

(b)(6)



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

Date: **AUG 21 2013** Office: NEBRASKA SERVICE CENTER [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The petitioner is a teaching hospital. It seeks to classify the beneficiary as an outstanding researcher or professor 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 in the United States as a Research Assistant Professor on the research track. 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 or professor.

On appeal, counsel submits a brief and evidence that was already part of the record. For the reasons discussed below, the AAO concurs with the director that the petitioner has not established that the beneficiary enjoys international recognition as an outstanding researcher or professor.

Specifically, when the AAO simply “counts” 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 the petition, set the beneficiary apart in the academic community through eminence and distinction based on international recognition, the purpose of the regulatory criteria.<sup>1</sup> *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):

\* \* \*

(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 --

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<sup>1</sup> The legal authority for this two-step analysis will be discussed at length below.

- (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 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 two of the given evidentiary criteria. 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>2</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>3</sup> 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 (9<sup>th</sup> Cir. 2003) (recognizing the AAO's *de novo* authority).

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<sup>2</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>3</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.

### III. Analysis

#### A. Evidentiary Criteria

This petition seeks to classify the beneficiary as a researcher who is recognized internationally as outstanding in the academic field of reproductive biology. The petitioner initially asserted that the beneficiary meets "at least two and as many as five of the six relevant criteria." The director determined that the petitioner had submitted qualifying evidence under two of the criteria. For the reasons discussed below, the AAO concurs with the director that the petitioner has submitted qualifying evidence under two of the criteria.

*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 the recipient of the [REDACTED] at [REDACTED]. The director concluded that the petitioner had not demonstrated that the beneficiary's [REDACTED] qualifies as a major award. On appeal, the petitioner does not contest this finding. Therefore, the AAO considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

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 submitted evidence that the beneficiary is a member of [REDACTED]. The director concluded that the petitioner had not established that membership in this particular organization requires outstanding achievements for its members. On appeal, the petitioner does not contest this finding. Therefore, the AAO considers this issue to be abandoned. *Id.*

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*

The petitioner submitted evidence that the beneficiary's work has been cited, and submitted several examples of media coverage. The director concluded the evidence submitted does not establish the beneficiary's eligibility for the criterion. On appeal, the petitioner does not contest this finding. Therefore, the AAO considers this issue to be abandoned. *Id.*

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 co-chaired a platform presentation at the [REDACTED]. The petitioner also submitted evidence that the beneficiary participated in the [REDACTED] for [REDACTED] during which her duties included "proof-reading the abstracts submitted by the presenters." 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 and will be considered below in our final merits determination.

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

As evidence relating to the beneficiary's original scientific or scholarly research contributions to the academic field, the petitioner submitted letters of support from peers and colleagues attesting to the beneficiary's research contributions.

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." Thus, the petitioner must establish that the beneficiary's research has made contributions to the academic field of reproductive biology.

The petitioner submitted an initial letter from [REDACTED] at the petitioning hospital, and the beneficiary's supervisor. In his letter, [REDACTED] asserts that the beneficiary "has made significant contributions to the field of reproductive biology" and that her research "is considered one of the most important and relevant developments in contraceptive research of the decade." [REDACTED] describes the beneficiary's work on developing [REDACTED] non-steroidal male contraceptive agent, which he asserts is "in preparation stages for filing with the Food and Drug Administration (FDA)." [REDACTED] states: "The development of H2-gamendazole as the most potent male contraceptive agent to date resulted in the identification of novel protein targets for drug discovery of novel male contraceptive agents." [REDACTED] also describes the beneficiary's research focus on whether reproductive potential is affected by space flight.

However, [REDACTED] assertions regarding the beneficiary's contributions and achievements are stated in a conclusory manner. [REDACTED] does not specifically explain how the beneficiary's work is being applied in the field. [REDACTED] statement that "[t]he development of H2-gamendazole as the most potent male contraceptive agent to date resulted in the identification of novel protein targets for drug discovery of novel male contraceptive agents" falls short of explaining what significance and impact the beneficiary's research has made in the academic field. In particular, it is not clear how the beneficiary's development of a component that could potentially be used in a future male contraceptive drug that is still in the preparation stages of filing with the FDA constitutes a contribution to the academic field of reproductive biology. Speculation as to potential future contributions cannot establish that the beneficiary has already contributed to the academic field as a whole.

