(b)(6)

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

U.S. Citizenship and Immigration Services

Date: NOV 0 4 2014 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 (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. We will dismiss the appeal.

The petitioner is a higher education and research institution. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). According to information in Part 6, "Basic Information About the Proposed Employment," of the Form I-140, Immigrant Petition for Alien Worker, the petitioner seeks to employ the beneficiary in the United States as a Research Associate of Biological Sciences. 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. In addition, the director determined that the petitioner had not established that it had offered the beneficiary a permanent job as of the date of filing.

On appeal, the petitioner submits a brief and an AAO non-precedent decision for an instrumental musician seeking a different visa classification. The petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Although AAO precedent decisions are binding on all U.S. Citizenship and Immigration Services (USCIS) employees in the administration of the Act, unpublished decisions are not similarly binding. *See* 8 C.F.R. § 103.3(c).

In addition, the petitioner correctly points out that the standard of proof in this matter is "preponderance of the evidence." The "preponderance of the evidence" standard, however, does not relieve the petitioner from satisfying the basic evidentiary requirements required by the statute and regulations. Therefore, if the statute and regulations require specific evidence, the petitioner is required to submit that evidence. In most administrative immigration proceedings, the petitioner must prove by a preponderance of the evidence that he or she is eligible for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The truth is to be determined not by the quantity of evidence alone but by its quality. *Id. at* 376. In the present matter, the documentation submitted fails to demonstrate by a preponderance of the evidence that the beneficiary is recognized internationally as outstanding in her academic area.

For the reasons discussed below, we uphold the director's determination that the petitioner has not established the beneficiary's eligibility for the classification sought.

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 our final merits determination, however, much of the evidence that technically qualifies under these criteria reflects 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.[1] *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):
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> * * *
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> (B) Outstanding professors and researchers. -- An alien is described in this subparagraph if --
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> (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
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> (iii) the alien seeks to enter the United States --
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> (I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,
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> (II) for a comparable position with a university or institution of higher education to conduct research in the area, or
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> (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.

The regulation at 8 C.F.R. § 204.5(i)(3) states that a petition for an outstanding professor or researcher must be accompanied by:

> (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

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[1] The legal authority for this analyzing the burden of production and persuasion separately will be discussed below.

> 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.

The Form I-140 petition was filed on August 5, 2013 to classify the beneficiary as an outstanding researcher "in the field of biology/zoology as related to genetics, immunology and virology." Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field as of that date, and that the beneficiary's work has been recognized internationally within the field as outstanding. The beneficiary received her Ph.D. in Zoology from the in India in December 2008.

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

The submission of evidence relating to at least two criteria does not, in and of itself, establish eligibility for this classification. *See Matter of Chawathe*, 25 I&N Dec. at 376 (holding that the "truth is to be determined *not by the quantity of evidence alone but by its quality*" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, *both individually and within the context of the totality of the evidence*, to determine whether the fact to be proven is probably true."); *see also Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See generally Dir., Office of Workers'*

Comp. Programs, Dep't of Labor v. Greenwich Collieries, 512 U.S. 267, 272-80 (1994) (explaining that the term "burden of proof" includes a burden of persuasion).

II. Analysis

A. Evidentiary Criteria[4]

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

The petitioner initially indicated that it was including exhibits relating to this criterion. In response to the director's request for evidence, the petitioner asserted that "the [beneficiary's] department was awarded an travel grant of $2,500, a grant from the , and a grant from ." The director determined that the petitioner did not establish the beneficiary's eligibility for this regulatory criterion, noting that the research grants fund future research rather than recognize past excellence and that travel grants are typically limited to those beginning their careers. The petitioner does not contest these conclusions on appeal. The record supports the director's determination.

The petitioner submitted a June 13, 2013 letter from Assistant Vice President for Research, Office of Research and Sponsored Programs, , stating:

> This is to verify that [the beneficiary] is key personnel on an [sic] entitled: 7/1/2011 to 6/30/14. She is also [a] co-investigator on a Grant from the funded on 10/30/12.

