



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **MAR 04 2014** Office: TEXAS 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, Texas 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, a United States university, seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary in the United States as a Research Associate. The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher.

On appeal, the petitioner asserts that the director's decision is defective for applying the wrong criteria and failing to give proper weight to submitted evidence. The petitioner submits a brief in support of the appeal.

I. The Law

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

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

* * *

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

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

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

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

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

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

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

8 C.F.R. § 204.5 states the following:

(i) *Outstanding professors and researchers.*

(1) Any United States employer desiring and intending to employ a professor or researcher who is outstanding in an academic field under section 203(b)(1)(B) of the Act may file an I-140 visa petition for such classification.

(2) *Definitions.* As used in this section:

Permanent, in reference to a research position, means either tenured, tenure-track, or for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination.

* * *

(3) *Initial evidence.* A petition for an outstanding professor or researcher must be accompanied by:

(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. Such evidence shall consist of at least two of the following:

- (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.
- (ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from current or former employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.
- (iii) 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:
- (B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's 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.¹ 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

¹ 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)).

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.² 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*.

II. Analysis

This petition was filed to classify the beneficiary as an outstanding researcher in the field of mechanical engineering, specializing in fluid dynamics, heat transfer, aerodynamics, thermodynamics, and efficient numerical algorithms. Therefore, the petitioner must establish that: (1) the beneficiary had at least three years of research experience in the field as of the filing date; (2) the beneficiary’s work has been recognized internationally within the field as outstanding; and (3) the beneficiary has an offer of employment from a prospective United States employer. The petitioner has established that the beneficiary has at least three years of research experience in the field. At issue here is whether the beneficiary’s work has been recognized internationally within the field as outstanding. Also at issue here, although not addressed by the director, is whether the beneficiary has an offer of employment from a prospective United States employer.

1. Evidentiary Criteria

The petitioner initially asserted that the beneficiary was submitting qualifying evidence under three of the six criteria, specifically, 8 C.F.R. §§ 204.5(i)(3)(i)(B), (E), and (F).³ The director determined that the petitioner had submitted qualifying evidence under one of the six criteria, specifically, 8 C.F.R. § 204.5(i)(3)(i)(F). For the reasons discussed below, the AAO finds that the petitioner has only submitted qualifying evidence under one criterion, 8 C.F.R. § 204.5(i)(3)(i)(F).

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

² 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.

³ As the petitioner only asserts eligibility under 8 C.F.R. §§ 204.5(i)(3)(i)(B), (E), and (F), the remaining criteria at 8 C.F.R. § 204.5(i)(3)(i) will not be discussed.

With the initial petition, the petitioner submitted evidence of the beneficiary's membership in the following

In the Request for Additional Evidence (RFE), the director advised that the criterion at 8 C.F.R. § 204.5(i)(3)(i)(B) has not been met because the evidence did not show that the above associations require outstanding achievements of its members. The director instructed the petitioner to submit evidence establishing that the beneficiary's memberships in the above associations require outstanding achievements of its members. In response to the RFE, the petitioner asserted that "there is no such organization for the [beneficiary's] particular specialized field." The beneficiary, in his letter in support of the instant petition, elaborated: "Very few associations are created purely for the sake of acknowledging distinguished individuals. Internet research through [redacted] that respond to the keywords "distinguished and continuing achievements in," not even the Nobel Prize." The beneficiary also stated: "Professional associations are optional and only those individuals with extraordinary characteristics decides [*sic*] to participate because their own drive of continuing to learn and share their knowledge." The beneficiary then summarized the missions of [redacted], and asserted that these associations' members "all pursue outstanding achievements." The director denied the petition, finding that the petitioner failed to establish the beneficiary's eligibility under 8 C.F.R. § 204.5(i)(3)(i)(B), as the evidence did not show that the above associations require outstanding achievements of its members.

