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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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Date: **MAY 11 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 is an institution of higher education/university. It seeks to classify the beneficiary as an outstanding professor or researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as an assistant professor of statistical genetics and genomics. The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding professor or researcher.

The petitioner has not submitted a brief on appeal. The petitioner has submitted the following additional evidence on appeal: an additional published article containing a citation to the beneficiary's work; and, a published abstract previously identified by the petitioner as containing a citation to the beneficiary's work.¹ For the reasons discussed below, the AAO concurs with the director that the record fails to establish that the beneficiary enjoys international recognition as outstanding in the academic field. Specifically, the petitioner has submitted qualifying evidence under only one of the required regulatory criteria, scholarly articles pursuant to 8 C.F.R. §§ 204.5(i)(3)(i)(F). Therefore, the evidence submitted by the petitioner has failed to establish that the beneficiary satisfies the antecedent regulatory requirement of two types of evidence. 8 C.F.R. § 204.5(i)(3)(i).

¹ On appeal the petitioner also submits an article published in 1993 containing a citation to an article published by the beneficiary in 1987, and three additional letters of reference. It is noted that on December 15, 2010, the director issued a Request for Evidence (RFE). The RFE instructed the petitioner to submit evidence of the applicant's eligibility pursuant to section 203(b)(1)(B) of the Act. In denying the application, the director concluded that the documents submitted in response to the RFE were not sufficient to establish that the applicant's eligibility. The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the application is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the application. 8 C.F.R. § 103.2(b)(14). As in the present matter, where an applicant has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Ohaigbena*, 19 I&N Dec. 533 (BIA 1988). If the applicant had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of this evidence submitted with the appeal. Regardless, the AAO notes that the letters of reference do not identify an original research contribution made by the beneficiary to the academic field as a whole, or provide evidence of his recognition beyond his own circle of collaborators.

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.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)).

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 this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did

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)).

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.



not submit qualifying evidence under at least two criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of two types of evidence. *Id.*

III. Analysis

A. Evidentiary Criteria⁴

This petition, filed on December 13, 2010, seeks to classify the beneficiary as a professor or researcher who is recognized internationally as outstanding in his academic field. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(i)(3)(i).

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

At the time of filing this petition, the petitioner asserted that the beneficiary “is not attempting to satisfy this criteria but we thought it good background information to let you know that in 2008, [REDACTED] won the Paul Anderson Student Paper Competition held by the American Statistician Association (ASA) . . .” The petitioner also stated that the beneficiary was awarded travel grants to finance his attendance at three professional conferences.

It is significant that the *proposed* regulation relating to this classification would have required evidence of a major *international* award. The final rule removed the requirement that the award be “international,” but left the word “major.” The commentary states: “The word “international” has been removed in order to accommodate the *possibility* that an alien might be recognized internationally as outstanding for having received a major award that is not international.” (Emphasis added.) 56 Fed. Reg. 60897-01, 60899 (Nov. 29, 1991.)

Thus, the standard for this criterion is very high. The rule recognizes only the “possibility” that a *major* award that is not international would qualify. Significantly, even lesser international awards cannot serve to meet this criterion given the continued use of the word “major” in the final rule. *Compare* 8 C.F.R. § 204.5(h)(3)(i) (allowing for “lesser” nationally or internationally recognized awards for a separate classification than the one sought in this matter).

The director concluded that the beneficiary’s student academic award and grants to finance attendance at a conference do not qualify as major prizes or awards for outstanding achievement in the academic field. Counsel does not challenge that conclusion on appeal. Accordingly, the petitioner has abandoned that claim. *See Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005)(holding, in counseled case, that when appellant fails to offer argument on an issue, that issue is abandoned); *Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *9 (E.D. N.Y. Sept. 30, 2011). Nevertheless, upon review, the AAO concurs with the director’s conclusion that

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

Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation

The petitioner has submitted two articles containing citations to the beneficiary's work. The regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) requires evidence of published material about the beneficiary's work. Upon review, the published material which cites the beneficiary's work is primarily about the author's own work, or recent work in the field generally, and not about the beneficiary's work. As such, it cannot be considered published material about the beneficiary's work.

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

Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field

At the time of filing this petition, the petitioner submitted evidence that the beneficiary agreed to review two manuscripts for the *Journal of Probability and Statistics (JPS)*.⁵ The petitioner has not submitted evidence that the beneficiary completed his review of these manuscripts. In addition, the petitioner also asserted that the "*Journal of IEEE* frequently requests [REDACTED] to determine if an article is substantive and groundbreaking enough to be published in their prestigious journal. He has also been asked to perform this type of peer review work for *Statistica Sinica*." In fact, the petitioner did not submit any evidence establishing that the beneficiary actually served on the panel of judges for the *Journal of IEEE* or *Statistica Sinica*.

As the plain language of the regulation requires "the alien's participation . . . as the judge of the work of others," the mere request to serve as a judge, or even agreeing to judge, without evidence of actually judging the work of others is insufficient to meet the plain language of this regulatory criterion.

In light of the above, the AAO withdraws this portion of the director's decision, and finds that the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(i)(3)(i)(D).

⁵The petitioner also submitted evidence that the beneficiary was nominated to serve on the Advisory and Review Committee of the Division of Resource and Environment Statistics of the Chinese Association of Applied Statistics, 2011 to 2012. However, this event occurred after December 13, 2010, the date of filing this petition, and cannot be considered evidence of the beneficiary's eligibility after that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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: nine reference letters from members of the beneficiary's field (eight 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.

