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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

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Date: **MAR 20 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 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 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 manufactures and sells superabrasives. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as an application development engineer. 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 researcher.

On appeal, the petitioner submits a brief and additional evidence. For the reasons discussed below, the AAO concurs with the director that the record 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.¹ *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)).

Beyond the decision of the director, the record lacks the actual job offer issued by the petitioner to the beneficiary, pursuant to 8 C.F.R. § 204.5(i)(3)(iii). Further, 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). 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 (9th 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):

* * *

¹ 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. Job Offer from Qualifying Employer

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

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

- (A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;
- (B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or
- (C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

The petitioner has not submitted its job offer to the beneficiary. Instead, the petitioner submitted a letter from Beth Hemans, Director of Human Resources, addressed to U. S. Citizenship and Immigration Services (USCIS) affirming the beneficiary's employment. *Black's Law Dictionary* 1189 (9th ed. 2009) defines "offer" as "the act or an instance of presenting something for acceptance" or "a display of willingness to enter into a contract on specified terms, made in a way that would lead a reasonable person to understand that an acceptance, having been sought, will result in a binding contract" and defines "offeree" as "[o]ne to whom an offer is made." In addition, *Black's Law Dictionary* defines "offeror" as "[o]ne who makes an offer." *Id.* at 1190.

In light of the above, the ordinary meaning of an "offer" requires that it be made to the offeree, not a third party. As such, regulatory language requiring that the offer be made "to the beneficiary" would simply be redundant. Thus, the letter from [REDACTED] addressed to USCIS affirming the beneficiary's employment is not an offer of employment within the ordinary meaning of that phrase. The record does not contain an offer of employment from the petitioner addressed to the beneficiary. While the AAO does not question the credibility of [REDACTED] the petitioner has not explained why the AAO should accept [REDACTED] assertions of the terms of the offer of employment in lieu of the offer of employment itself, which is required initial evidence pursuant to 8 C.F.R. § 204.5(i)(3)(iii).

In addition, the petitioner has not demonstrated that it employs the requisite three full-time researchers. Counsel asserts that the petitioner employs three full-time researchers in addition to the beneficiary: [REDACTED]

[REDACTED] In response to a request for evidence (RFE) counsel submitted the 2009 W-2 forms for these three individuals, and general descriptions of the positions of senior development engineer, development engineer and development and testing support engineer. 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 on their W-2 forms or general job descriptions for their job titles. At issue are the job duties, not the job titles, of [REDACTED] and [REDACTED]. [REDACTED] Since the petitioner has not submitted descriptions of their job duties, 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 (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.² 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

² 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)).

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.³ 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 (9th Cir. 2003) (recognizing the AAO's *de novo* authority).

IV. Analysis

A. Evidentiary Criteria⁴

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 several citations to the beneficiary's work, although the petitioner has not attached the articles themselves. 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 published material itself, not a mere citation record. In addition, 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.

³ 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.

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

The petitioner also submitted several published articles that briefly discuss the beneficiary's work and that of his colleagues at Penn State University.⁵ 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, these articles are university press releases that do not include the author of the material, as acknowledged by counsel on appeal.

As the published material submitted by the petitioner does not include the author of the material, 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 *International Journal of Refractory Metals & Hard Materials (IJRMHM)*, *Powder Technology Journal*, and the journal *Metallurgical and Materials Transactions A*. 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 which the beneficiary is listed as a co-inventor; documents from the *International Journal of Refractory Metals and Hard Materials* listing two of the applicant's articles as being among the publication's most downloaded articles for 2006 and 2007; and, eight reference letters (five from the beneficiary's immediate circle of coauthors and collaborators). The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(E) does not require that the beneficiary's contributions themselves be internationally recognized as outstanding. That being said, the plain language of the regulation does not simply require original research, but an original "research contribution." Had the regulation contemplated merely the submission of original research, it would have said so, and not have included the extra word "contribution." Moreover, the plain language of the regulation requires that the contribution be "to the academic field" rather than an individual laboratory or institution.

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

⁵ One of the articles submitted by the petitioner is a foreign language article without an accompanying translation. 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 article.

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, but merely states that it, "plans to use this patent in its future production of innovative products." Thus, the impact of the innovation is not documented in the record.