The petitioner submitted copies of the "Application for Federal Assistance," Form SF-424, that submitted to the for research projects entitled ' and " ' The application submitted to NIH for anti-HIV gene therapy" lists Dr. Associate Professor of Biological Sciences, WSU, Dr. Associate Professor, as a "Co-principal Investigator" and mentor to the beneficiary; and the beneficiary as a "Post doctoral fellow." In addition, the application submitted to for ' i lists Dr. as "Project Director/Principal Investigator" and the beneficiary as a "Postdoctoral fellow." With regard to the grant from the , the petitioner did not submit documentation from the identifying the beneficiary among the personnel named on that grant. 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. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

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[4] On appeal, the petitioner does not claim that the beneficiary meets any of the regulatory categories of evidence not discussed in this decision and the record contains no evidence that relates to those criteria.

Regarding the two research grants for which and Dr. applied and received funding, as the director stated, research grants are intended to fund scientists' work.[5] The petitioner does not assert otherwise on appeal or submit evidence demonstrating that either issued their research grants in recognition of the beneficiary's outstanding achievement.

The petitioner submitted an October 26, 2009 e-mail Dr. Editor-in-Chief of purportedly to unlisted recipients stating: "A committee of senior scientists appointed to evaluate the best papars [sic] published in during 2008-2009 has declare [sic] the following results." The e-mail then lists three papers published in the journal, one of which the beneficiary coauthored with two others. In addition to the "papars" misspelling and the grammatical error, the aforementioned e-mail does not include a "To:" heading identifying the specific recipients of the message. The preceding deficiencies in the e-mail diminish its probative value. Regardless, there is no supporting documentary evidence showing that the best paper honor is a major prize or award for outstanding achievement in the academic field.

The petitioner submitted a December 3, 2013 letter from Administrative Coordinator, , stating that the beneficiary received a $500 postdoctoral fellow travel grant to attend the In addition, Ms. states: "For the 2012 meeting, 143 postdoctoral fellow applications were submitted and a total of 86 travel grants were funded." Thus, more than half of the postdoctoral fellows who applied for travel funding received the grant. The petitioner also submitted a December 23, 2013 letter from Dr. Professor and Chair, Department of Biological Sciences, stating: "Only investigators at the post-doctoral (Ph.D.) or fellowship (M.D.) level and interested in studying virology are eligible to apply." These letters are consistent with the director's conclusion that travel grants are limited to those early in their career. There is no supporting documentary evidence showing that the preceding travel grant, limited to postdoctoral fellows and physicians in the advanced training phase of their career, is a major prize or award for outstanding achievement in the academic field.

The petitioner submitted the Fall 2012 issue of *Research News*, a newsletter of the Office of Research and Sponsored Programs. Pages 7-22 of the newsletter list numerous faculty and staff who received grants and contracts "from September 2011 through March 2012." Page 17 identifies the Dr. the beneficiary, and two others who shared an in the amount of $2,500. There is no documentary evidence demonstrating that the beneficiary's travel grant was recognized beyond the presenting organization and her employer at a level commensurate with a major prize or award for outstanding achievement in the academic field.

It is significant that the proposed regulation relating to this classification would have required evidence of a major international award. The final rule removed the requirement that the award be

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[5] A substantial amount of scientific research is funded by research grants from a variety of public and private sources. The past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator and her team are capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future scientific research, and is not a major prize or award for outstanding achievement in the academic field.

"international," but left the word "major." The commentary states: "The word 'international' has been removed in order to accommodate the possibility that an alien might be recognized internationally as outstanding for having received a major award that is not international." 56 Fed. Reg. 60897-01, 60899 (Nov. 29, 1991.) Thus, the standard for this criterion is very high. The rule recognizes only the "possibility" that a major award that is not international would qualify. Significantly, even lesser international awards cannot serve to meet this criterion given the continued use of the word "major" in the final rule. *Compare* 8 C.F.R. § 204.5(h)(3)(i) (allowing for "lesser" nationally or internationally recognized awards for a separate classification than the one sought in this matter).

