

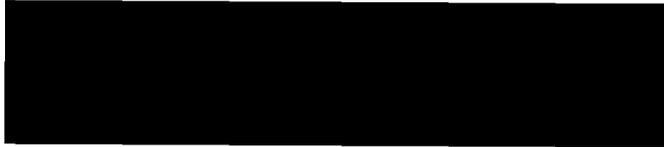
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



B3

DATE: **MAY 30 2012**

Office: TEXAS 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, Texas 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 a semiconductor manufacturer. 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 a process integration 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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9<sup>th</sup> Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See e.g., Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

## I. Law

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

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

\* \* \*

(B) Outstanding professors and researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

## **II. International Recognition**

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

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

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

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

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

(E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or

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

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under a similar classification set forth at section 203(b)(1)(A) of the Act. *Kazarian v.*

USCIS, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion. With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations.<sup>1</sup> Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

*Id.* at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination.<sup>2</sup> On appeal, counsel asserts that the *Kazarian* case involved a different classification than the one at issue in this matter and that the 9<sup>th</sup> Circuit case has no precedence for a 5<sup>th</sup> Circuit filing. Notwithstanding, the similarity of the two classifications makes the court's reasoning persuasive to the classification sought in this matter. Moreover, a December 22, 2010 policy memorandum requires all USCIS officers to apply the two-part approach to Form I-140 petitions under Title 8 Code of Federal Regulations (8 CFR) sections 204.5(h)(3) and (4), 204.5(i)(3)(i), and 204.5(k)(3)(ii).<sup>3</sup> Therefore, in reviewing Service Center decisions, the AAO will

<sup>1</sup> Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) (comparable to 8 C.F.R. § 204.5(i)(3)(i)(D)) and 8 C.F.R. § 204.5(h)(3)(vi) (comparable to 8 C.F.R. § 204.5(i)(3)(i)(F)).

<sup>2</sup> The classification at issue in *Kazarian*, section 203(b)(1)(A) of the Act, requires qualifying evidence under three criteria whereas the classification at issue in this matter, section 203(b)(1)(B) of the Act, requires qualifying evidence under only two criteria.

<sup>3</sup> PM-602-0005.1: Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the *Adjudicator's Field Manual (AFM)* Chapter 22.2, *AFM* Update AD11-14 (December 22, 2010).

apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See 8 C.F.R. 103.3(a)(1)(iv); *Soltane*, 381 F.3d at 145; *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003) (recognizing the AAO's *de novo* authority).

### III. Analysis

#### A. Evidentiary Criteria

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

The petitioner submitted evidence of the beneficiary's receipt of three certificates for Outstanding Student Scholarship from the University of Science and Technology of China and one certificate for a Huawei Fellowship. In a Request for Evidence (RFE), the director noted that the awards did not appear to be major national or international, but scholastic in nature. The petitioner did not contest this finding in response to the RFE or on appeal. Given this, the petitioner did not submit qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(i)(3)(i)(A).

On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005). Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner submitted an IEEE membership welcome letter. In a RFE, the director noted that the membership did not establish that the association required outstanding achievements from their members. The petitioner did not contest this finding in response to the RFE or on appeal. The petitioner did not submit qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(i)(3)(i)(B).

On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005). Accordingly, the petitioner has not established that he meets this criterion.

*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 articles written by other researchers that cite the beneficiary's work in the field. The regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) requires evidence of published material about the beneficiary's work. The AAO reads "published material" to mean the article itself, not a mere footnote or a single sentence within an article. Articles which cite the beneficiary's work are primarily about the author's own work, not the beneficiary's work. As such, they cannot be considered published material about the beneficiary's work.

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

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

The petitioner submitted email letters indicating that the beneficiary has reviewed four manuscripts for *IEEE Electron Device Letters*. This evidence qualifies under the plain language of the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(D).