We acknowledge that the beneficiary has authored articles. Even if we considered the original nature of the beneficiary's research to qualify it under the criterion at 8 C.F.R. § 204.5(i)(3)(i)(E), and we do not, whether or not the contributions are indicative of the beneficiary's international recognition in the field is a valid consideration under our final merits determination. (We will consider the articles under 8 C.F.R. § 204.5(i)(3)(i)(F)). However, evidence that two of the beneficiary's articles were among the most downloaded articles for 2006 and 2007 in the *International Journal of Refractory Metals and Hard Materials*, without other evidence, does not demonstrate that this original research is considered a contribution to the academic field. Downloads of the beneficiary's articles carry less weight than citations. One could download the article and realize it isn't useful; if one has cited the article, one has used it, at least as background.

states that he met the beneficiary in 2002, when he worked with him during the beneficiary's Master's degree research at Penn State University. He states that the beneficiary developed the first powder injection molding process for niobium, which he states is an important and groundbreaking contribution to the field of powder metallurgy and injection molding. does not explain how this work has impacted the field. He also states that the beneficiary's work on decomposition curves for binders in injection molding is an important contribution to the field, which he states has been applied successfully in both academic research and the industry practice. does not provide examples of independent research institutions using the beneficiary's technique or assert that the beneficiary's technique is becoming one of the "widely accepted standard techniques" as would be expected of a contribution to the field as a whole. He states that the beneficiary has authored scholarly 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 met the beneficiary in 2005, when he worked with him during the beneficiary's Ph.D. research at Penn State University. He states that the beneficiary's "exceptional knowledge in the field of powders and particulate materials processing . . . was instrumental in the development of optimum feedstock for self-lubricating wear resistant coatings for jet engines," which led to the "successful culmination of a funded project." does not provide any examples of how the beneficiary's innovations are already being applied in the field. He states that the beneficiary's approach "for modeling composite coatings deposition using cold spray set a new paradigm in coatings science. It provided an inexpensive gateway to the otherwise complex and computationally expensive impact-contact modeling." While discusses the potential applications for the beneficiary's research, he t

does not suggest it is in use. He notes that the beneficiary published his work but he does not explain how it has impacted the field.

states that he met the beneficiary at the *International Conference of Powder Metallurgy and Particulate Materials*, where the beneficiary presented his work on powder injection molding of pure niobium. He asserts that the beneficiary's research, "has made critical contributions to the field of powder injection molding and powder of processing of refractory and hard metals." He states that some of the numerical models developed by the beneficiary and his colleague, "have been applied successfully to both academic research and in the powder metallurgy industry with tools for predicting sintering and debinding processes that helps designing their optimum processing conditions." does not provide examples of independent research institutions using the beneficiary's technique or examples of that the beneficiary's innovations are already being applied in the field.

states that he has known the beneficiary since the beneficiary became a member of the editorial board for the and of which He states that the beneficiary has performed, "outstanding research in the field in powder metallurgy, specifically in near-net shaping of refractory and hard metals" and that the beneficiary's "work on powder injection molding of pure niobium gave him international recognition and have truly contributed to the field of refractory metals and powder injection molding." However, does not provide any examples of how the beneficiary's work is already being applied in the field. also states that the applicant's published articles in IJRMHM were part of 25 most downloaded articles in years 2006 and 2007, respectively, and that IJRMHM receives approximately 50,000 requests for full-text articles per year. However, at stated above, the regulations 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.

was the beneficiary's Master's degree and Ph.D. advisor at Penn State University. He states that the beneficiary's Master's work yielded a novel process to inject mold pure niobium powder into intricate shapes, and that his work in powder feedstock formulation was instrumental in meeting a very important goal of wear-resistant coatings. He does not explain how this work has impacted the field. states that the beneficiary's Ph.D. work involved developing self-lubricating coatings for jet engines. He does not explain how this work has impacted the field. While asserts that the beneficiary's development of the powder injection molding process for pure niobium is superior to "the established processes of die-compaction and machining . . . providing a competitive advantage for U.S. industries," does not provide examples of independent research institutions using the beneficiary's technique or assert that the beneficiary's technique is becoming one of the "widely accepted standard techniques" as would be expected of a contribution to the field as a whole. He states that the beneficiary's research, "opened avenues for injection-molded niobium parts covering a wide range from rocket-nozzles, wires, human bone replacements to orthodontic braces." While discusses the potential applications for the beneficiary's research he does not suggest it is in use. also states that the beneficiary's

research on a particular mathematical model, “provided a tool to conveniently change binder formulations with or without the metal powder and to calculate the decomposition temperature, hold time, and the heating rate for the debinding process in powder injection molding.” Once again, [REDACTED] does not provide any examples of independent institutions using the beneficiary's system.