Upon review of the record, the AAO finds that the petitioner failed to establish eligibility under 8 C.F.R. § 204.5(i)(3)(i)(B). The petitioner concedes that it cannot meet the criterion at 8 C.F.R. § 204.5(i)(3)(i)(B) by stating that "there is no such organization for the [beneficiary's] particular specialized field" that requires outstanding achievements of its members. The beneficiary's assertion that his membership in associations whose members pursue outstanding achievements should qualify under 8 C.F.R. § 204.5(i)(3)(i)(B) is not supported by a plain reading of the regulations nor by any citations to legal authority. As such, the petitioner has failed to establish eligibility under 8 C.F.R. § 204.5(i)(3)(i)(B).

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

As evidence under the criterion at 8 C.F.R. § 204.5(i)(3)(i)(E), the petitioner submitted four letters of reference. The petitioner also submitted evidence of the beneficiary's research publications, and asserted that these research publications constitute "objective evidence" of the beneficiary's contributions to the field.

The director concluded that the petitioner failed to establish the beneficiary's eligibility under 8 C.F.R. § 204.5(i)(3)(i)(E). In the denial, the director concluded that the submitted documentation "demonstrates that the beneficiary has made contributions to his field; however, it has not been established if and how the contributions are of major significance in the field of endeavor." The director further stated that in order to establish eligibility under this criterion, the petitioner must submit evidence demonstrating that "the beneficiary's contributions are not only original, but that they are of major significance in the field" and that "the field has significantly changed as a result of [the beneficiary's] work."

On appeal, the petitioner asserts that the director misapplied standards from another immigrant classification to the instant petition by requiring evidence that the beneficiary's contributions are of major significance in the field, and evidence that his work has significantly changed the field of endeavor. The petitioner asserts that the director "invoked a series of criteria which are ultra vires and flagrant violation of the Kazarian rule against rulemaking at the adjudicative level." The petitioner states, "8 C.F.R. § 204.5(i)(3)(i)(E) says what it says and nothing more." The petitioner then asserts that the submitted evidence clearly establish that the beneficiary has engaged in "original research."

Upon review, the AAO agrees with the petitioner that the director erred as a matter of law by requiring evidence that the beneficiary's contributions are of major significance and have "significantly changed" the field. The plain language of 8 C.F.R. § 204.5(i)(3)(i)(E) requires only evidence of original scientific or scholarly contributions. Cf. 8 C.F.R. § 204.5(h)(3)(v).

Notwithstanding the above, the AAO concurs with the director that, overall, the petitioner has failed to establish eligibility under the criterion at 8 C.F.R. § 204.5(i)(3)(i)(E). The AAO will withdraw the director's finding that the beneficiary has made contributions to his field. Instead, the AAO determines that the submitted evidence is insufficient to show that the beneficiary has made original research contributions to the field. While the AAO does not doubt that the beneficiary has engaged in original research, the plain language of 8 C.F.R. § 204.5(i)(3)(i)(E) does not simply require original research, but original research "contributions." Had the regulation contemplated merely the submission of original research, it would have said so, and not have included the extra word "contributions." Moreover, the plain language of the regulation requires that the contributions be "to the academic field" rather than an individual laboratory, university, employer, or company.

The reference letters are insufficient to establish that the beneficiary has made original research contributions to the field.⁴ Critically, none of the letters explain with any specificity how the beneficiary's work has contributed to the overall academic field. The letters contain conclusory assertions regarding the beneficiary's contributions and abilities as a researcher, but do not sufficiently explain the factual basis for these assertions. Conclusory assertions regarding the beneficiary's contributions and research abilities are not sufficient. 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); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

⁴ The AAO observes that the reference letters were all written in April 2011 and submitted in support of the beneficiary's Form I-140, Immigrant Petition for Alien Worker, filed on July 5, 2011, in which the beneficiary applied for a National Interest Waiver. The petitioner merely submitted duplicate copies of the April 2011 letters. The petitioner provided no indication that the writers of the letters were aware or in support of the instant petition. The AAO also observes that the letters from [REDACTED] all praise the beneficiary's teaching capabilities. The beneficiary's teaching skills are not relevant to the question of whether the beneficiary has made original *research* contributions to the academic field, as required by the plain language of 8 C.F.R. § 204.5(i)(3)(i)(E).

