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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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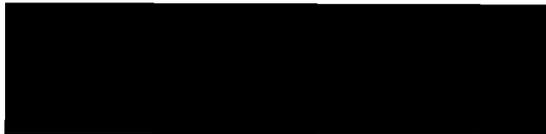
DATE: Office: NEBRASKA SERVICE CENTER  
**MAR 20 2012**

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a high speed optical networking firm. It seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B), as an outstanding researcher. The petitioner seeks to employ the beneficiary permanently in the United States as a research scientist. The director determined that the petitioner had not established that it employs the requisite three full-time researchers in addition to the beneficiary, as required by section 203(b)(1)(B)(iii)(III) of the Act; 8 C.F.R. § 204.5(i)(3)(iii)(C).

On appeal, counsel asserts that the petitioner has established that it employs the requisite three full-time researchers in addition to the beneficiary, and submits a brief and additional evidence. For the reasons discussed below, the AAO will uphold the director's decision.

Beyond the decision of the director, the record also fails to establish that the beneficiary enjoys international recognition. Specifically, when we simply "count" the evidence submitted, the petitioner has submitted qualifying evidence under two of the regulatory criteria as required, judging the work of others and scholarly articles pursuant to 8 C.F.R. §§ 204.5(i)(3)(i)(D) and (F). As explained in the final merits determination, however, much of the evidence that technically qualifies under these criteria reflects routine duties or accomplishments in the field that do not, as of the date of filing, set the beneficiary apart in the academic community through eminence and distinction based on international recognition, the purpose of the regulatory criteria.<sup>1</sup> *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)). An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

## I. LAW

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

\* \* \*

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<sup>1</sup> The legal authority for this two-step analysis will be discussed at length below.

(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. QUALIFYING EMPLOYER

The regulation at 8 C.F.R. § 204.5(i)(3)(iii) provides that a petition must be accompanied by:

An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or

(C) *A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-*

*time in research positions*, and that it has achieved documented accomplishments in an academic field.

(Emphasis added.)

The director concluded that the record lacks evidence that the petitioner employs at least three full-time researchers. The petitioner contends that it has met this requirement through its employment of [REDACTED] and [REDACTED]. However, the director found that the duties of [REDACTED] and [REDACTED] are predominantly management duties and not research duties. On appeal, counsel asserts that the director was in error, and submits additional evidence.

Counsel asserts that the petitioner's employment of three full-time researchers can be inferred from the petitioner's documented outstanding accomplishments in an academic field, and the fact that the petitioner was spending \$1.3 million for research and development (R & D) at the time this petition was filed. Counsel submits a copy of the petitioner's budget summary. Counsel also asserts that the petitioner's employment of three full-time researchers can be inferred from the fact that the petitioner rents research facilities from Cornell University and the University of California, Santa Barbara. The petitioner has submitted several rental invoices from these facilities, two of which list [REDACTED]. We reiterate that the regulation at 8 C.F.R. § 204.5(i)(3)(iii)(C) states that the petitioner must "demonstrate" that it employs at least three full-time researchers. Thus, it is the petitioner's burden to establish this element of eligibility; USCIS is not required to infer the number of researchers, either based upon the petitioner's accomplishments, the amount of its annual R & D budget or its rental of research facilities.

Counsel attaches job descriptions for the job title "materials scientists" from *O\*New OnLine* and the *Occupational Outlook Handbook*, and a job description of "Director, Research and Development" from the *Dictionary of Occupational Titles*. At issue, however, are not the job titles of [REDACTED] and [REDACTED] but their job duties. The petitioner submitted, in response to a request for evidence, resumes for [REDACTED] and [REDACTED] which contain their job duties.

[REDACTED] resume lists his job duties as [REDACTED] Technology as follows: leading MEMS product development efforts; being a key technical contributor during technology incubation and evaluation; leading a group of MEMS engineers to turn novel technology into MEMS products; manage development projects to specification and report weekly to the Executive Management Team; and, as a member of the IP (intellectual property) Management team, establish a robust MEMS patent portfolio. [REDACTED] job duties do not suggest that the S. Director engages in full-time research activities, but, rather, engages in management duties which include some research activities.