In light of the above, the petitioner has not submitted evidence demonstrating that the beneficiary has received any awards rising to the level of a major award as explained in the Federal Register commentary to the regulation at 8 C.F.R. § 204.5(i)(3)(i)(A). 56 Fed. Reg. at 60899. Accordingly, the petitioner has not established that the beneficiary meets this regulatory criterion.

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

The director determined that the petitioner did not establish the beneficiary's eligibility for this regulatory criterion, concluding that the record lacks evidence that the bylaws and membership requirements for the associations of which the beneficiary is a member are consistent with associations that require outstanding achievements of their members. The petitioner does not contest this conclusion on appeal and the record supports the director's conclusion.

The petitioner submitted a June 6, 2013 letter from Secretary-Treasurer, stating: "[The beneficiary] is a current Associate member of the , having paid membership dues for the term of 1 January through 31 December 2013." In addition, the petitioner submitted a copy of the "Bylaws of the " Article II, Section 1 of the bylaws states:

> Membership is open to qualified investigators residing in the Americas, or elsewhere, who have published original investigations in virology and who are actively involved in virology research. To be qualified for regular (full) membership an individual should be at least three years past his/her professional degree (Ph.D., M.D., D.V.M., or equivalent). Associate membership shall be awarded to individuals in training positions in virology (graduate students, postdoctoral fellows, or equivalent) actively engaged in virology research.

With regard to the beneficiary's "Associate" membership status in the holding a "training" position in virology and engaging in virology research do not constitute "outstanding achievements."

The petitioner also submitted a letter from Dr. President of the Ohio Branch of the stating that the beneficiary "is a current member in good standing" with the There is no documentary evidence (such as bylaws or rules of admission) showing that the requires outstanding achievements of its members.

The petitioner further submitted a June 10, 2013 letter from Membership and Administrative Coordinator, stating that the beneficiary "is currently a Transitional Member" of the In addition, the petitioner submitted a copy of the Article IV, Section 4.2 of the bylaws states:

> (a) Active Members: Individuals who have manifested an interest in any discipline important to gene therapy, cell therapy, or manufacturing technologies for gene and cell delivery as evidenced by work in the field are eligible for Active Membership. Active Members shall pay dues and have all privileges of the Society including, but not limited to, the right to vote, serve on committees, hold office, and serve on the Board of Directors.
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> * * *
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> (d) Transitional Members: Individuals who fulfill the requirements for Active membership shall be eligible for Transitional Membership for no more than two (2) years, which status provides for the same privileges and member benefits as Active Membership except that membership dues shall be at a discounted rate as determined by the Board of Directors. Transitional Membership is intended to provide a membership dues discount to individuals who are in the early or other transitional stages of their careers. For purposes of Section 4.6 below, and any and all other provisions of these Bylaws, except as expressly provided in this subsection, Transitional Members shall be considered to be Active Members and any reference to Active Member shall also be deemed to refer to Transitional Members.

In regard to the beneficiary's "Transitional" membership status in the demonstrating "an interest in any discipline important to gene therapy, cell therapy, or manufacturing technologies for gene and cell delivery as evidenced by work in the field" does not constitute "outstanding achievements."

The petitioner submitted a June 6, 2013 letter from Membership Manager, , stating that the beneficiary "is a member" of the . In addition, the petitioner submitted a copy of the Article I, Section 2 of the bylaws states:

> A. Regular Members. Individuals who hold a Ph.D. or equivalent degree or have equivalent experience.
> B. Postdoctoral Members. Individuals who hold a Ph.D. or equivalent degree or have equivalent experience, are actively engaged in a training program, and whose applications are endorsed by their research advisor. Postdoctoral membership status discontinues if not renewed and may be held for a maximum of five consecutive years.