The petitioner submitted a letter from [REDACTED] Biological and Bioengineering, [REDACTED] was the chairman of Mechanical Engineering at [REDACTED] where the beneficiary was a master's student and filled in as Adjunct Professor. [REDACTED] states, in pertinent part, that the beneficiary's "unparalleled experience in [the field], in addition to his unmatched managerial skills, have made of him a walking wealth of knowledge; and the right candidate for any teaching position in which his technical capabilities will be of service to the professional advancement of the future generation of mechanical engineers here in the US." After discussing the beneficiary's teaching experience, [REDACTED] then states that the beneficiary "impressed the whole faculty community at [REDACTED] University when he submitted his Thesis Work titled "The Construction of Integrated Hypersonic Vehicles from 2D Flow Fields." [REDACTED] asserts that the beneficiary's thesis work "clearly evidenced his mastery in the subject of Hypersonic Vehicle Design, which goes beyond my notion of anyone even coming close to such a high level of expertise in the materialization of what could potentially be the next generation of vehicles." [REDACTED] concludes that the beneficiary is "a talented researcher and teacher with excellent abilities in Fluid Dynamics, Heat Transfer, Aerodynamics, Thermodynamics, and Numerical Algorithms, whose work has helped paved the way for next generation of Engineers."

Although [REDACTED] describes the beneficiary in positive terms, [REDACTED] does not explain with any specificity how the beneficiary's research constitutes a contribution to the field. [REDACTED]'s statement that the beneficiary's thesis work showed a "high level of expertise in the materialization of what could potentially be the next generation of vehicles" falls short of establishing that this particular research has made a contribution to the field. Speculation as to potential future contribution cannot establish that the beneficiary has made a contribution to the academic field as a whole. [REDACTED]'s statement that the beneficiary is a "talented researcher" is conclusory and bears little probative value.

The petitioner submitted a letter from [REDACTED] Engineering at the petitioning university. [REDACTED] is the beneficiary's immediate supervisor and the beneficiary's co-author on several publications. [REDACTED] states that the beneficiary has "displayed outstanding capabilities in teaching, tutoring, and researching activities." [REDACTED] states that the beneficiary has "mastered" modern-day equipment employed in the ongoing research operations on thermal barrier coatings, has "flawlessly managed some of the most intrinsic lab experiments for the determination of thermophysical properties of air plasma sprayed and electron beam physical vapor distribution," and has processed thermal barrier coatings. [REDACTED] also asserts that the beneficiary has been involved in securing grants for the petitioning university. [REDACTED] lists the beneficiary's research publications, and then asserts that "[t]he above publications are essential to the research work on energy security and self-sufficiency and thus make US very competitive on the global market economically." [REDACTED] concludes that the beneficiary "is an outstanding young scientist with extraordinary research ability in the field of computational fluid dynamics, heat transfer and thermal barrier coatings. He possess a level of expertise in the important area of energy and fluid systems that distinguishes him as one of the few who have risen to the top of the field."

Similar to [REDACTED] letter, [REDACTED] letter describes the beneficiary in positive terms but does not explain with any specificity how the beneficiary's research constitutes a contribution to the field. In particular, [REDACTED] focuses on how the beneficiary has "mastered" research equipment, "flawlessly managed" research lab experiments, and has helped the petitioning university with securing grants. At most, this information suggests that the beneficiary has made contributions to the petitioning university; it does not, however, explain how the beneficiary has made contributions to the field as a whole. As stated above, the plain language of the regulation requires that the contributions be "to the academic field," rather than an individual laboratory, university, employer, or company. [REDACTED] assertions that the beneficiary's research publications "are essential to the research work on energy security and self-sufficiency," and that the beneficiary is "an outstanding young scientist with extraordinary research ability," are conclusory and bear little probative value.