The petitioner submitted a letter from [REDACTED]

[REDACTED] curriculum vitae indicates that he has spent over 35 years with [REDACTED] in the field of space biology and biomedicine. [REDACTED] describes the beneficiary's research on how space flight alters the reproductive physiology of animals, and asserts that her research "will be especially important in assuring that the risk of reproductive potential of young astronauts is determined and that risk mitigation strategies are developed. [REDACTED] also describes how the beneficiary's research "may potentially be extrapolated from space-flight to biomedical problems here on Earth, e.g. multiple sclerosis, muscular dystrophy and osteoporosis" and "should open new avenues of research leading to new therapies for bone and muscle wasting diseases." [REDACTED] concludes that the beneficiary's "work ethic, her enthusiasm, and her creativity mark her as a person who will be a valuable member of the U.S. scientific community as we strive to maintain world leadership in the field of space biology and biomedical research." However, while [REDACTED] letter describes the beneficiary's work he does not explain how her work is being applied in the academic field of reproductive biology.

The petitioner submitted an initial letter from [REDACTED]

[REDACTED], at the [REDACTED] [REDACTED] attests that he is a neuroscientist specializing in electrophysiology. [REDACTED] attests that he interacted with the beneficiary on three past space shuttle missions in his capacity as [REDACTED] of the Russian Space Agency. [REDACTED] attests that the beneficiary's "groundbreaking" findings about the effects of space flight on reproductive physiology in female mice "raised huge awareness and scientific curiosity among space scientists around the country and the world." Dr. [REDACTED] further attests that the beneficiary's findings are "of critical importance and brought awareness to a potential serious risk to astronauts, particularly in terms of understanding the influence of long-term habitation on the International Space Station for young astronauts and in the planning of even lengthier missions to Mars or elsewhere." [REDACTED] further attests that the beneficiary's research on developing non-hormonal male contraceptives "demonstrates her expertise in the field of reproductive biology" and that her research is in its pre-investigational new drug (pre-IND) stages and close to FDA approval for pre-clinical trials." [REDACTED]

concludes that the beneficiary has and will continue to make significant contributions “in the field of space biology as well as development of safe and effective contraception for the U.S. public.”

Similar to [REDACTED] letter does not adequately explain how the beneficiary’s work has contributed to the academic field of reproductive biology. Foremost, the AAO questions whether [REDACTED] can be considered an expert in the field of reproductive biology, as he is a neuroscientist specializing in electrophysiology. Second, [REDACTED] does not explain how the beneficiary’s research in non-hormonal male contraceptives has contributed to the field of reproductive biology. [REDACTED] states that the beneficiary’s research is in the investigational drug (pre-IND) stages and has not yet obtained FDA approval for pre-clinical trials; he does not explain how the beneficiary’s research findings are already being applied in the field. It is unclear how an “investigational drug” that has not yet obtained FDA approval for pre-clinical trials constitutes a contribution to the academic field of reproductive biology. Again, speculation as to potential future contributions cannot establish that the beneficiary has already contributed to the academic field as a whole.

The petitioner submitted a letter from [REDACTED] states that he became acquainted with the beneficiary through a friend who is working as an assistant professor at the petitioning hospital. [REDACTED] attests that his laboratory “has been at the forefront of research in mammalian gametogenesis and germ cell development,” and in particular, “on the genetic regulation of these events at [a] molecular level.”<sup>4</sup> [REDACTED] attests that the beneficiary has been “instrumental in conducting several critical studies in various animal models and was able to demonstrate successfully that H2-Gamendazole . . . is a promising candidate for development of non-hormonal male contraceptive.” [REDACTED] attests that the beneficiary’s research is in the pre-IND stage, and asserts that this is a “landmark achievement” that will be “a significant addition to the existing contraceptive choices.” [REDACTED] further attests that the beneficiary’s research involving the effect of space flight on reproductive physiology “created a huge stir in [the] space research community . . . [and] has become highly important for the welfare of reproductive health of astronauts.” [REDACTED] concludes that the beneficiary’s research contributions “have had an international impact in the fields of Reproductive biology and have significantly sped up the progress of contraceptive development.”

[REDACTED] letter does not adequately explain how the beneficiary’s work has contributed to the academic field of reproductive biology. Other than making conclusory assertions regarding how the beneficiary’s research in this area will be a “significant addition” and a “promising candidate,” [REDACTED] does not explain how the beneficiary’s research findings are actually being applied in the field. Again, speculation as to potential future contributions cannot establish that the beneficiary has already contributed to the academic field as a whole. With regards to the beneficiary’s research involving the effect of space flight on reproductive physiology, Dr.

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<sup>4</sup> It is not clear whether the field of reproductive biology is the same as mammalian gametogenesis and germ cell development.

assertion that this “created a huge stir in [the] space research community” indicates that the beneficiary’s research has impacted the space research community, but does not explain how her research has contributed to the field of reproductive biology.