Regarding the beneficiary's membership in the holding "a Ph.D. or equivalent degree" (or having equivalent experience), engaging in a cell biology training program, and receiving an endorsement by one's research advisor do not constitute "outstanding achievements."

In light of the above, the petitioner has not established that the beneficiary meets this regulatory criterion.

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

The director determined that the petitioner did not establish the beneficiary's eligibility for this regulatory criterion. The petitioner does not contest this conclusion on appeal and the record supports the director's findings.

The petitioner submitted the Fall 2012 issue of a newsletter of the Office of Research and Sponsored Programs. Pages 7-22 of the newsletter list numerous faculty and staff who received grants and contracts. Page 17 identifies the Dr the beneficiary, and two others who shared an ' in the amount of $2,500. The author of the preceding material was not identified and the brief mention of the beneficiary's department's travel grant does not constitute published material about her work in the academic field.

The petitioner also submitted a July 2, 2012 e-mail from Dr. an editor of the to Dr. stating that the article she coauthored with the beneficiary entitled was "selected by the editors of the for inclusion in 'Spotlight,' a feature in the Journal that highlights research articles of significant interest from the current issue." Dr. five others, and the beneficiary coauthored ' in September 2012. Dr. e-mail further states:

> This section follows the table of contents and includes short descriptions of five especially meritorious articles.
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> * * *
>
> If you wish your article to be included in this section, please draft a short, declarative title and a brief summary of your manuscript (between 50-100 words) and forward these to me. Please compose your summary in general terms, highlighting the broad biological significance of the work.

In addition, the petitioner submitted a January 2, 2014 letter from the Dr. Senior Editor of. stating:

> The research conducted by [the beneficiary] was selected by the editors of the for inclusion in our "Spotlight" section. This is a feature in the Journal that highlights research articles of significant importance and interest from each issue. The Spotlight article was published in and was entitled ' This was in reference to [the

> beneficiary's] research publication in that same issue, pages 9244-9254, entitled ' ' The selected Spotlight article showcases the high relevance of the topic in the field and depicts the utmost quality of [the beneficiary's] research.

With regard to the brief feature in the "Spotlight" section of in September 2012, the petitioner failed to submit a copy of the published material appearing on page 8919. A petition must be filed with any initial evidence required by the regulations. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). When relying on secondary evidence, the petitioner must provide documentary evidence that the primary evidence is either unavailable or does not exist. *Id.* The petitioner has not established that the published material appearing in the section is unavailable or does not exist. As such, the petitioner has not complied with the preceding regulatory requirements. Moreover, the e-mail from Dr. indicates that the authors of the articles whose work is being showcased write the summary material in the "Spotlight" section of the journal. As such, these materials more properly fall under the scholarly articles criterion at 8 C.F.R. § 204.5(i)(3)(i)(F).

In light of the above, the petitioner has not established that the beneficiary meets this regulatory criterion.

> *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 director determined that the petitioner had established the beneficiary's eligibility for this regulatory criterion. The record supports that finding.

The petitioner submitted a June 8, 2009 e-mail from , Monitoring Editor of requesting that the beneficiary review a manuscript entitled There is no evidence of the beneficiary's response to the editor or documentary evidence showing that the beneficiary actually completed the review. The plain language of this regulatory criterion requires "[e]vidence of the alien's participation . . . as the judge of the work of others." Receiving a request to review a manuscript is not evidence of the beneficiary's actual "participation" as a reviewer or judge.

In addition, the petitioner submitted a December 23, 2013 letter from Dr. Editor-in-Chief, ' published by the India. Dr. states: "[The beneficiary] . . . is an editor in our Journal titled ' , since June of 2013." The petitioner also submitted an internet screenshot from webpage listing the beneficiary among eight members of the Editorial Board.