The petitioner submitted a letter from [REDACTED] [REDACTED] sought the assistance of the beneficiary and his supervisor, Dr. [REDACTED] for a project, [REDACTED] for the specific purpose of analyzing cooling systems for placement in the company's [REDACTED] diesel driver. Mr. [REDACTED] discusses the beneficiary and his supervisor's work with respect to this particular project, and states that the beneficiary's contribution "helped to resolve this issue [regarding the placement of the coolers] in a timely manner and the project to remain on schedule . . . [and ultimately,] helped increase flood protection of [REDACTED] for the upcoming hurricane season." [REDACTED] concludes that the beneficiary's "caliber . . . must be allowed to contribute to the development of the nation" and that his work is of "intrinsic benefit" to the United States." [REDACTED] also concludes that the beneficiary should be granted permanent residence in the United States "and continue to contribute his knowledge [to] the nation and to the students of [the petitioning university]."

[REDACTED] does not describe with any specificity how the beneficiary has made original research contributions to the overall academic field. Instead, his letter focuses on the beneficiary's contributions to a particular project of [REDACTED]. His letter also mentions the beneficiary's contribution to the students of the petitioning university and the United States as a whole. Again, the plain language of the regulation requires that the contributions be "to the academic field," not to an individual company or university. Furthermore, vague assertions regarding the beneficiary's contributions the United States and the "intrinsic value" of his research to are insufficient to establish that the beneficiary has made original research contributions to the academic field.

The petitioner submitted a letter from [REDACTED] [REDACTED] [REDACTED] was the beneficiary's advisor for his MS and Ph.D. degrees at [REDACTED] University, and has also been the beneficiary's co-author on several publications. [REDACTED] speaks highly of the beneficiary's intellectual, academic and professional capacity, and moreover, his "capacity to develop computer codes that utilizes the basic engineering principles to result in realistic computer simulations of natural designs." [REDACTED] highlights the beneficiary's development of a computer code that is "capable of designing and analyzing the fluid-structural interaction of aircraft wing configurations. In

addition, his code is capable of identifying the design parameters that will optimize the performance of these configurations for a given mission.” [REDACTED] also highlights the beneficiary’s MS thesis and Ph.D. dissertation, stating that these documents “are now used extensively in the Center for Aerospace Research to initiate the training of new students in [the field of computational fluid dynamics (CFD)].” [REDACTED] concludes that the beneficiary “possesses the potential to become a foremost expert in his field,” and that the beneficiary’s “research and teaching accomplishments, and his work in CFD have already made a strong impact in our center. Based on past performances, I truly believe that [the beneficiary’s] professional capabilities have the potential of expanding the state-of-the-art in CFD.”

[REDACTED] does not describe with specificity how the beneficiary has made original research contributions to the overall academic field. While his letter highlights the beneficiary’s development of a computer code and that code’s capabilities, [REDACTED] does not explain how this code is being applied in the field. Without such information, it is unclear how the beneficiary’s code constitutes a contribution to the field. Further, while [REDACTED] indicates that the beneficiary’s work has made contributions to the Center for Aerospace Research at [REDACTED], the plain language of the regulation requires that the contributions be “to the academic field,” not to an individual research center or university. Additionally, Dr. [REDACTED] speaks positively of the beneficiary’s potential to contribute to the field in the future, stating that the beneficiary “possesses the potential to become a foremost expert in his field” and has “the potential of expanding the state-of-the-art in CFD.” However, speculation as to the beneficiary’s potential cannot establish that the beneficiary has made contributions to the academic field as a whole.

A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm’r 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971). The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248.

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 we have 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”). The letters considered above primarily contain conclusory assertions of the beneficiary’s contributions, without specifically identifying the contributions and providing specific examples of how those contributions have influenced the academic field or are being applied in the field. Overall, the AAO determines that the testimonial letters are insufficient to establish the beneficiary’s eligibility under the criterion at 8 C.F.R. § 204.5(i)(3)(i)(E).

With regard to the beneficiary’s scholarly publications, the regulations 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. Therefore, the petitioner's suggestion that the beneficiary's research publications inherently constitute evidence of contributions to the field is not persuasive.