We acknowledge that the beneficiary has authored several articles in journals in the academic field. 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. We will consider the articles under 8 C.F.R. § 204.5(i)(3)(i)(F).

states that he was the beneficiary's doctoral advisor in statistics at the University of Florida. According to the beneficiary's curriculum vitae, has co-authored several articles with the beneficiary. He states that the beneficiary "plays a central role in implementing algorithms for differential equations into a statistical mixture framework for functional mapping. He derived several mathematical and statistical theorems to simplify the calculations of differential equations within the mixture framework." He states that the beneficiary's research findings "will undoubtedly impact the pharmaceutical industry, AIDS research and agricultural and forestry industries in the United States." While discusses the potential applications for the beneficiary's research, he does not suggest that the beneficiary's computational tools are currently in use, or are becoming one of the "widely accepted standard techniques" as would be expected of a contribution to the field as a whole. Although he states that the beneficiary's "original scientific findings and cutting-edge research will receive sustained national and international acclaim and recognition in the fields of statistics," he does not explain how the beneficiary's work has impacted the field.

professor and chairperson of the petitioner's department of biostatistics, states that the beneficiary's research "will move forward the methodology for gene discovery in clinical settings." She also states that the beneficiary's research related to wireless communication "improved this field of research by deriving the best estimate of signal, subject to constraints, a growing issue in wireless communication." While discusses the potential applications for the beneficiary's research, she does not provide examples of independent research institutions using the beneficiary's techniques, or explain how the beneficiary's work has impacted the field.

a professor of mathematics at the University of Florida, states that he has known the beneficiary for several years and has co-authored work with him. He states that the beneficiary can be a leading researcher in the area of the application of mathematics and statistics to

genetics. [REDACTED] does not provide examples of how the beneficiary's research findings are already being applied in the field.

[REDACTED] states that he has known the beneficiary from his association with the statistical genetics group at Penn State Medical Center, of which the beneficiary was a member as a post-doctoral fellow. He states that the beneficiary helped to develop a differential-equation-based model to help identify the genes that are responsible for dynamics of virus. He states that the beneficiary's model "will have great influence in studying molecular genetics properties of the virus dynamics." Although [REDACTED] provides an example of a potential application for the beneficiary's research, he does not provide examples of independent research institutions using the beneficiary's research findings.

[REDACTED] a professor of mathematics at the College of Computer Science at South China Normal University, states that he became aware of the beneficiary's work when his research team read a 2009 article co-authored by the beneficiary. He states that the beneficiary's research work "totally changed our view about the disease dynamic models such as HIV and hepatitis" and "brings us creative methods in solving our research problems." [REDACTED] does not state that he or his research team has used the beneficiary's research findings, nor does he explain how the beneficiary's work has impacted the field.

[REDACTED] China, states that he became aware of the beneficiary's research when the beneficiary applied for a job at Guangzhou University, prior to working for the petitioning university. Although he states that the beneficiary's research "has changed others (sic) work," he does not explain how the beneficiary's work has impacted the field.

[REDACTED] Beijing, states that he has known the beneficiary for many years, but he does not indicate how he learned of the beneficiary's work. He states that the beneficiary has made advances in statistical genetics that have changed his and other's work. He does not state that he has used the beneficiary's research findings, and he does not provide examples of research institutions using the beneficiary's research findings. Although [REDACTED] states that the beneficiary's proposed algorithm "has corrected some mistakes of many widely cited publications," he does not state that the beneficiary's computational tool is currently in use, or 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 will influence many scientists' research. Speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole.

[REDACTED] professor of biostatistics at the petitioning university, states that the beneficiary is "driving research forward" in the areas of methodological research focused on genetic problems, and research involving "the analysis of longitudinal features of disease measured in subjects over time." [REDACTED] does not provide examples of independent research institutions using the beneficiary's techniques, or explain how the beneficiary's work has impacted the field.

assistant professor of biochemistry and molecular biology at the petitioning university, states that the beneficiary is performing statistical analyses of cancer research results. While it is clear that the beneficiary's work benefits the petitioning university, does not state that the beneficiary has made original scientific or scholarly research contributions to the academic field.

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

The opinions of experts in the field are not without weight and have been considered above. 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.⁶ Considering the letters 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).

⁶ *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).

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 in journals in the academic field.⁷ 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 failed to satisfy the antecedent regulatory requirement of two types of evidence. 8 C.F.R. § 204.5(i)(3)(i).

IV. Conclusion

The documentation submitted in support of a claim of outstanding ability must clearly establish that the alien has achieved international recognition.

Had the petitioner submitted the requisite evidence under at least two evidentiary categories, in accordance with the *Kazarian* opinion the next step would be a final merits determination that considers all of the evidence in the context of whether or not the evidence submitted by the petitioner has demonstrated that the beneficiary is recognized internationally as an outstanding professor or researcher in the academic field specified in the petition. 8 C.F.R. § 204.5(i)(3)(i); *see also Kazarian*, 596 F.3d at 1119-20. As the petitioner has not submitted the requisite evidence under at least two evidentiary categories, the appeal will be dismissed on this basis alone. The AAO will not conduct a final merits determination.⁸

For the above stated reasons, the petitioner has not established eligibility pursuant to section 203(b)(1)(B) of the Act, and the petition may not be approved.

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

ORDER: The appeal is dismissed.

⁷ The petitioner also submitted evidence that the beneficiary authored a chapter in a book published in 2011, and was invited to participate in a seminar in China in 2011. However, these events occurred after December 13, 2010, the date of filing this petition, and cannot be considered evidence of the beneficiary's eligibility after that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

⁸ The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d at 145. In any future proceeding on motion or as a result of litigation, the AAO maintains the jurisdiction to conduct a final merits determination as the official who made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I. & N. Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).