[REDACTED] resume lists his job duties as [REDACTED] as follows: project management/monitoring, budget management, interface with customer, optical design work, proposal writing, technical report writing and supervising other team members. The remaining job duties in [REDACTED] resume are stated in the past tense and appear to pertain to his previous position as [REDACTED]

While his job duties do include some optical design work which may involve research activities, [REDACTED] job duties do not suggest that the [REDACTED] engages in full-time research activities, but, rather, engages in management duties.

On appeal, counsel asserts the management duties of [REDACTED] and [REDACTED] do not preclude them from engaging in research activities. However, the question is not whether they engage in research activities in addition to management duties, but whether they are *full-time* researchers, and their job duties suggest that they are not.

In light of the above, the AAO agrees with the director that the petitioner has not established that it employs the necessary number of full-time researchers such that it is a qualifying petitioner pursuant to 8 C.F.R. § 204.5(i)(3)(iii).

### III. INTERNATIONAL RECOGNITION

The regulation at 8 C.F.R. § 204.5(i)(3)(i) states that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The regulation lists the following six criteria, of which the beneficiary must submit evidence qualifying under at least two.

- (A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;
- (B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;
- (C) Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;
- (D) Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field;
- (E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or
- (F) Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under a similar classification set forth at section 203(b)(1)(A) of the Act. *Kazarian v. USCIS*, 596 F.3d 1115 (9<sup>th</sup> 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>2</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>3</sup> While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court's reasoning persuasive to the classification sought in this matter. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. 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).

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<sup>2</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>3</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.

## A. Analysis

### i. Evidentiary Criteria

This petition, filed on May 26, 2010, 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).<sup>4</sup>

*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 following conference organizers invited the beneficiary to review papers: the *ICC CISS 2009*, *Shadow-CoNEXT 2008*, *NTMS 2008*, *ICCN Network Security Track 2008*, *GC CCNS 2008*, *WiMob 2008*, *ICC WCS 2008*, *IEEE Globecom Ad-hoc and Sensor Networking Symposium 2007*, *Q2SWinet 2007*, *ICC Computer and Communications Network Security Symposium 2007*, *ICC WAS 2007*, *INFOCOM 2007*, *INFOCOM Minisymposium 2007*, *Globecom WASNet 2006*, *MASS 2006*, *ICC 2005* and *HPSR 2005*. The record establishes that the beneficiary completed most of the requested reviews. While approximately one-third of the requests for review are from the beneficiary's [REDACTED] many of the invitations are from organizers who are independent of the beneficiary. The petitioner also submitted evidence that the beneficiary served as a technique committee member for the following conferences: *IEE NAS 2009*, *ACM CoNEXT 2009*, *CSA 2008*, *WiMob 2008*, *Second IFIP International Conference on NTMS 2008*, *IEEE GlobeCom 2008*, *ICCCN 2008*, *IEEE ICC 2007*. 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.*

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 (3<sup>rd</sup> Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> 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.

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<sup>4</sup> The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

As evidence relating to the beneficiary's original scientific or scholarly research contributions to the academic field, the petitioner submitted six reference letters (four from the beneficiary's immediate circle of coauthors, collaborators and professors).

states that he was the beneficiary's Doctoral thesis supervisory committee member at the University of Nebraska Lincoln, where he states the beneficiary worked on key management issues in hybrid wireless sensory networks (HWSN's). He states that the beneficiary's research developed two Elliptic-Curve based schemes for secure group communication in ad hoc networks, which states are more efficient than traditional communication schemes and hold important applications. does not explain how this work has impacted the field. He states that the beneficiary's research proposed centralized group rekeying (CGK) schemes in sensor networks, which he states are more efficient and secure than traditional schemes, and that the beneficiary proposed a communication protocol for WSN's to address scalability and energy-efficiency limitations found in previous protocols. He states that the beneficiary proposed a key management protocol, mKeying, to support key distribution and revocation in WSN's with multiple base stations. does not provide examples of independent research institutions using the beneficiary's proposed techniques, or assert that the beneficiary's proposed techniques are becoming one of the "widely accepted standard techniques" as would be expected of a contribution to the field as a whole. states that the beneficiary has authored scholarly research papers and articles. The regulations, however, include a separate criterion for scholarly articles at 8 C.F.R. § 204.5(i)(3)(i)(F). 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.