*Evidence of the alien's original scientific or scholarly research contributions to the academic field.*

The petitioner submitted the beneficiary's scholarly articles, citations to those articles and positive reference letters from members of the beneficiary's field. The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(E) does not require that the beneficiary's contributions themselves be internationally recognized as outstanding. That said, the plain language of the regulation does not simply require original research, but original "research contributions." Had the regulation contemplated merely the submission of original research, it would have said so, and not have included the extra word "contributions." See *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3<sup>rd</sup> Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003). Moreover, the plain language of the regulation requires that the contributions be "to the academic field" rather than an individual laboratory or institution.

The petitioner submitted evidence 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.

In discussing the articles that cite the beneficiary's work, the petitioner submitted 16 articles citing the beneficiary's work. In five of the articles, the authors cite the beneficiary's work as first author for his work published in the *Applied Physics Letters*. The remaining articles reference the beneficiary's work as 2<sup>nd</sup> or 3<sup>rd</sup> author in publications. The author of an article in the *Journal of Physics D: Applied Physics* specifically notes the beneficiary's name and work within the article. .

The petitioner also submitted several letters from the beneficiary's peers and colleagues in order to establish original contributions. Four of his peers in the field, ██████████ discuss how the beneficiary's research contributed to the semiconductor process simulation field. ██████████ describes the beneficiary's work and its high value to SRC member companies stating "it is not only interesting in academia, but also well aligned with the urgent needs of semiconductor industry." He goes on to state ██████████ contribution to SRC through his high quality research and many publications in internationally recognized journals and conferences." However, ██████████ also states that the beneficiary's work will have a future impact, rather than has had a significant impact. ██████████ goes on to state that the beneficiary's "...pivotal work ... expanded our knowledge ... This understanding will largely determine whether and how we can successfully develop the next-generation small-scale device..." ██████████ explains "with the information provided by the work of ██████████ it is possible to design fabrication processes and simulation softwares with higher accuracy than before...". Professor ██████████ describes two of the beneficiary's contributions which substantially impact the field: 1) the beneficiary was the first to establish that interstitial mechanism is dominant over vacancy mechanism in arsenic diffusion and 2) the beneficiary's discovery of arsenic segregation configurations at SiO<sub>2</sub>/Si interfaces. Professor ██████████ notes that the beneficiary's experiments were very important to semiconductor device development ... This is especially encouraging for the next generation and nano device design..." ██████████ discusses the beneficiary's work at Freescale and states that his work "enable(s) companies in this industry to develop effective ultra shallow junction solutions ...", which is a "highly original contribution to semiconductor process simulation fields."

All of the experts discuss the beneficiary's published works in the field. For example, ██████████ Director, Microelectronics Research Center, discusses the beneficiary's original research at the University of Texas at Austin and asserts that his work made great contributions to multiple research areas and that the beneficiary published his work in all of these areas in top-notch journals and international conferences. ██████████ discusses the beneficiary's work on the interaction of dopants and defects in silicon. He states that the beneficiary's work has been published in *Applied Physics Letters*, *Journal of Applied Physics*, and *Physical Review B*, which are the premier research journals in this field. ██████████ states that the beneficiary's work and that of his co-workers has added new insights in to the phenomena of arsenic diffusion and electrical behavior. He states, "This experimental work was then followed by some brilliant theoretic interpretations of the results published in the *Journal of Applied Physics* ...".

Considering the letters and other evidence in the aggregate, the record does establish that the beneficiary's research, while original, can be considered a contribution to the field as a whole. The

record shows that the beneficiary is respected by his colleagues and has made useful contributions and publications to the field. In light of the above, the petitioner has submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(i)(3)(i)(E).

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

The petitioner submitted nine articles authored by the beneficiary. The record also contains a letter from [REDACTED] *Applied Physics Letters*. [REDACTED] confirms that the beneficiary published two scientific papers in the international journal in the field of applied physics. Thus, the petitioner has submitted evidence that qualifies under 8 C.F.R. § 204.5(i)(3)(i)(F).

