(b)(6)

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

U.S. Citizenship and Immigration Services

Date: FEB 0 8 2019 Office: NEBRASKA SERVICE CENTER FILE

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

If you believe the 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 in accordance with the instructions on 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 filed this immigrant petition seeking 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, an Illinois Limited Liability Company, is self-described as a company engaged in scientific research and development.[1] The petitioner seeks to employ the beneficiary permanently in the United States as a researcher/mechanical engineering specialist.

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.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel contends the director applied an improper standard in determining whether the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher. Counsel asserts that the petitioner has submitted sufficient evidence to establish the beneficiary's eligibility for classification as an outstanding researcher. On appeal, the petitioner submits a brief. In support of its brief, the petitioner submits documentary evidence which has previously been submitted into the record.

For the reasons discussed below, the AAO concurs with the director that the record fails to establish that the beneficiary enjoys international recognition. 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)).

Beyond the decision of the director, the record lacks the actual job offer issued by the petitioner to the beneficiary, pursuant to 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

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[1] The petitioner has submitted its Articles of Organization which reveal it was organized in 2006, "To perform the contract with the United States Department of Energy for the management and operation of The articles reveal that management of the petitioner is vested in one manager, the

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

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).

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,
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> (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. Job Offer from Qualifying Employer

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.

The petitioner has not submitted its job offer to the beneficiary. Instead, the petitioner submitted a letter from , Senior Human Resource & Immigration Specialist, addressed to U. S. Citizenship and Immigration Services (USCIS), affirming that the petitioner has submitted a job offer to the beneficiary, stating "[the petitioner] has offered [the beneficiary] permanent employment in the full-time research position of Mechanical Engineering Specialist at *Black's Law Dictionary* 1189 (9th 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. Thus, the letter from addressed to USCIS *affirming* that the petitioner has submitted a job offer to the beneficiary is not an *offer* of employment within the ordinary meaning of that phrase. The record does not contain an offer of employment from the petitioner addressed to the beneficiary. While the AAO does not question the credibility of the petitioner has not explained why the AAO should accept assertions of the fact of the offer of employment in lieu of the offer of employment itself, which is required initial evidence pursuant to 8 C.F.R. § 204.5(i)(3)(iii).

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

[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)).

> "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, if qualifying, considered in the context of a final merits determination.[4] While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court's reasoning persuasive to the classification sought in this matter. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See* 8 C.F.R. § 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (recognizing the AAO's *de novo* authority).

IV. Analysis

A. *Evidentiary Criteria*

This petition, filed on May 11, 2012, seeks to classify the beneficiary as 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 membership in associations in the academic field which require outstanding achievements of their members*

The director concluded that the beneficiary's membership in the [redacted] does not qualify as evidence of the beneficiary's membership in associations which require outstanding achievements in the academic field. Neither counsel nor the petitioner challenges that conclusion on appeal. Accordingly, the petitioner has abandoned that claim. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005); *Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *9 (E.D. N.Y. Sept. 30, 2011). Nevertheless, upon review, the AAO concurs with the director's conclusion that the petitioner did not submit qualifying evidence that meets the plain language requirements of this criterion, set forth at 8 C.F.R. § 204.5(i)(3)(i)(B).

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[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.

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

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

The petitioner submitted evidence that the beneficiary has reviewed paper submissions for professional conferences and symposia, as well as manuscripts for professional journals such as the 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.

As evidence relating to the beneficiary's original scientific or scholarly research contributions to the academic field, the petitioner submitted the following: seven reference letters (two from the beneficiary's immediate circle of coauthors and colleagues); and documentation from GoogleScholar showing that twelve articles co-authored by the beneficiary have been cited a total of 21 times.

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.

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.

We acknowledge that the beneficiary has authored articles which have been published in journals and at conferences and symposia in the academic field, and many of the reference letters refer to this fact. 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. (We will consider the articles under 8 C.F.R. § 204.5(i)(3)(i)(F)). 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 also acknowledge that the beneficiary reviewed manuscripts for professional publications, and paper submissions for symposia and conferences, and the reference letter of refers in detail to this fact. The regulations, however, include a separate criterion for judging the work of others in the field at 8 C.F.R. § 204.5(i)(3)(i)(D). 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 judging. (We have above considered evidence of the beneficiary's judging experience under 8 C.F.R. § 204.5(i)(3)(i)(D)). Whether or not the beneficiary's judging experience is indicative of the beneficiary's international recognition in the field is a valid consideration under our final merits determination.

, a division leader, at a synchrotron radiation facility in states that he first became aware of the beneficiary's work when the beneficiary presented a ray-tracing simulation at a conceptual design review meeting at which the witness was on the review committee. He states that the beneficiary is a key person in design and development of a sub-micron-focusing beamline for protein crystallography at the petitioning entity. He states that the beneficiary's simulation "gave an optimized guideline of approach to design and implement (sic) of this beamline." He states that the beneficiary's beamline "is the second sub-micron focusing beamline for protein crystallography, with more intensity and smaller beam size, in the world." However, does not state that he or his research facility has adopted the beneficiary's techniques, nor does he provide examples of independent research institutions utilizing the beneficiary's research findings. does not explain how the beneficiary's findings have impacted the academic field, nor does he assert that the beneficiary's research is becoming one of the "widely accepted standard techniques" as would be expected of a contribution to the field as a whole.

