

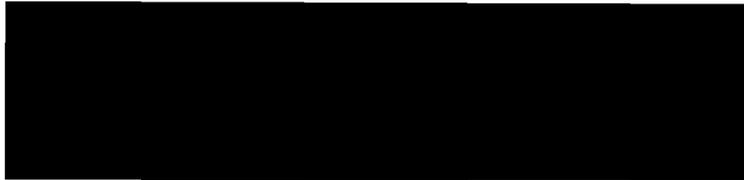
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



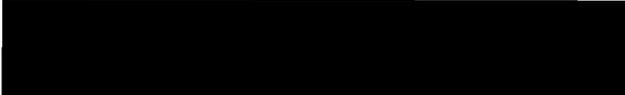
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Date: **MAY 25 2012** Office: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

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

On appeal, the petitioner has submitted a brief and an updated record of citations to the beneficiary's published works. The petitioner has not submitted any further evidence on appeal.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, 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.² *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)).

¹On appeal the petitioner submitted several requests for the beneficiary to review manuscripts, which have previously been submitted into the record. Also on appeal, the petitioner submitted several requests for the beneficiary to review manuscripts after this petition's filing date, and documentation showing that several articles authored by the beneficiary were published after the petition's filing date. However, since the dates of these events took place after the date of filing the petition on March 12, 2010, they 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). Further, on appeal the petitioner submitted requests for the beneficiary to review two manuscripts for an Academy of International Business (AIB) Conference in 2009. However, it is noted that on April 8, 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 the applicant's eligibility. The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the application is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the application. 8 C.F.R. § 103.2(b)(14). As in the present matter, where an applicant has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Ohaigbena*, 19 I&N Dec. 533 (BIA 1988). If the applicant had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of this evidence submitted on appeal.

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

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.³ 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.

³ 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)).

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.⁴ 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).

III. Analysis

A. Evidentiary Criteria

This petition, filed on March 12, 2010, seeks to classify the beneficiary as a professor or researcher who is recognized internationally as outstanding in her academic field. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(i)(3)(i).

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

The petitioner submitted evidence that the beneficiary received the following awards: [REDACTED] travel stipend; Sheth Foundation travel stipend; Temple Center for International Business Education and Research (CIBER) travel stipend; and, awards for best/ among-the-best academic papers for doctoral research conferences in 2003, 2004, 2006 and 2007.

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.

⁴ 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.

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).

Regarding the beneficiary having received the Ewing Marion Kauffman Foundation travel stipend, the documentation reflects the stipend funded the beneficiary’s registration fee and lodging for the Doctoral Consortium Program, Babson College Entrepreneurship Research Conference (2008). The documentation also reflects that the travel stipend was provided to the 25 best qualified applicants, based upon the following criteria: applicants should be currently enrolled in a doctoral program with a concentration in entrepreneurship; applicants will be evaluated based on their academic achievements, including publications and conference presentations, with preference given “to those who are in the process of formulating a dissertation proposal or who will be doing so in 2008.” A grant to finance the beneficiary’s attendance at a conference does not qualify as a major prize or award for outstanding achievement in the academic field. In addition, the documentation reflects that this award does not demonstrate international recognition in the field, but, rather, academic achievements in comparison with one’s fellow students.

Regarding the beneficiary having received a Sheth Foundation travel stipend, the award letter reflects that the beneficiary received \$750 to defray her expenses in attending the Academy of International Business (AIB) Annual Conference in Milan (2008). The documentation also reflects that this travel stipend is available to full-time doctoral students. As stated above, a grant to finance the beneficiary’s attendance at a conference does not qualify as a major prize or award for outstanding achievement in the academic field.

Regarding the beneficiary having received a Temple CIBER travel stipend, the award letter reflects that the beneficiary received \$750 to defray her expenses in attending the AIB doctoral consortium (2008). The documentation also reflects that this award is available to faculty members and doctoral students proposing to develop a research project that will “make a distinct and significant contribution to existing literature and knowledge in the field.” As stated above, a grant to finance the beneficiary’s attendance at a conference does not qualify as a major prize or award for outstanding achievement in the academic field. In addition, the documentation reflects that this award does not demonstrate international recognition in the field, but, rather, academic achievements in comparison with one’s fellow students.

