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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: APR 2 3 2013 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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,

Ron Rosenberg
Acting 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 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 submits a brief. 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)).

I. Law

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

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

[1] On appeal counsel refers to an unpublished decision in which the AAO determined that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding professor or researcher. However, counsel has not furnished evidence establishing that the facts of the instant petition are analogous to those in the unpublished decision, in which the proffered position was that of a researcher in the field of pharmaceutical science. Therefore, the prior AAO decision is of little evidentiary value for the purposes of this proceeding. In addition, an unpublished AAO decision does not constitute a pertinent precedent decision which could have established that the AAO's decision was based on an erroneous conclusion of law. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all United States Citizenship and Immigration Services (USCIS) employees in the administration of the Act, unpublished decisions are not similarly binding. Moreover, as will be discussed below, the unpublished decision predates a recent circuit court decision that impacts our evaluation process.

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

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

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

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

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

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

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

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

II. 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.

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

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[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)).

[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.

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 September 20, 2012, 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).[5]

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 was awarded an Emerald Literati Network Award for Excellence for Highly Commended Paper (2012), for his article published in

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 petitioner submitted documentary evidence that eligibility for the annual Emerald Literati Network awards is limited to papers published in the 200 journals of Emerald Group Publishing Limited. The documentation states that each of the publisher's journals annually select papers for, respectively, one Outstanding Paper award and up to three Highly Commended Paper awards.

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

The director concluded that the petitioner had not demonstrated that the criteria used to select the recipients of this award satisfy the requirements of this criterion. The documentation contains the criteria used to select only the Outstanding Paper, and does not state the criteria used to select the Highly Commended Papers. The criteria used to select the Outstanding Paper include the following:

- Contribution of something new to the body of knowledge either in terms of approach or subject matter.
- Excellent structure and presentation and well written.
- Rigour in terms of argument or analysis.
- Relevance – to practice and further research, in most cases.
- Up to date – demonstrating that the latest/key works in the field have been cited.
- A work which is clearly within the editorial scope and remit of the journal.

Upon review of, even if the beneficiary's award were based upon the same selecting criteria, which has not been established, the beneficiary's inclusion in the publishing company's honor is not indicative of international recognition in the academic field. We therefore concur with the director that this award does not constitute a major award.

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).

> *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 was *invited* to review articles for the following professional journals: *Production and Operations Management; Journal of Business Logistics, Journal of Business Research, Transportation Journal, Management Research Review* and the *International Journal of Logistics Management.* The petitioner also submitted evidence that the beneficiary was invited to review papers for the following professional meetings in the academic field: Academy of Management Meeting (2011), Academy of Management Meeting (2010) and Council of Supply Chain Management Professional's (CSCMP's) Supply Chain Management Educators Conference (SCMEC)(2010). However, the record does not establish that the beneficiary completed any of the requested reviews.

The petitioner also submitted evidence that the beneficiary is a credited member of the editorial boards of the [redacted] and the [redacted] The websites of the [redacted] and the [redacted] reveal their editorial boards are comprised of approximately 200 members and 60 members, respectively. However, the record does not establish that the beneficiary reviewed any articles as a credited member of those editorial boards.

The petitioner further submitted evidence that the beneficiary agreed to serve on the editorial board of the although a review of the journal's website reveals that the beneficiary is not a credited member of the journal's editorial board. In addition, the record does not establish that the beneficiary reviewed any articles for the journal.

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.

The petitioner submitted evidence that the beneficiary reviewed a manuscript for a professional conference of the Society for Marketing Advances (2012). The petitioner also submitted reference letters from associate professor of management, Spain, who states the beneficiary has been selected as a reviewer for a research handbook on e-business strategic management that is currently editing, which would require the beneficiary to assess the scholarly contributions of other researchers. It appears that the beneficiary has begun his work as a reviewer for the research handbook, as states, that the beneficiary has been able "to provide a critical evaluation of some of the work submitted to the research handbook." [6]

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.

While the director determined that the petitioner established eligibility for this criterion, the AAO must withdraw the decision of the director based upon a review of the record of proceeding. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis). While we do not lightly withdraw a favorable finding by the director, the evidence simply does not support the director's conclusion regarding this criterion.

