

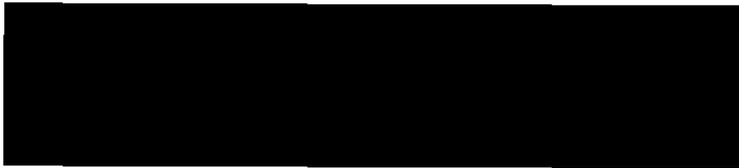
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

**U.S. Citizenship
and Immigration
Services**

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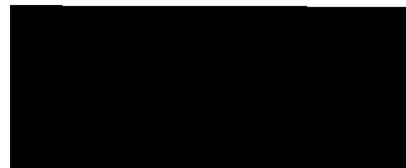


DATE: **JUN 25 2012** Office: NEBRASKA SERVICE CENTER FILE:

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:



INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is an institution of higher education/university . It seeks to classify the beneficiary as an outstanding professor 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. 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.

On appeal, counsel, on behalf of the petitioner, submits a brief and additional evidence. Counsel asserts that the director's actions in denying an application that demonstrates three of the criteria for Outstanding Professor/Researcher were arbitrary and capricious. Counsel asserts that the director violated the mandatory procedures contained in the Adjudicator's Field Manual by failing to carefully examine the application form and all supporting documents.

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;

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.

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).

III. Analysis

A. Evidentiary Criteria

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

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).

While the beneficiary's curriculum vitae lists numerous honors and awards, the petitioner submitted documentation in support of the beneficiary as the recipient of four awards/grants. The director erred by failing to address the beneficiary's research awards/grants. Nevertheless, upon review, the AAO finds that the evidence does not qualify as major prizes or awards for outstanding achievement in the academic field.

Regarding the beneficiary's research grants, research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement. The evidence fails to establish that the beneficiary's awards were major prizes or that the awards for his outstanding achievement in the academic field. In light of the above, the petitioner has not submitted evidence of major prizes or awards pursuant to 8 C.F.R. § 204.5(i)(3)(i)(A).

On appeal, the petitioner did not assert that the beneficiary met this criterion or offer additional evidence. 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.

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

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). It is noted that the record contains the beneficiary's curriculum vitae, which lists his membership in several associations. The petitioner must show that membership in the associations is based on the beneficiary's outstanding achievements in the academic field. The record fails to contain such evidence. 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 one article written by another that cites the beneficiary's work in the field. The regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) requires evidence of published material about the beneficiary's work. The AAO reads "published material" to mean the article itself, not a mere footnote or a single sentence within an article. Counsel asserts that the author listed one of the beneficiary's articles among only six citations. The article which cites the beneficiary's work is primarily about the author's own work, not the beneficiary's work. As such, it cannot be considered published material about the beneficiary's work. Given this, the record fails to contain evidence of published material written by others about the beneficiary's work.

In light of the above, the citations 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 submitted evidence that National Council of Teachers of Mathematics (NCTM) invited the beneficiary to speak at the NCTM Research Pre-session in 2011. This letter also indicates that the beneficiary has served as a reviewer of conference papers for the NCTM. This evidence qualifies under the plain language of the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(D).

journals.” [REDACTED] describes the beneficiary’s contribution and editing of the first book on the international use of GeoGebra and his other published works. He fails to state how the beneficiary’s work has impacted the academic field.

[REDACTED], Montana State University-Bozeman, discusses the beneficiary’s research and presentation work. He also stated that the beneficiary’s “research in the area of TPACK will become more widely influential as the Common Core State Standards are implemented throughout the United States.” While [REDACTED] describes the beneficiary’s work, he fails to provide specific examples of the impact of beneficiary's work in the academic field. Speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole.

[REDACTED] Faculty of Education, University of Cambridge, states that the beneficiary “has contributed to the field of Mathematics Education through his authorship of several chapters and editing of the first book on the international research and development of GeoGebra in mathematics education.” [REDACTED] describes the beneficiary’s “work in editing the first GeoGebra book will certainly prove to be a ground-breaking contribution to the field.” [REDACTED] discusses how the beneficiary’s work “will prove productive” and “will increase the ability of mathematics teachers to reach their students.” [REDACTED] speaks to the future and fails to explain how the beneficiary's work is already being applied in the academic field. Speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole.