[REDACTED] states that he has known the applicant since 2002, when he was his colleague at Penn State University. [REDACTED] states that the beneficiary's work on powder injection molding of niobium was the first effort to mold pure niobium, and has set a new paradigm in the field of powder metallurgy. He does not provide examples of independent research institutions using the beneficiary's technique, or assert that the beneficiary's technique is becoming one of the "widely accepted standard techniques" as would be expected of a contribution to the field as a whole. He also states that the numerical models which he and the beneficiary developed in collaboration, the Master Sintering Curve and the Master Decomposition Curve, have been applied in academia and industry, providing industry with tools to predict sintering and debinding processes. [REDACTED] discusses the potential applications for the beneficiary's research but does not provide any examples of independent institutions using the beneficiary's system. [REDACTED] also states that the beneficiary has authored scholarly articles, but he does not explain how they have impacted the field.

[REDACTED] states that he has known the beneficiary from Penn State University. He states that the beneficiary's work on powder injection molding of pure niobium, and “his novel approach to develop an optimum powder feedstock based on its rheological behavior and simulation is an exceptional contribution to the injection molding science. This can provide huge savings in raw materials costs . . .” [REDACTED] also states that the beneficiary “developed and evaluated a master decomposition curve for niobium, which can help in optimizing binder composition without additional experiments . . . leading the path to new developments.” He asserts that the beneficiary's research “could open the doors to injection molded niobium parts ranging from rocket nozzles to human bone replacements to orthodontic braces.”⁶ [REDACTED] discusses the potential applications for the beneficiary's research but does not provide any examples of independent institutions using the beneficiary's system.

[REDACTED] states that, while he has not met the beneficiary, he has been “referring and using his seminal work on powder injection molding in my research.” [REDACTED] does not provide any examples of how he has used the beneficiary's research in his own research. He also states that the beneficiary's research identifying a process window to successfully injection mold pure niobium, “has opened numerous opportunities for the powder metallurgy research groups around the globe.” [REDACTED] does not discuss the potential applications and benefits of the beneficiary's research. He states that the beneficiary's development of a master decomposition curve is a tool that “helps in building in the quality during the process.” While [REDACTED] suggests the potential benefits of the beneficiary's research he does not suggest that the beneficiary's technique is becoming one of the "widely accepted standard techniques", as would be expected of a contribution to the field as a whole.

[REDACTED] used very similar language to [REDACTED]. The beneficiary's research “could open the doors to injection molded niobium parts ranging from rocket nozzles . . . to orthodontic braces.”

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.⁷ 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 submitted several 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 two of the criteria that must be satisfied to establish the minimum eligibility requirements for this classification. Specifically the

⁷ *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).

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. Counsel asserts that the journals have assigned manuscripts to the applicant for his review based upon, "his international reputation for excellence in his field." The beneficiary reviewed four manuscripts for the international journal *Metallurgical and Material Transactions* and one article for *Powder Technology Journal*. The beneficiary also reviewed ten articles as a credited member of the editorial board listed in the *International Journal of Refractory Metals and Hard Materials (IJRMHM)*. The fact that the applicant is a credited member of the editorial board of the *IJRMHM*, 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.

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

While the beneficiary has published 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 (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.*

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 contains no evidence that the beneficiary's articles have been widely cited or other comparable evidence that demonstrates that the beneficiary's publication record is consistent with international recognition.

In light of the above, the final merits determination reveals that the beneficiary's qualifying evidence, 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. Indeed, with the exception of a small number of citations, the record lacks evidence that members of the academic field outside of the beneficiary's immediate circle of colleagues are even aware of his work.

C. Conclusion

The petitioner has shown that the beneficiary is a talented metallurgical engineer, 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. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

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.