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

#### *B. Final Merits Determination*

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

The nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. See *Kazarian*, 596 F. 3d at 1122. The record reflects that the beneficiary reviewed four manuscripts for *IEEE Electron Device Letters*. 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 evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed manuscripts for a journal that credits a small, elite group of referees, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, the AAO cannot conclude that the beneficiary's judging experience is indicative of or consistent with international recognition.

Regarding the beneficiary's original research, 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."

Finally, the Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at [www.bls.gov/oco](http://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](http://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.

On appeal, counsel references the distinguished nature of the journals that published the beneficiary's articles. While such publication demonstrates the promising nature of the beneficiary's work, more persuasive evidence is how the beneficiary's work was received upon publication. Moreover, the beneficiary's citation history is a recognized relevant consideration when evaluating the beneficiary's recognition in the field. See *Kazarian*, 596 F. 3d at 1122.

Counsel asserts that the director diminished the weight of 18 citations to one of the beneficiary's articles, because the particular article has eight co-authors. The director stated that it was difficult to determine whether the beneficiary's work was being cited or one of his co-authors. On appeal, counsel submits a new expert letter from [REDACTED] who certifies that the beneficiary made "very significant contribution to the research work published ...." He goes on to state that the beneficiary's "contribution as far greater than the other co-authors, resulting in position as second author on the paper." Notwithstanding the beneficiary's significant contribution to this particular paper, the record does not establish that any one of the beneficiary's articles has garnered more than moderate citation. Moreover, the citing authors mostly cite the beneficiary's work for background material rather than as the foundation of the research reported in the citing article. For example, in two articles published by the *Journal of Applied Physics*, the authors cited the beneficiary's work. The authors, however, only cite the beneficiary's article as one of several articles to reference research results. Another article published in the *IEEE Journal of Selected Topics in Quantum Electronics* cites the beneficiary's article as one of several studies. While the record does establish that the beneficiary has been cited internationally, the minor citations are not consistent with being recognized as outstanding in the academic field.

In light of the above, the final merits determination reveals that the beneficiary's qualifying evidence, minimally participating in the peer review process and publishing articles that have garnered moderate citations 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.

*C. Conclusion*

The petitioner has shown that the beneficiary is a talented process integration engineer, who has won the respect of his collaborators, employers, and colleagues, while securing some degree of exposure for his work. The record, however, stops short of elevating the beneficiary to the level of an alien who is internationally recognized as an outstanding researcher or professor. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

**IV. Job Offer from Qualifying Employer**

Beyond the decision of the director, the record fails to contain an offer of employment from the petitioner to the beneficiary, as required under the regulations at 8 C.F.R. § 204.5(i)(3)(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 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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.

*Black's Law Dictionary* 1189 (9<sup>th</sup> 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. Letters *affirming* the beneficiary’s employment are not *offers* of employment within the ordinary meaning of that phrase.

In the national interest waiver context, legacy Immigration and Naturalization Service (INS), now USCIS, has interpreted the waiver of the job offer referenced in section 203(b)(2)(B) of the Act to mean a waiver of the alien employment certification. 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991). In the context of section 203(b)(1)(B) of the Act, however, there is no requirement for an alien employment certification. As such, the requirement for an offer of employment in the regulation cannot be referencing an alien employment certification. Moreover, the purpose of the alien employment certification is not to establish the existence of a tenure-track offer of employment. Rather, it demonstrates that the Department of Labor has confirmed that there not are sufficient workers who are able, willing, qualified and available and that the employment of the alien will not adversely affect the wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a). Thus, the AAO must interpret the phrase “offer of employment” in 8 C.F.R. § 204.5(i)(3)(iii) as commonly defined. The record does not contain an offer of employment from the petitioner addressed to the beneficiary. For this additional reason, the petitioner may not be approved.

For the above stated reasons, considered both in sum and as separate grounds for denial, 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.