In light of the above, the petitioner has not submitted evidence establishing eligibility under the criterion 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 AAO concurs with the director that the petitioner has submitted evidence that qualifies under 8 C.F.R. § 204.5(i)(3)(i)(F). Therefore, this criterion has been met.

2. Summary

The petitioner has failed to establish eligibility under at least two of the six criteria found under the regulation at 8 C.F.R. § 204.5(i)(3)(i). Therefore, the proper conclusion is that petitioner has failed to satisfy the regulatory requirement of two types of evidence.

Had the petitioner submitted the requisite evidence under at least two evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a consideration of the evidence in the context of a final merits determination. However, as discussed above, the petitioner failed to establish eligibility under at least two of the criteria found under the regulation at 8 C.F.R. § 204.5(i)(3)(i). Therefore, the AAO will not conduct a final merits determination.⁵

3. Job Offer from Qualifying Employer

Beyond the decision of the director, the AAO finds that the petitioner failed to submit acceptable evidence of an offer of employment to the beneficiary, which is required initial evidence pursuant to 8 C.F.R. § 204.5(i)(3)(iii).

With the initial petition, the petitioner submitted a letter, dated November 28, 2012, addressed to "To Whom It May Concern." The letter states:

⁵ The AAO maintains *de novo* review. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding on motion or as a result of litigation, the AAO maintains the jurisdiction to conduct a final merits determination as the official who made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). See also Section 103(a)(1) of the Act; Section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii)(2003); *Matter of Aurelio*, 19 I & N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

[The beneficiary] has been employed with [the petitioning university] in the Mechanical Engineering Department since January, 2009 carrying out the full time position of Post-Doctoral Research Faculty with outstanding capabilities. Included in [the beneficiary's] daily activities he assists Principal Investigators in proposal writing as well as managing all high temperature material experiments in the Advanced Material and Research Lab.

It is our great honor to extend to him a full time position as a Research Assistant professor upon approval of his Residency Petition. The proffered annual salary for this position is \$55,000 per academic year.

In this position, [the beneficiary] will be responsible for assessing complex problems for internal/external research projects in the thermo-physical sector. [The beneficiary] ensures that safe work practices are followed at all times in accordance with laboratory safety policies. He will work closely with research associates to review and analyze data to achieve the technical success of the project.

We are highly pleased with [the beneficiary's] work ethic productivity and outstanding contributions to research activities. He is a valued employee of the Department of Mechanical Engineering and has great potential to help us sustain our research productivity with numerous publications and continued funding from our sponsors. As an outstanding young researcher with a growing publication record, [the beneficiary] also has the potential to contribute to Science, Technology, Engineering, and Mathematics (STEM) education enterprise at [the petitioning university] and the nation if given the opportunity.

The ordinary meaning of an "offer" requires that it be made to the offeree, not a third, unidentified party.⁶ Thus, the letter from the petitioner addressed to "To Whom It May Concern" indicating its intent to employ the beneficiary is not an *offer* of employment within the ordinary meaning of that phrase. The AAO must interpret the phrase "offer of employment" in 8 C.F.R. § 204.5(i)(3)(iii) as commonly defined. Notably, the beneficiary stated in his letter submitted in response to the RFE: "It is noteworthy to mention that my current employer [the petitioner] have [*sic*] shown interest to permanently hire me as Research Assistant Professor for the Department of Mechanical Engineering." The beneficiary's statement that the petitioner has "shown interest" to hire him does not support the conclusion that the petitioner has made an *offer* of employment.

In short, the record does not contain an offer of employment from the petitioner addressed to the beneficiary. The petitioner has not explained why the AAO should accept the letter dated November 28, 2012 in lieu of the

⁶ *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.

actual offer of employment itself, which is required initial evidence pursuant to 8 C.F.R. § 204.5(i)(3)(iii). For this additional reason, the appeal will be dismissed.

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 at 145 (the AAO reviews appeals on a *de novo* basis).

III. Conclusion

The record indicates that the beneficiary is a promising researcher who has won the respect of his collaborators and employers. The record, however, stops short of elevating the beneficiary to the level of an alien who is internationally recognized as an outstanding researcher. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.