Regarding the beneficiary having received awards for best/among-the-best academic papers for doctoral research conferences in 2003, 2004, 2006 and 2007, the above selection criteria demonstrate that these awards do not qualify as major prizes or awards for outstanding achievement in the academic field. Research conference awards limited to doctoral students are not indicative of international recognition in the field. The beneficiary competed with her fellow doctoral students, not with the most experienced and recognized members of the field. While 8 C.F.R. § 204.5(i)(3)(A) references outstanding achievements in one’s academic field, 8 C.F.R. § 204.5(i)(2) defines “academic field” as “a body of specialized knowledge offered for study.” Academic study is not a field of endeavor, academic or otherwise. Rather, academic study is training for a future career in an academic field. As such, awards in recognition of academic achievement are insufficient. Such awards are simply not evidence of international recognition in

the field. Rather, they represent high academic achievements in comparison with one's fellow students.

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

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

The petitioner has submitted evidence that the beneficiary is a member of the following organizations: Beta Gamma Sigma (BGS) Honor Society; Academy of International Business (AIB); Destination Marketing Association International (DMAI); Strategic Management Society (SMS); and, Academy of Management.

Regarding the beneficiary's membership in Beta Gamma Sigma (BGS) Honor Society, the documentation reflects that membership in BGS is available to business students in business programs accredited by the Association to Advance College Schools of Business (AACSB) International. The petitioner has submitted evidence that the beneficiary became a member of BGS on May 13, 2009, the day before she was awarded her doctor of philosophy in business administration. Regarding graduate student membership in BGS, the petitioner has provided the bylaws of BGS, which state that "doctoral students who have completed all requirements for that degree may be inducted without restriction as to number." The by-laws also state that BGS "recognizes individuals who have exhibited excellence in meeting the requirements for membership," and that membership is "composed of those persons of high scholarship and good moral character." The educational requirements of a having exhibited excellence in completing all requirements for a doctoral degree, and being of high scholarship and good moral character are not outstanding achievements. Therefore, the record does not establish that BGS requires outstanding achievements of its members.

Regarding the beneficiary's membership in the AIB, the documentation reflects that the beneficiary has been a member of the AIB since September 19, 2007. The documentation also reflects that applications for membership in the AIB must be endorsed by one member in good standing, and approved by a majority vote of the membership committee. The petitioner did not submit evidence that the above association requires anything other than sponsorship to become a member. The requirement of sponsorship, alone, does not establish that the AIB requires outstanding achievements of its members. Therefore, the record does not establish that the AIB requires outstanding achievements of its members.

Regarding the beneficiary's membership in Destination Marketing Association International (DMAI), the petitioner submitted documentation that in 2006 the beneficiary was selected for a two-year term on the Research Committee, which requires that beneficiary be a member in good standing of DMAI. The documentation also reflects that DMAI has more than 2800 members. The

petitioner did not submit any evidence that DMAI requires outstanding achievements of its members.

Regarding the beneficiary's membership in SMS, the petitioner submitted documentation which reflects that the beneficiary paid membership dues for this society in 2009 and 2010. The petitioner did not submit any evidence that SMS requires outstanding achievements of its members.

Regarding the beneficiary's membership in the Academy of Management, the petitioner submitted documentation which reflects that the beneficiary paid membership dues for this academy in January 2010. The petitioner did not submit any evidence that the Academy of Management requires outstanding achievements of its members.

The petitioner did not submit evidence that any of the above associations require anything other than sponsorship, the beneficiary having attained certain educational requirements, such as a degree, or the payment of dues for membership. Thus, the petitioner has not established that the beneficiary is a member of associations which require outstanding achievements of their members.