The petitioner also submitted a November 19, 2013 letter from of the Editorial Office of stating: "We certify that [the beneficiary] . . . reviewed manuscript number

entitled ' for our journal on September 29, 2012." The editorial position and the instance of peer review of a manuscript for meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(D). Accordingly, the evidence supports the director's finding that the beneficiary meets this regulatory criterion.

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

The director determined that the petitioner did not establish the beneficiary's eligibility for this regulatory criterion. The petitioner submitted the beneficiary's scholarly articles and presentations, a few citations to her published work, two grant applications listing Dr. as "Project Director/Principal Investigator," and positive reference letters from members of the beneficiary's field. The director acknowledged the petitioner's submission of the preceding evidence, but found that it was not sufficient to demonstrate that the beneficiary has made original scientific or scholarly research contributions to her field. The plain language of this regulatory criterion requires not only evidence of original research, but original "research contributions to the academic field." The phrase "contributions to the academic field" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

On appeal, the petitioner asserts that the beneficiary "is listed among the Senior/Key Personnel" on two of grants that list Dr. as "Project Director/Principal Investigator." Again, most if not all scientific research receives funding from somewhere. Not all research results in contributions to the field as a whole. As a research grant is designed to fund future scientific research, securing funding for one's research projects does not, by itself, demonstrate scientific or scholarly contributions to the academic field. While funding is essential to a researcher's efforts to pursue studies, funding in and of itself does not guarantee that the final results of the study will constitute a contribution to the field as a whole. Even if the petitioner were to demonstrate that receipt of the preceding two grants was based mainly on the beneficiary's achievements rather than those of Dr. the petitioner has not provided evidence showing that the beneficiary's original work on those projects affected the field at a level indicative of scientific or scholarly research contributions to the academic field.

With regard to the beneficiary's published and presented work, the regulations include a separate criterion for authorship of scholarly articles at 8 C.F.R. § 204.5(i)(3)(i)(F). Because separate criteria exist for authorship of scholarly articles and original scientific or scholarly research contributions to the academic field, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the regulatory requirement that a beneficiary meet at least two separate criteria. Furthermore, there is no presumption that every published article or conference presentation is a contribution to the academic field; rather, the petitioner must document the actual impact of the beneficiary's article or presentation. Numerous favorable independent citations for an article authored by the beneficiary may indicate that other researchers have been influenced by her work and are familiar with it. A minimal citation record, on the other hand, is less probative of the beneficiary's impact in the field.

In the appeal brief, the petitioner lists seven "citations" to the beneficiary's work as evidence for this regulatory criterion as follows:

1.

2.

3.

4.

5.

6.

7.

Items 1 and 2 above are not citations to the beneficiary's work by the Instead, they are internet screenshots showing that an abstract of the beneficiary's article is available online for viewing through , a free internet search engine for accessing abstracts on life sciences and biomedical topics that is maintained by the With respect to items 3, 5, and 6, these are self-cites by the beneficiary to her own articles. Self-citation is a normal, expected practice. Self-citation, however, is not probative of the extent of a researcher's influence on other scientists' work. In regard to items 4 and 7, these articles independently cite to the beneficiary's article entitled ' In addition, item 7 independently cites to the beneficiary's article entitled " ' The submitted documentation reflects an aggregate of three independent cites to the beneficiary's body of published work, and that none of her individual articles was independently cited to more than twice. The petitioner has not established that the number of independent cites per article for the beneficiary's published work is indicative of scientific or scholarly research contributions in the academic field.

The petitioner's appeal brief points to the letters of support as further evidence that the beneficiary meets this criterion.

Dr. states:

This letter is to offer my unqualified and enthusiastic support for [the beneficiary], who has a Research Associate position in my laboratory in the Department of Biological Sciences at Ohio.