The petitioner submitted a letter from [redacted] attests that she is the “co-PI [co-principal investigator] of the project with which [the beneficiary] is associated,” in particular, the beneficiary’s research project involving developing H2-Gamendazole as a reversible, oral, non-hormonal male contraceptive. [redacted] asserts that the beneficiary has made “outstanding contributions” to this project and has played a “critical role” in determining the efficacy of H2-GMZ, a drug candidate that induces reversible infertility in various animal models. [redacted] goes on to state that “the development of an effective contraceptive without any undesirable side effects is a very important contribution toward expanding the contraceptive choices available today.” [redacted] asserts that the beneficiary’s various presentations, travel awards, and invitations to review and chair sessions, “[show] that [the beneficiary] has achieved remarkable heights in the field of reproductive biology.”

However, [redacted] fails to explain how the beneficiary’s research has already contributed to the field of reproductive biology. The AAO emphasizes that [redacted] characterization of H2-GMZ as “a drug candidate” and her assertions that she and the beneficiary are working towards “the development . . . [of] a very important contribution” are stated in terms of a potential future contribution, but do not explain how the research is actually being applied in the field. As stated above, speculation as to potential future contributions cannot establish that the beneficiary has already contributed to the academic field as a whole. Furthermore, [redacted] assertions regarding the beneficiary’s contributions and achievements are stated in a conclusory manner. Finally, [redacted] attests that she is the co-PI of the particular H2-GMZ project of which the beneficiary “is associated” and discusses the beneficiary’s “outstanding contributions” to this project. Her letter fails to specifically identify the beneficiary’s exact role in the project, but it implies that the beneficiary is not one of the primary investigators of the research.

The petitioner submitted a letter from [redacted] Associate Professor in the Department of Histology and Embryology, Faculty of Medicine, [redacted] asserts that the beneficiary “has already made important scientific contributions to the field of male contraceptive development by developing a non-hormonal oral contraceptive compound which is fast moving towards pre-IND status.” [redacted] also asserts that the beneficiary is involved in “path-breaking research with [redacted] where she is trying to study the effect of space-flight on reproductive health.” [redacted] states that the beneficiary’s findings in this area “may also be extrapolated to the natural process of aging” and “will ensure that the mission to find cures for aging related complications can move forward and be accomplished in a timely manner.”

With respect to the beneficiary’s research on male contraceptive compounds, [redacted] fails to explain how the beneficiary’s research has already contributed to the field of reproductive biology. Notably, [redacted] characterizes the beneficiary’s research as “fast moving towards

pre-IND status," which is inconsistent with other claims that the beneficiary's research "is in the pre-IND stage." With respect to the beneficiary's research on the effect of space-flight on reproductive health, [REDACTED] statements indicate that the beneficiary's research will contribute to academic field related to aging and aging related complications, not specifically to the academic field of reproductive health.

In response to the RFE, the petitioner submitted additional letters. The petitioner submitted a second letter from [REDACTED] describing in more detail the beneficiary's research findings and their impact on the space research community. [REDACTED] describes the beneficiary's research as providing "direct and critical basic science understanding on life in space and establishes the basis for applied protocols to maintain crew health and performance." However, [REDACTED] fails to explain how the beneficiary's research findings are actually being applied in the field.

The petitioner submitted a letter from [REDACTED]

[REDACTED] describes her collaborations with the beneficiary, and lists some of the beneficiary's presentations. [REDACTED] asserts that "[a]s a result of these presentations, [the beneficiary] is well-recognized in the international community." [REDACTED] further asserts that the beneficiary's research on male contraception "will have a profound impact on healthcare, specifically for controlling fertility using an innovative and reversible method of male contraception that has been developed only by her and her research team." [REDACTED] concludes that the beneficiary has "unique" and "unequaled" experience and knowledge in male contraceptive development and that her "significant original contributions are well-recognized by the international scientific community in our field." However, other than making conclusory assertions regarding the beneficiary's research contributions, [REDACTED] does not explain with any specificity how the beneficiary's research findings are actually being applied in the field.