states that he worked with the beneficiary at the University of Nebraska Lincoln. He states that he and the beneficiary developed a novel key management scheme for WSN's and co-authored two papers. He states that they proposed a novel key revocation scheme for WSN's, KeyRev, which is far better than the existing centralized key revocation scheme. discusses the potential applications for the beneficiary's research but does not provide any examples of how the beneficiary's innovations are already being applied in the field. He states that the beneficiary's other research contributions have involved network security issues such as cryptography, secure routing protocols and intrusion detection protocols, but he does not explain how the beneficiary's work is already a contribution to the field as a whole.

states that he met the beneficiary in November 2007, when the beneficiary began working with him at the petitioning company. He states that the beneficiary's Doctoral work proposed a novel protocol, Control Packet Queuing (CPQ), based on a popular protocol for an optical burst switching (OBS) network. He states that the beneficiary's proposed protocol will improve reliability and performance of the optical network and reduce costs, but he does not provide any examples of how the beneficiary's innovations are already being applied in the field.

states that she met the beneficiary in 2007 at the University of Nebraska Lincoln when they worked together in a Database course. She states that the beneficiary has presented a novel

key distribution scheme for WSN's, mKeying, which she states is very promising, and has potential applications in the area of battlefields and homeland security, but she does not state that the beneficiary's innovations are already being applied in the field.

states that he became aware of the beneficiary's work in 2006 from the beneficiary's article, *a Survey of Security Issues in Wireless Sensory Networks*. states the beneficiary's research identified the security issues in WSN's, providing "a solid foundation for engineers to develop better solutions", but he does not state how the beneficiary's work has already contributed to the field as a whole.

states that he became aware of the beneficiary's work at an *IEEE International Conference* (2007), from his conference publication regarding efficient key revocation in WSN's. describes KeyRev, the beneficiary's proposed scheme to remove compromised sensor nodes from WSN's, as "important and groundbreaking", with broad usage in security applications for other types of networks, but he does not assert that the beneficiary's proposed techniques are becoming one of the "widely accepted standard techniques" as would be expected of a contribution to the field as a whole.

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>5</sup> Considering the letters and other evidence in the aggregate, the record does not establish that the beneficiary's research, while original, can be considered a contribution to the field as a whole.

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

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

The petitioner has submitted a listing of several books and abstracts of several book chapters co-authored by the beneficiary. The petitioner has submitted several journal articles, conference and workshop papers, and technical reports co-authored by the beneficiary. Thus, the petitioner has submitted evidence that qualifies under 8 C.F.R. § 204.5(i)(3)(i)(F).

The petitioner has submitted evidence that the beneficiary has been cited in excess of 50 times by researchers and scientists around the world. The beneficiary's citation record, by itself, is not indicative of contributions to the academic field as a whole. 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 petitioner also submitted a copy of a request to re-publish a journal article co-authored by the beneficiary, and requests from three graduate students outside of the United States concerning the beneficiary's work. All of this evidence will be considered below in our final merits determination.

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.

## ii. 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

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<sup>5</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).

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 AAO cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. The same is true for scientific conferences, which rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. The record establishes the beneficiary's moderate record of peer review (approximately 50 conference papers) and service as a technique committee member for several international conferences. However, 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, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, the AAO cannot conclude that the beneficiary's judging experience is indicative of or consistent with international recognition.

Regarding the beneficiary's original research, as stated above, it does not appear to rise to the level of a contribution to the academic field as a whole. 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 petitioner has provided a listing of several books and abstracts of several book chapters co-authored by the beneficiary, as well as copies of several journal articles, conference and workshop papers, and technical reports co-authored by the beneficiary. While the beneficiary has authored books, book and articles, the Department of Labor's Occupational Outlook Handbook (OOH) provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See [www.bls.gov/oco/ocos066.htm](http://www.bls.gov/oco/ocos066.htm) (accessed June 23, 2011 and incorporated into the record of proceeding). The OOH expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field.

As stated above, 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 submitted citation results from Google Scholar indicating that the

beneficiary's work has been moderately cited (54 times). The petitioner also submitted a copy of a request to re-publish a journal article co-authored by the beneficiary, and requests from three graduate students outside of the United States concerning an incomplete citation in the beneficiary's work. This moderate level of citation, request to reprint a journal article, 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 books and 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 research scientist, 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 or professor.

### III. 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.

In addition, the petitioner has not established that it employs the requisite three full-time researchers in addition to the beneficiary, as required by section 203(b)(1)(B)(iii)(III) of the Act; 8 C.F.R. § 204.5(i)(3)(C)(iii).

The petition will be denied for the above-stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.