* * *

Her findings published in the unequivocally indicate that cellular polarity and susceptibility to viral infection go hand-in-hand. . . . [The beneficiary's] work has shown that susceptibility to adenovirus depends largely on the isoform-specific expression of CAR. It turns out that a low abundance isoform of CAR can be expressed on the apical surface of polarized epithelial cells and that the level of this CAR isoform can be increased or decreased under several conditions. For example, her work published in the provides new and critically valuable insight into the molecular mechanisms behind cigarette smoke-induced increased epithelial susceptibility to respiratory viral infections. . . . [The beneficiary] demonstrated that side-stream smoke (effectively second-hand smoke) alters GSK3-beta signaling leading to an increase in apical CAR expression and increased adenovirus infection. Her data are the first to show a molecular mechanism that connects sidestream smoke exposure and increased susceptibility of airway epithelia to viral infection. Although we have focused on adenovirus as a pathogen due to the significant morbidity and mortality exhibited in both pediatric and military populations, these findings may have broad implications for other respiratory viruses. . . . Thus, her findings carry great therapeutic potential for many human cancers.

* * *

[The beneficiary] is currently developing novel therapeutics that could protect us all from the common cold that is caused by adenovirus, or could help enhance adenovirus-based therapeutics that have shown promise in the treatment of a variety of cancers, and we are now pursuing patent rights on this discovery. In collaboration with graduate student she used a clever yeast screen to identify specific interactions between CAR and the cellular scaffolding protein MAGI-1 . . . . Their elegant work, published in the , masterfully demonstrated that the apical CAR isoform interacts with two different MAGI-1 PDZ domains and each of these interactions has opposing effects on the susceptibility of cells to adenovirus infection.

* * *

[The beneficiary] played a pivotal role in highly innovative work published in which showed that CAR can alter the trafficking of ASIC3 and rescue its channel activity via an interaction with PSD-95. This work offers a mechanism by which PDS-95 is able to transport and concentrate signaling molecules at cell junctions. Moreover, CAR-mediated co-transportation and junctional localization of signaling molecules, such as ASIC3, had never been shown previously. Together, these findings address long standing questions of protein function, transport, and localization. They

also open up new lines of research which will have broad implications for diverse fields of study from virology and gene therapy to cell biology and neuroscience.

Finally, [the beneficiary] has played a major role in an on-going collaborative -funded effort with the world renowned scientist Dr. from the . . . [The beneficiary] has been instrumental in the implementation and experimental analysis of directed evolution experiments. Novel AAV capsids have been identified that are able to infect, in particular, those cells already infected by HIV. She is now highly involved in engineering these vectors to deliver a therapeutic gene against HIV.

Dr. comments on the beneficiary's collaborative project with Dr. and her research findings in and but there is no documentary evidence showing that the beneficiary's work was heavily cited by independent researchers, has been successfully implemented as a medical therapy, or otherwise equates to original contributions to the academic field. In addition, Dr. asserts that the beneficiary's "findings carry great therapeutic potential for many human cancers," that the beneficiary is "developing novel therapeutics that could protect us all from the common cold," and that she is working "to deliver a therapeutic gene against HIV," but Dr. does not provide specific examples of how the beneficiary's original work has already been utilized to achieve those effects. Dr. expectation regarding the possible future impact of the beneficiary's work is not evidence, and cannot establish eligibility for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v). Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Dr. Professor in Internal Medicine and Director of the Division of Pulmonology, Critical Care and Occupational Medicine at the states:

[The beneficiary] has been working as a member of Dr. research group in various capacities – first as a postdoctoral researcher and now as a research associate. [The beneficiary's] research publication record demonstrates an exceptionally strong background in developmental cell and molecular biology, as well as adenovirus biology.

[The beneficiary's] current research focuses on studying the role of the Coxsackie and adenovirus receptor (aka CAR) in adenovirus infection. These studies also provide critical insights into the gene therapeutic potential of this group of viruses.