The petitioner submitted a second letter from [REDACTED], in which he emphasizes the originality of the beneficiary's research. With respect to the beneficiary's research on the effect of space travel on fertility, [REDACTED] emphasizes that the beneficiary "is the only scientist in the history of space travel research, here in the United States or to our knowledge anywhere in the world, who has conducted such research." With respect to the beneficiary's research on male contraception, Dr. [REDACTED] characterizes this research as "one of the most important and relevant developments in the field in the decade" and emphasizes the novelty of her research. However, while the AAO does not question the originality of the beneficiary's research, the regulation does not simply require original research, but an original "research contribution." [REDACTED] fails to explain with specificity how the beneficiary's research findings are actually being applied in the field.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If

testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. United States Citizenship & Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as the AAO has done above, evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; see also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

Overall, the letters submitted by the petitioner primarily contain conclusory assertions of international recognition and contributions, without specifically identifying the contributions and providing specific examples of how the beneficiary's research is being applied in the field. Some of the letters are written by experts outside of the field of reproductive biology, and attest to the impact of the beneficiary's research in the field of space biology rather than reproductive biology. Moreover, several reference letters are from the beneficiary's immediate circle of colleagues or collaborators. Considering the above, the letters alone are insufficient to establish that the beneficiary's research can be considered a contribution to the field of reproductive biology.

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); *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. Comm'r 1972) (going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings). Similarly, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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.).

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

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

The petitioner submitted evidence that the beneficiary has authored at least four journal publications in the academic field. 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 her own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. Here, the petitioner highlights the fact that the beneficiary served as co-chair for the 43<sup>rd</sup> Annual Meeting of the Society for the Study of Reproduction in 2010. While notable, the record is insufficient to establish that the beneficiary's judging experience is indicative of or consistent with international recognition beyond her immediate circle of collaborators. In particular, with reference to the 43<sup>rd</sup> Annual Meeting of the Society for the Study of Reproduction, the AAO observes that the beneficiary was invited to serve as co-chair by Dr. Zelinski, whom had known the beneficiary since 2009 when she began discussions to conduct studies with Dr. Tash. In her letter, Dr. Zelinski states that she invited the beneficiary because she was "aware" of the beneficiary's "investigative excellence and important contributions to the field of andrology," but Dr. Zelinski did not specify what qualifications were needed in order to serve as a co-chair for this particular event.<sup>5</sup>

The AAO cannot ignore that scientific journals and conference submissions are peer reviewed and rely on many scientists to review submitted articles and participate in the conferences in

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<sup>5</sup> The Schedule of Events for the 43<sup>rd</sup> Annual Meeting of the Society for the Study of Reproduction reflects that there were approximately 50 different chairs and co-chairs for the entire event.

various ways. Thus, the act of serving as a reviewer is somewhat routine in the field; not every reviewer enjoys international recognition. While serving as a co-chair is less routine than serving as a peer reviewer, without evidence that sets the beneficiary apart from others in her field such as evidence that she co-chaired for a conference that credits a small, elite group of reviewers and judges, the AAO cannot conclude that the beneficiary's judging experience is indicative of the beneficiary's international recognition.

The petitioner also emphasizes the beneficiary assisted in the [REDACTED]

[REDACTED] The petitioner submitted a letter from the [REDACTED] Council of Medical Research attesting that the beneficiary was a volunteer and assisted in organizing the conference. The letter listed the beneficiary's duties as including "proof-reading the abstracts submitted by presenters, managing distribution of meeting material to the participants and help in various other scientific activities and social activities pertaining to the meeting" as well as serving on the welcome committee. However, this letter does not indicate what qualifications were needed for volunteers like the beneficiary to serve. Further, the nature of the duties that the beneficiary performed, such as helping in organization, managing distribution of meeting materials, and helping in social activities, are not indicative of a process in which volunteer positions are prestigious or highly selective.

The beneficiary's citation history is another relevant consideration as to whether the evidence is indicative of the beneficiary's international recognition. *Id.* The evidence indicates that the beneficiary's work had been cited approximately twelve times at the time the instant petition was filed and approximately 20 times as of the date of the petitioner's RFE response. Based on the number of citations alone, the record does not reflect that the beneficiary has been widely cited. Again, the petitioner asserts that much of the beneficiary's work is "proprietary and confidential in nature and therefore not available for researchers," but the petitioner failed to provide any evidence to support this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner emphasizes that the beneficiary has published four important articles and made at least sixteen professional presentations. However, the petitioner has failed to explain and document how the beneficiary's publication and presentation history sets her apart from others in the researcher's field. While the petitioner characterizes the beneficiary's publication history as "productive," the petitioner fails to provide any factual basis to support this characterization. Here, it is important to note the beneficiary's educational and professional history during the time of her published articles and presentations. In particular, the beneficiary received her Ph.D. from the [REDACTED] in 2005. She was a [REDACTED] from February 2006 to June 2011, and began her current position there as a Research Assistant Professor on July 1, 2011. Generally, Ph.D. candidates, postdoctoral fellows and Research Assistants are expected to

perform research and publish their work.<sup>6</sup> In particular, the AAO observes that the beneficiary's job duties as a Research Assistant Professor on the research track specifically require her to publish in journals and present at scientific meetings. The petitioner's job offer letter to the beneficiary states:

Description of Research/Scholarship Activities: As a member of a faculty on the research track you will be involved primarily in research. You will be expected to continue to develop your research program in collaboration with [REDACTED]. In addition, you will be expected to pursue independent external funding as PI. **Success in this program will be judged by the number and quality of publications, presentations at appropriate scientific meetings, and securing external grant funds.** (Emphasis added.)