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

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

On appeal, the petitioner has submitted an updated citation record for the beneficiary, containing 34 total citations to the beneficiary's work, and copies of several articles containing citations to the beneficiary's work. The petitioner has also submitted the following: a special edition of *USA Today* dated July 21, 2006, "created exclusively for the 2006 DMAI convention attendees," discussing the beneficiary's student membership in DMAI; a copy of *On the Verge* (2005), a publication of Temple University Fox School of Business and its affiliate School of Tourism, containing an interview with the beneficiary during her doctoral studies.

The regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) requires evidence of published material about the beneficiary's work. A review reveals that the published material which cites the beneficiary's work is primarily about the author's own work, or recent work in the field generally, and not about the beneficiary's work. As such, it cannot be considered published material about the beneficiary's work. However, the beneficiary's citation history is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond her own circle of collaborators. *See Kazarian*, 596 F3d at 1122. The citation history will be considered below in our final merits determination.

In addition, the articles in the special edition of *USA Today* and *On the Verge* are about the benefits, respectively, of student membership in the DMAI and doctoral study at the Fox School of Business, respectively, and not about the beneficiary's work.

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

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

The petitioner submitted evidence that the beneficiary has reviewed manuscripts for the following publications: *Journal of International Management*; *International Journal of Strategic Business Alliances*; *Anatolia: An International Journal of Tourism and Hospitality Research*; *International Journal of Hospitality Management*; *Journal of Travel Research*; and *IEEE Transactions on Systems, Man and Cybernetics-Part C: Applications and Reviews*.⁵ The petitioner also submitted evidence that the beneficiary has reviewed manuscripts for several international conferences.

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

As evidence relating to the beneficiary's original scientific or scholarly research contributions to the academic field, the petitioner has submitted reference letters from five members of the beneficiary's field (three of whom are from the beneficiary's immediate circle of collaborators).

⁵Letters from representatives of the [REDACTED]

[REDACTED] on [REDACTED] contain almost identical language, stating that the beneficiary was requested to review manuscripts, "since she is recognized internationally as outstanding/as an outstanding scholar in the fields of strategic management and international business strategy."

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

The petitioner submitted a reference letter from [REDACTED], chair professor and director of the School of Hotel and Tourism Management, The Hong Kong Polytechnic Institute, and editor of the Journal of Travel and Tourism Marketing. [REDACTED] states that she learned of the beneficiary's work when the Journal of Travel and Tourism Marketing published an article co-authored by the beneficiary. The record reflects that journal published the beneficiary's article, [REDACTED] in 2007. She states that the beneficiary's findings provide "a unique Benchmarking framework that is used as a tool for comparatively evaluating the performance of tourist destinations." While [REDACTED] discusses the potential applications for the beneficiary's research she does not provide examples of how the beneficiary's tool has already been applied in the field. She states that the beneficiary's work enables DMO's "to make behavioral changes . . . providing tangible performance improvement" and "when applied to long term outcomes increase the organizations capabilities to exploit, create, accumulate and share new knowledge." She also states that the beneficiary developed a novel tool "to assess the impact of technology implementation" and that the beneficiary's research findings "are now being implemented as a routine practice in Bureau [Convention and Visitors Bureau] evaluating and furthering industry transformation and growth." [REDACTED] does not provide specific examples of independent research institutions using the beneficiary's research findings or explain how the beneficiary's tools are already being applied in the field, as would be expected of a contribution to the field as a whole.

[REDACTED] Canada, states that he is "extremely familiar" with the beneficiary's work, although he does not indicate how he learned of the beneficiary's work. He states that the beneficiary's work has led to "some significant contributions to the research methods used in management studies including computer-aided text analysis. . . ." He does not provide specific examples of how the beneficiary's tools are already being applied in the field. He provides some examples of the beneficiary's research findings which he states challenge "the conventional wisdom in the international management research"⁶, but he does not provide examples of how the beneficiary's research findings are already being applied in the field.