[6] The record also contains an e-mail from to the beneficiary describing the research handbook project and requesting that the beneficiary submit a chapter for the handbook. The e-mail does not request the beneficiary's services as a reviewer for the project.

At issue for the classification sought is whether the beneficiary enjoys international recognition as outstanding and at issue under this criterion is whether or not the beneficiary has contributed to the field as a whole. 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.

As evidence relating to the beneficiary's original scientific or scholarly research contributions to the academic field, the petitioner submitted the following: letters of support from ten individuals, two of whom are from the beneficiary's immediate circle of colleagues; and, a citation record.

We acknowledge that the beneficiary has authored several journal articles in the academic field and has presented his 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 published materials under 8 C.F.R. § 204.5(i)(3)(i)(F)).

Citations, such as a reference to the beneficiary's work in an article, are evidence of the impact and influence of the article cited. As evidence of the significance of the beneficiary's articles, the petitioner submitted evidence from the Google Scholar website reflecting that four of the beneficiary's articles have been cited a total of ten times. Two of these articles were minimally cited. The two other cited articles were cited a total of eight times, seven of which are from independent sources. A review of the ten citing articles submitted by the petitioner reveal that they list the beneficiary's work as one of several references. The record does not establish that the beneficiary's citation record is consistent with a contribution to the field as a whole, or that the number of citations alone is significant. The beneficiary's citation history is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian,* 596 F3d at 1122. The citation history will be considered below in our final merits determination.

Finally, we acknowledge that the petitioner submitted several letters supporting the petition. We will address these letters in depth.

[redacted],
India, states the applicant was a visiting professor for several months at his university in 2011, and that he was invited for the position "because of [the beneficiary's] expertise and knowledge in the areas of Business Management and more specifically Business Statistics."

director of the India, states the applicant was a guest lecturer at the center in 2010, invited to lecture "because of [the beneficiary's] recognized expertise and knowledge in the areas of Supply Chain and Logistics Management."[7]

associate professor of operations management at the Canada, does not state how she first became aware of the beneficiary's work. She states the beneficiary's work "has formed the basis for additional expanded research that can result in significant improvement of supply chain management and, along with that, increase profitability for businesses." She also states that the analytic models developed by the beneficiary and his colleagues "can be used in practice to determine the cost savings that would result from using modified policies under 'order crossover' and can improve decision making in managing such inventory systems." However, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole. does not 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.

associate professor of management, Spain, does not state how he first became aware of the beneficiary's work. In two letters of support he states that the beneficiary "has been selected as a reviewer for a research handbook on 'e-business strategic management' that I am currently editing. . . For this role [the beneficiary] is called upon to assess the scholarly contributions of other researchers." He states the beneficiary was chosen for this role "due to his international reputation and expert knowledge in the area of e-business and supply chain management." The record also contains an e-mail from to the beneficiary describing the research handbook project and requesting that the beneficiary submit a chapter for the handbook. The e-mail does not request the beneficiary's services as a reviewer for the project.

associate professor of operations management at New York, does not state how he first became aware of the beneficiary's work. He states the beneficiary has made "unique and ample" contributions to the field of operations management, in that the beneficiary "has formulated new and relevant inventory control problems and has developed heuristics to solve them efficiently. His research has led to the development of algorithms and software tools that are readily usable in the industry." However, does not state that the beneficiary's research tools and algorithms are already being applied in the field.

Interim Dean and a professor of management at the Massachusetts, submits two letters of support. He does not state

[7] We note that the closing paragraphs of the letters of and use identical language consistent with a common source. While the authors signed their letters, affirming the contents, nevertheless, the use of boilerplate language somewhat reduces the evidentiary weight of these letters.

how he first became aware of the beneficiary's work. He states that the beneficiary's scholarly contribution in sustainable logistics management and the adoption of Radio Frequency Identification (RFID) technology in the logistics industry "sets the stage for other researchers to pursue further research within the area of sustainable logistics operations."