[The beneficiary's] most recent publication is in the prestigious international, peer-reviewed journal, . As lead author, she is the first scientist in the world to provide data that demonstrates that cigarette smoke is able to increase the susceptibility of a polarized human airway epithelium to adenovirus infection. . . . This publication further describes the molecular mechanism of how smoking creates respiratory distress. The paper also sheds light on the mechanism how passive smokers (i.e. those exposed to second hand smoke) become susceptible to respiratory illness. In my opinion, [the

> beneficiary] designed these experiments meticulously and the results were analyzed with impressive thoroughness.
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> In addition to the above publications, [the beneficiary] has provided further insights into the mechanism of how polarized cells can appear immune to adenovirus infection even when the cell expresses abundant primary receptor. This study dispels the myth that viral receptor abundance is the only issue that affects viral infection and is also significant because the cells that were used in this study have widely been used as model system to investigate biology of numerous viruses.
>
> [The beneficiary] has also authored an article that demonstrates that the and susceptibility to infection are differentially regulated by two different PDZ domains of the cellular scaffolding protein . Whereas within the cell and reduces , This work suggests that novel therapeutics can be developed to either augment or decrease adenovirus infection for either gene therapy approaches to target airway disease or to protect susceptible people from adenovirus infection, respectively.

Dr. points to the beneficiary's studies regarding the role of the CAR in adenovirus infection, the susceptibility of a polarized human airway epithelium to adenovirus infection, the mechanism of how polarized cells can appear immune to adenovirus infection, and the eight exon isoform of CAR, but he does not provide specific examples of how the beneficiary's work has been utilized to develop novel diagnoses, prevention methods, or novel therapeutic treatments for viral infections. Although the beneficiary's research has value, any research must be original and likely to present some benefit if it is to receive funding and attention from the scientific or academic community. In order for a university, publisher or grantor to accept any research for graduation, publication or funding, the research must offer new and useful information to the pool of knowledge. Not every scientist who performs original research that adds to the general pool of knowledge in the field knowledge has inherently made an original contribution to the academic field as a whole. The petitioner has not established that the beneficiary's work has impacted the biomedical research community in a major way, or that her work was otherwise commensurate with an original contribution to the academic field as a whole.

Dr. Director of the and Professor in the Department of Bioengineering & states:

> [The beneficiary's] research is important due to her novel structure-function approach to understanding the biological relevance of the Coxsackievirus and Adenovirus Receptor (CAR) in the pulmonary epithelium by assessing both endogenous activity and viral receptor activity. She is conducting studies to decipher how CAR and its interacting proteins regulate viral infection, a daunting task that demands high expertise, creativity, and technical skill.

> She is also on the forefront of developing novel strategies to advance pulmonary gene therapy. Therefore, [the beneficiary] plays a leading role in this cutting-edge field of the research and is one of the few scientists who has developed the necessary set of skills to take a project from basic biology and further having its impact at clinical stages.
>
> [The beneficiary] has published in peer reviewed journals. These journals have high rankings and show her to be at the forefront of her field and of biomedicine. . . . [The beneficiary] has also presented her work at international conferences such as the in both oral and poster formats.

Dr. comments on the beneficiary's work to decipher how CAR and its interacting proteins regulate viral infection, but he does not provide specific examples of how the beneficiary's work has impacted the field at a level indicative of a contribution to the academic field as a whole. Dr. also points to the beneficiary's scientific and "technical skill." Having a capable skill set is not a contribution to the field in and of itself. Rather, the record must be supported by evidence that the beneficiary has already used her skills to make an original contribution to the academic field as a whole. Furthermore, assuming the beneficiary's skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the U.S. Department of Labor through the alien employment labor certification process. *See Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Assoc. Comm'r 1998). In addition, Dr. also mentions the beneficiary's journal publications and international conference presentations. With regard to the beneficiary's conference presentations, many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. Professional associations, educational institutions, employers, and government agencies promote and sponsor these meetings and conferences. Participation in such events, however, does not equate to original contributions to the academic field. There is no documentary evidence showing that the beneficiary's published or presented work has been heavily cited, has impacted the field as a whole, or otherwise rises to the level of original contributions to the academic field.