[REDACTED] discusses that beneficiary's research work in explaining "the phenomenon of competitive advantage of [REDACTED], and examining [REDACTED] ability to succeed "despite constraints posed . . . by their weak institutional environments."

states that she has worked with the beneficiary on a number of Tourism related projects. She describes some of the beneficiary's research projects at NLTeC [National Laboratory of Tourism & eCommerce], which is listed in the beneficiary's curriculum vitae (C.V.) as a doctoral research assistant position held by her at Temple University, Philadelphia, from 2004 through 2006.⁷ She states that the beneficiary's research results regarding her organization, Visit Baltimore, were published and have been "further replicated by researchers to resolve similar technology adoption problems in the tourism industry." She does not provide specific examples of independent researchers or research institutions using the beneficiary's research findings, or provide examples of how the beneficiary's findings are already being applied in the field.

states that she has known the beneficiary for a number of years, and more recently has worked with the beneficiary on various projects. She describes some of the beneficiary's research projects at [REDACTED]. She states that the beneficiary's research findings enable CVB's [Convention and Visitors Bureaus] and DMO's [Destination Management Organizations] to develop and implement performance management practices to enhance destination competitiveness, and she states that the beneficiary's techniques are currently being used by CVB's, DMO's and "various tourism business (sic) in the united states (sic)." She does not provide specific examples of CVB's or DMO's that are already applying the beneficiary's techniques, as would be expected of a contribution to the field as a whole.

The petitioner has submitted a letter of reference from [REDACTED] where the beneficiary obtained her masters and doctoral degrees. He discusses the beneficiary's research findings on "adoption of e-Procurement technologies in the hotel industry", and how her findings may benefit companies. However, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole. He states that one of the beneficiary's research projects at [REDACTED] identified findings that "are now used by industry professionals as building blocks for developing a 'Decision Support System' specifically geared toward the needs of tourism executives." [REDACTED] does not provide specific examples of industry professionals or independent research institutions using the beneficiary's research findings or explain how the beneficiary's research findings are already being applied in the field as would be expected of a contribution to the field as a whole.⁸

[REDACTED] use identical language is stating, "Her specialization in conducting in-depth case studies and action research has enabled her to resolve key management issues in the tourism and hospitality industry. Further she uses a/has invented a unique content analysis methodology that involves computerized text-mining to interpret the results of the case study."

⁸ The petitioner also submitted documentation showing that a professor at Penn Fels Institute of Government, Pennsylvania assigned one of the beneficiary's forthcoming articles as required reading for a course offered in summer 2010. However, since the date of this event took place after the date of filing the petition on March 12, 2010, it 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).

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.⁹ Considering the letters in the aggregate, the record does not establish that the beneficiary's research is original or can be considered a contribution to the field as a whole.

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

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

The petitioner submitted evidence that the beneficiary has authored several journal articles in the academic field, and has presented her work at several international conferences and symposia.

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

⁹ *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

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

B. Final Merits Determination

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

The nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond her own circle of collaborators. See *Kazarian*, 596 F.3d at 1122. The petitioner submitted evidence that the beneficiary has reviewed manuscripts for the *Journal of International Management*, *International Journal of Strategic Business Alliances*, *Anatolia: An International Journal of Tourism and Hospitality Research*, *International Journal of Hospitality Management*, *Journal of Travel Research and IEEE Transactions on Systems, Man and Cybernetics-Part C: Applications and Reviews*. The petitioner also submitted evidence that the beneficiary has reviewed manuscripts for several international conferences. The AAO cannot ignore the fact that business journals are peer reviewed and rely on many business professionals 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 she 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."

The Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at www.bls.gov/oco on January 28, 2010 and incorporated into the record of proceedings), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See www.bls.gov/oco/ocos066.htm. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field.

Further, [REDACTED], independent references, do not indicate that they learned of the beneficiary's work through the beneficiary's international reputation. Indeed, the record lacks evidence that a significant number of members of the academic field outside of the beneficiary's immediate circle of colleagues are even aware of her work.

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

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

The petitioner has shown that the beneficiary is a talented professor of business management, who has won the respect of her collaborators, employers, and mentors, while securing some degree of exposure for her 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.

IV. Conclusion

Review of the record does not establish that the beneficiary is internationally recognized as an outstanding researcher or professor. 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 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.