submitted evidence to meet the criteria set forth at 8 C.F.R. §§ 204.5(i)(3)(i)(D) and (F). The next step, however, is a final merits determination that considers whether the evidence is consistent with the statutory standard in this matter, international recognition as outstanding, Section 203(b)(1)(B)(i) of the Act.

### *B. Final Merits Determination*

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

The nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. See *Kazarian*, 596 F.3d at 1122. The petitioner has submitted evidence that the beneficiary has reviewed manuscripts for the *European Journal of Organic Chemistry*, *European Journal of Medicinal Chemistry*, *Arabian Journal of Chemistry*, *Journal of Chemical Biology*, *Bioorganic & Medicinal Chemistry Journal*, *Molecular Diversity Journal* and *Royal Society of Chemistry Journal*. The petitioner has also submitted evidence that the beneficiary has reviewed manuscripts as a credited member of the editorial board of the *Journal of Thermodynamics & Catalysis – Open Access* (OMICS Publishing Group). The documentation states that the beneficiary was invited to be an editorial board member based upon his “reputation for quality of research and trustworthiness in the field of ‘Thermodynamics and Catalysis’.”

The fact that the applicant is a credited member of the editorial board of the online *Journal of Thermodynamics & Catalysis – Open Access*, while notable, is not by itself indicative of international recognition as outstanding. The AAO cannot ignore 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.

In addition, as noted in the director's decision, the documents submitted by the petitioner reveal that the online *Journal of Thermodynamics & Catalysis – Open Access* is one of several journals published online only by OMICS Publishing Group, “an open-access publisher for the

advancement of science and technology.” The director also noted that, while the submitted documentation states that the published articles of the journal are deposited in the Directory of Open Access Journals (DOAJ) and Google Scholar, a search of journal articles in both sources only resulted in three articles published by the journal. On appeal, counsel states that the journal is “new.” The director further noted that the membership information on the OMICS Publishing Group website states that “Fellowship” members, who pay a membership fee of \$15,000, have the benefit of being “privileged for member editorial advisory board in the future.”<sup>10</sup> Therefore, membership in the editorial board of the journal does not require criteria that are not indicative of or consistent with international recognition. Finally, we note that the petitioner has not submitted evidence that the beneficiary has actually reviewed any manuscripts as a member of the editorial board of the journal.

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."

The Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at [www.bls.gov/oco](http://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](http://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.

Further, [REDACTED] and [REDACTED] 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 his work.

The beneficiary's citation history is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. See *Kazarian*, 596 F.3d at 1122. The petitioner has submitted several articles containing citations to the beneficiary's work. The record contains no evidence that the beneficiary's articles have been widely

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<sup>10</sup> The AAO notes that an informational brochure on the OMICS website now states that membership in OMICS Publishing Group is free, and that members are “privileged for member editorial advisory board in the future.”

cited or other comparable evidence that demonstrates that the beneficiary's publication record is consistent with international recognition. The petitioner also submitted a request from a graduate student in Turkey concerning the beneficiary's work, and letters from four graduate students in India requesting employment in the beneficiary's research laboratory. This moderate level of citation and letters from graduate students are not sufficient to demonstrate that the beneficiary's published work has been widely cited or other comparable evidence that demonstrates that the beneficiary's publication record is consistent with international recognition.

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

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

## **V. Conclusion**

Review of the record does not establish that the beneficiary is internationally recognized as an outstanding researcher. Therefore, the petitioner has not established the beneficiary's eligibility pursuant to section 203(b)(1)(B) of the Act and the petition may not be approved.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.