a vice-president of in East Hanover, New Jersey states he handles his company's business process transformational project. He does not state how he first became aware of the beneficiary's work. He states that the beneficiary's research findings relating to optimal and approximate inventory policies "could result in significant cost savings for industries experiencing order crossover in their inventory systems" and that his company "will certainly find it advantageous to use this important contribution to the industry to improve our inventory management and profitability." However, does not state that his company has already applied the beneficiary's research findings, or state that the beneficiary's research findings are already being applied in the field. As stated above, speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole.

professor and Chair of the states he is also Co-Editor-in-Chief of the He states the beneficiary first came to his attention "based upon the work he has done as a researcher, published author and speaker at international conferences," particularly in stochastic inventory modeling. He states that, using novel techniques of dynamic programming and simulation, the beneficiary's research resulted in optimal and approximate policies for inventory systems with order crossover. He states that the outstanding nature of the beneficiary's work is recognized by its publication in and his being invited to serve on the board of . Although asserts that many others in the field found the beneficiary's work to be "of profound importance," he does not provide specific examples of the beneficiary's research contributions, and how they are already being applied in the field.

associate professor Supply Chain Management at states that the beneficiary's work was highly recommended to him when he was conducting his own research on stochastic inventory modeling, "especially studying the impact of lead-times on supply chains." states he serves as an associate editor for He states that the beneficiary's work "became well recognized in the international business community when it was published in . . . the premier journal for strategic supply chain research." He, states that having an article published in] evidences the outstanding nature of the work. Although states that his own research is "greatly influenced" by the beneficiary's research, he does not state how he has applied the beneficiary's research findings in his own research, or state how the beneficiary's research contributions are already being applied in the field as a whole.

associate professor of supply chain management at Idaho, states that the beneficiary "became recognized to me through the presentation of his works at major international conferences," specifically he mentions annual meetings of the He states that by presenting his work at those conferences the beneficiary has had the opportunity "to influence the thinking of some of the most prominent

scholars in his field and to establish a strong reputation in areas related to Buyer-Seller partnerships and collaboration."

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. 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.[8] 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. For example, the record does not indicate the extent to which his work has impacted others in his field nationally or internationally, nor does it show that the field has significantly changed as a result of his work.

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).

[8] *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 evidence that the beneficiary has authored several journal articles in the academic field and has presented his work at several professional conferences and symposia. The petitioner has also submitted a list of several articles authored by the beneficiary which are under consideration for publication.

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

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

B. Final Merits Determination

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

The nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. The petitioner submitted evidence that the beneficiary reviewed a manuscript for a conference of the Society for Marketing Advances (2012). In addition, it appears the beneficiary is a reviewer for a research handbook on e-business strategic management that is currently editing. Further, the petitioner submitted evidence that the beneficiary is a credited member of the editorial review boards of the and the and agreed to serve on the editorial board of the The fact that the applicant is a credited member of the editorial board of two journals, while notable, is not by itself indicative of international recognition as outstanding. First, the petitioner has not submitted evidence that the beneficiary reviewed any articles as a credited member of those editorial boards. Second, the AAO cannot ignore that business journals, conference presentations and textbooks 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 he has

reviewed manuscripts for a journal that credits a small, elite group of referees, or received independent requests from a substantial number of journals, the AAO cannot conclude that the beneficiary's judging experience is indicative of or consistent with international recognition.

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

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, the eight independent references with no apparent relationship to the beneficiary do not clearly 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 his work.

In addition, the record does not contain evidence that the beneficiary's journal articles in the academic field have been widely cited, or other comparable evidence that demonstrates that the beneficiary's publication record is consistent with international recognition. A beneficiary's citation history is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122.

In response to the director's request for evidence and again on appeal, counsel asserts that the beneficiary has a modest publication record because journals in the beneficiary's academic field are slower in publishing articles than journals in other academic fields. In support of this contention the petitioner submits several articles analyzing the relative publication rates of different academic fields. The support letter from [redacted] also makes this assertion. Counsel further contends that the beneficiary has a modest citation record because the journals publishing the beneficiary's work are utilized by non-academicians, "who would not necessarily be writing articles with citations." Counsel has not submitted any evidence in support of this assertion. Without

documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Whatever the reason for the lack of international recognition of the beneficiary's publications, it remains that his articles had not attained international recognition at the time of filing.

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 management, who has won the respect of his colleagues and employers 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. 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.