[REDACTED] and [REDACTED] discuss the beneficiary’s work and how his research is being applied in the academic field.

[REDACTED] University “St. Clement of Ohrid,” discusses the “outstanding nature of [REDACTED] contributions to the field of Mathematics Education, particularly in the area of mathematical modeling and dynamic learning technologies in education.” She states she included the beneficiary’s 2010 Mathematical Association America paper on the construction of a mirascope using dynamic technology as required reading for more than 500 students at her university.

[REDACTED] University of Nicosia, discusses the beneficiary’s publications in the journal of Online Mathematics and its Application (JOMA) of Mathematical Association of America (MAA). [REDACTED] describes the beneficiary’s work as “groundbreaking” and his articles “helped to fill an important void in these studies (dynamic mathematics learning technology).” He further states that the beneficiary’s “work is widely used within the field as a starting point to study this issue.”

██████████ Fellow at Tufts University, states that the beneficiary is “an outstanding” professor. ██████████ further states that the beneficiary’s research has “already started helping us reconsider the use of dynamic technologies in school mathematics and professional development of mathematics teachers.” ██████████ explains how the beneficiary’s “presentation was one of the cornerstones of the ground-breaking first annual North American GeoGebra Conference because of the breadth and the depth of the development and research in high-need areas of mathematics education.”

██████████ Association of Teacher Educators (ATE) Leadership Academy, discusses the beneficiary’s presentations and participation in the ATE Leadership Academy. ██████████ explains the rigorous selection process for presenters at annual conferences and states the beneficiary has been one of their most popular presenters with “six exceptional presentations”. He discusses the beneficiary’s work as a significant contributor and editor of the first book regarding the use of GeoGebra. He also states that the beneficiary’s “work on mathematical modeling and simulations have been published by the Mathematical Association of America and utilized world-wide in mathematics education.”

██████████ SIUC, describes how the beneficiary “contributed to the implementation of a new graduate degree program for teachers, the SMART program, that recently graduated 27 in-service teachers who are empowered to advance math and science education in southern Illinois K-12 schools. His research programs and outcomes are contributing to an important body of knowledge in our field and used widely to study educational reform issues.”

██████████ Education at the School of Education at New York Institute of Technology, discuss the beneficiary’s presentation at a conference in 2011. ██████████ states that the beneficiary’s “study of the use of mathematical history to enrich teacher education using digital media was almost unprecedented in the field.” He further states that the beneficiary’s “research has taken these studies to a whole new level by incorporating digital media into mathematics teacher preparation and teacher development.”

██████████ Prince Mohammad Bin Fahd University in Al-Khobar, discusses the beneficiary’s research and contributions to the field of Mathematics Education, in particular, in the areas of mathematical modeling and simulations. ██████████ states that he has “implemented ██████████ work in model-centered learning in computer education and instruction designs systems” and “██████████ work is tremendously useful in my own teaching and research.”

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)).

The record shows that the beneficiary is clearly respected by his colleagues and has made useful contributions, specifically through his published articles, presentations and editing of the first GeoGebra book.

In light of the above, the petitioner has 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 numerous articles authored by the beneficiary. 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 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), (E) 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 by failing to carefully examine the application form and all supporting documents. 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), (E) and (F). Given this, the AAO will consider the evidence submitted in connection with those criteria.

The fact that the beneficiary served as a reviewer of conference papers for the National Council of Teachers of Mathematics 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 recognition of the beneficiary beyond his collaborators.

Regarding the beneficiary's published articles, 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. 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 the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. The record does establish that one of the beneficiary's articles has been cited; however, the evidence submitted reflects only a minor citation which is not consistent with being recognized as outstanding in the academic field.

The nature of the beneficiary's expert letters is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. Here, the twelve expert letters represented people from seven different countries around the world. Based on this, the evidence is indicative of the beneficiary's recognition beyond a little more than his own circle of

collaborators within the United States. Some of the expert letters state that the beneficiary's research work was either included as university required reading or implemented in teaching methods. The majority of experts describe the beneficiary's work on the first book on the international uses of GeoGebra as groundbreaking. In the absence of corroboration, the expert letters fail to establish that the beneficiary's research work is indicative of or 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 minor citation 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 researcher, who has won the respect of his collaborators, employers, 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 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.