, a staff member at the in , states he met the beneficiary when the beneficiary "contacted me in 2010 to discuss ray-tracing with [the ray-tracing code] SHADOW." He states that the beneficiary's design for a sub-micron focusing beamline for macromolecular crystallography is similar to an existing beamline in Japan, but "with smaller size and greater intensity for the U.S." does not explain how the beneficiary's research contributions have impacted the academic field rather than simply the work of the beneficiary's employer.

a professor at the , states that he met the beneficiary at a professional conference in 2009 where he states the beneficiary presented his research findings. He states that the beneficiary used synchrotron-x-ray-based ultrafast imaging technology and "characterized fuel sprays and correlated spray performance with fuel dynamics at inside of nozzle." He also states the beneficiary used the x-ray absorption technology to capture the density distribution of a diesel spray. He states that the beneficiary's research findings represent a major breakthrough in fuel spray research which "will lead to a better understanding of fuel combustion, and result in optimized designs of injection and combustion systems with reduced emissions." However, speculation as to a future contribution or that the beneficiary's methodology will lead the way for others to use this methodology does not establish that the beneficiary's work has already contributed to the field as a whole.

, professor at the , met the beneficiary in 2009 at the same professional conference as and his letter is similar to , discussed above.

, associate professor of physics at states he met the beneficiary in 2006 when the beneficiary was doing doctoral research and contacted him regarding one of the witness's published papers. He states that the beneficiary's research methods in wave propagation and scattering in random media provide highly accurate simulations of elastic wave scattering in materials, and significantly improve computational efficiency. However, does not provide examples of specific contributions or explain how those contributions have impacted the academic field rather than simply the work of the beneficiary's employer.

a physicist and group leader at states he met the beneficiary five years ago, when the beneficiary joined his group as a postdoctoral research scientist. has co-authored several articles with the beneficiary. uses almost identical language to that of above, including stating that the beneficiary's research findings "will lead to a better understanding of fuel combustion, and result in optimized designs of injection and combustion systems with reduced emissions." He states that as a result of the beneficiary's research findings the petitioner has "two contracts from two major engine and component manufacturing companies to investigate fuel injection systems for achieve (sic) higher efficiency and lower emissions using both conventional and alternative fuels." However, does not explain how the beneficiary's research findings have impacted the academic field as a whole rather than simply the work of the petitioner.

associate professor at states he was the beneficiary's dissertation advisor at that institution, and one of the beneficiary's co-authors. He states the beneficiary's doctoral dissertation involved three-dimensional calculation and simulation in "designing noise absorption composite panel." He does not explain, however, how the beneficiary's dissertation findings have contributed to the field other than to assert generally that the beneficiary's research is "scientifically original."

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

The opinions of experts in the field are not without weight and have been considered above. United States Citizenship & Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission

of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as the AAO has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of widespread recognition and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions have influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[6] Considering the letters and other evidence in the aggregate, the record does not establish that the beneficiary's research, while original, can be considered a contribution to the field as a whole.

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

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

The petitioner submitted the first page of several of the beneficiary's articles which have been published in journals and at conferences and symposia 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

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

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. Counsel asserts, with the submission of the recommendation letter of , the beneficiary's dissertation advisor, that the beneficiary's participation as a peer reviewer for certain professional journals and at certain professional conferences is evidence that he is internationally recognized as being outstanding in his field. As stated above, the petitioner submitted evidence that the beneficiary has reviewed paper submissions for national and international professional symposia and conferences, as well as manuscripts for professional journals such as the . 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, 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."

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

The beneficiary has published several articles in journals and at conferences and symposia in the academic field. While such publication demonstrates the promising nature of the beneficiary's work, of far greater importance in this proceeding is how the beneficiary's work was received upon publication. The petitioner submits, as evidence to establish the impact of the beneficiary's work, documentation from GoogleScholar showing that twelve articles co-authored by the beneficiary have been cited a total of 21 times. While evidence that the petitioner's work is widely cited can serve to establish the impact of this work, the record does not contain evidence that

independent experts have consistently cited the beneficiary's work. In discussing the articles that cite the beneficiary's work, counsel focuses on the number of citations in the aggregate. The record, however, does not establish that any one of the beneficiary's articles has garnered more than moderate citation. In addition, a review of the one citing article submitted by the petitioner reveals that it does not substantively discuss the beneficiary's work, but cites his work among many other authorities. The record does not contain evidence that independent experts have consistently cited or relied upon the beneficiary's work, nor does the record contain other comparable evidence that demonstrates that the beneficiary's publication record is consistent with international recognition.

The petitioner provided a 2010 ISI Web of Knowledge Journal Citation Report for three of the journals that have published the beneficiary's work, listing the impact factors of those journals. The petitioner also provided a 2011 SCImago Journal Ranking for one of those journals. Counsel asserts that the journal ranking and the citation index impact factors of the journals that have published the beneficiary's work sufficiently establish their impact. The impact of a given journal is not persuasive evidence of the impact of every article published in that journal. The fact that a journal has a high overall impact factor does not imply that any one article in that journal has had a proportionate impact. As stated above, the record does not contain evidence that the beneficiary's published articles have garnered widespread citations or other response in the academic field

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.

V. Conclusion

The petitioner has shown that the beneficiary is a talented researcher/mechanical engineering specialist, who has won the respect of his collaborators, employers, and mentors, 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.

The petition will be denied for the above-stated reasons, with each considered as an independent and alternative basis for denial. 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.