Thus, the beneficiary's published research and presentations, whether arising from her position as a Ph.D. candidate or her current position as a Research Assistant Professor, do not set her apart from other similarly situated researchers in the field. The petitioner has not provided any explanation or documentation to establish that the beneficiary's publication and presentation record is atypical and much more prolific than that of other researchers.

The petitioner asserts that the beneficiary's publication record would be higher except that [REDACTED] and/or her research is in a "proprietary area of study" that precludes such publications. However, the petitioner has not submitted any evidence to support such claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*

The petitioner has also provided Thomson Reuters Journal Citation Reports for journals that have published the beneficiary's work, listing the impact factor of those journals. The Journal Impact Factor from the Journal Citation Report is a product of Thomson ISI (Institute for Scientific Information). The Journal Citation Report provides quantitative tools for evaluating journals. The impact factor is one of these; it is a measure of the frequency with which the "average article" in a journal has been cited in a given period of time. See [www.thomsonreuters.com](http://www.thomsonreuters.com).

The petitioner further submits as evidence to establish the impact of the beneficiary's work, [REDACTED]

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<sup>6</sup> See The [REDACTED] Office of Postdoctoral Affairs Handbook, available online at: [REDACTED] (accessed July 26, 2013) describing the university's expectation of a postdoctoral scholar to participate in a regimen of advanced training and research, and to train under the supervision and direction of a faculty research mentor who will provide the opportunity for collaborative and independent research, as well as promote publication of findings and preparation of research grants as determined by a mutual agreement between the postdoctoral scholar and the mentor. See also the Department of Labor's Occupational Outlook Handbook, available online at: [www.bls.gov/oco](http://www.bls.gov/oco) (accessed July 26, 2013) states that postsecondary faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure.

Obstetrics and Gynecology, and Medicine, which includes several journals that have published the beneficiary's work.

Counsel asserts that the Citation Index Impact Factors and rank of the journals that have published the beneficiary's work sufficiently establish their impact. The impact factor or rank of a given journal is not persuasive evidence of the impact of every article published in that journal. More persuasive is how the beneficiary's work was received upon publication.

Even if we accepted these documents as evidence of the prestige of the highlighted journals, they would not evidence the beneficiary's eligibility under this criterion. The record does not include a copy of the citing articles to show that the articles substantively discuss the beneficiary's work, rather than merely citing it as one among many other authorities.

On appeal, counsel emphasizes the originality of the beneficiary's research, and implies that original research, alone, should constitute evidence of the beneficiary's contributions to the academic field. On appeal, counsel states: "We do not agree that the phrase 'contributions to the Academic field' implies a 'higher standard' than original non-replicative research." However, counsel's assertion is unpersuasive and unsupported by any citations to legal authority. Demonstrating that the beneficiary's work is "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 Ph.D., 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."

Counsel repeatedly asserts that the beneficiary is "leading" the research on female fertility in space travel and in the development of H2-Gamendazole as a reversible male contraceptive. However, the evidence in the record suggests otherwise. The news and media articles the petitioner submitted specifically identify [REDACTED] as the leading researcher, not the beneficiary. For example, a press release published on the website [REDACTED]

[REDACTED] and fails to identify the beneficiary in any way. Similarly, the article in the [REDACTED]

[REDACTED] as the recipient of the grant and the researcher who is "leading" the study. It is important to note the petitioner's job offer letter to the beneficiary specifically states that the beneficiary is "expected to continue to develop your research program in collaboration with [REDACTED]. In addition, [REDACTED] letter attests that she is the "co-PI of the project with which [the beneficiary] is associated," suggesting that the beneficiary is not one of the primary investigators leading the research. Therefore, the record is unclear as to what the beneficiary's actual role is with respect to the research she is conducting. The beneficiary's actual role in the research is an important factor in considering whether the beneficiary has acquired international recognition as an outstanding researcher. 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.

In light of the above, the final merits determination reveals that the beneficiary's qualifying evidence 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.

#### IV. Conclusion

The petitioner has shown that the beneficiary is a talented researcher who has won the respect of her peers and collaborators, 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, and the petition will be denied.

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.