Dr. , Professor of Pediatrics, Microbiology and Internal Medicine, and Vice-Chair for of Medicine, states:

> I can speak to the cutting edge research projects being carried out in Dr. lab, where [the beneficiary] is working as a research scientist. Dr. is a leading scientist in gene therapy.
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> * * *
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> [The beneficiary's] initial work, during her Ph.D. studies at the helped unravel the cellular and molecular mechanisms involved in lizard tail regeneration. . . . [The beneficiary'] landmark work on lizard regeneration resulted in several publications that have contributed significantly to this exciting and dynamic field of research.

> In contrast to the regenerative tissue discoveries made during her Ph.D., [the beneficiary] has made crucial discoveries important for our understanding of the basic biology of adenovirus:cell and cell:cell interactions while at
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> * * *
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> [The beneficiary] has been instrumental to our current understanding of CAR [Coxsackievirus and Adenovirus Receptor]. . . . She embraced a new field focused on a recently discovered alternatively spliced-isoform of CAR known as CAR-Ex8. She discovered that CAR-Ex8 is the primary receptor present at the apical surface of polarized epithelia and is responsible for the initiation of viral infection. Additionally, in a study which is the first of its kind, she has shed light on factors that make individuals exposed to second-hand smoke potentially more susceptible to adenovirus infection by increasing CAR-Ex8. This study is particularly important because little is understood about how adenovirus actually initiates infection within the host. It has opened up the possibility of altering the susceptibility of the epithelium to viral infections, particularly in populations of people that are at high risk for respiratory disease. These findings resulted in a first author paper in
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> Subsequent studies by [the beneficiary] have focused on the genetic dissection of the domains of CAR and the cellular proteins that interact with CAR. . . . She demonstrated that CAR-Ex8 and susceptibility to apical adenovirus (AdV) infection are differentially regulated by two different PDZ domains within MAGI-1. . . . Importantly, she also found that the presence of those MAGI-1 PDZ domains was instrumental to the ability of CAR-Ex8 to modulate both the decrease (PDZ3) and increase (PDZI) of viral infections. . . . These findings resulted in a peer-reviewed paper in a top virology journal, [The beneficiary] has also investigated the importance of receptor accessibility in epithelial cells with intact tight junctions. This work demonstrates an influential difference between polarized and non-polarized cells and hence the susceptibility of each cell type to AdV infection. This work lead to a first author paper published in . [The beneficiary's] research has improved our understanding of AdV infection and I have every expectation that she is on a trajectory to continue to illuminate the field. Additionally this work may facilitate drug discovery for viral infections and disease.

Dr. asserts that the beneficiary's "landmark work on lizard regeneration resulted in several publications that have contributed significantly to this exciting and dynamic field of research," but there is no evidence showing that the beneficiary's published work has been frequently cited by independent researchers or otherwise constitutes original contributions to the academic field. In addition, while Dr. discusses the beneficiary's findings in he does not provide specific examples of how the beneficiary's work has been applied by others in the field beyond her research institutions and immediate collaborators. Furthermore, the petitioner has not established that the number of independent citations to the beneficiary's articles is indicative of a demonstrable influence on the academic field as a whole.

Dr. , Scientist, Infectious Disease Program, New Mexico, states:

> [The beneficiary] is one of my valuable collaborators playing an outstanding role in advancing our understanding of the initiation of adenovirus infection and identifying factors that alter the susceptibility of the airway epithelium to adenovirus entry. Adenoviruses are one of the major causes of respiratory infections especially among children under the age of 5 years and also effective gene therapy tools for the treatment of diseases like muscular dystrophy and cancer.
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> * * *
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> I first met [the beneficiary] during my visit at on April 11, 2011. I initiated a research collaboration with the laboratory of Dr. [the beneficiary's] advisor. During the past two years, I have found [the beneficiary] to be an intelligent, knowledgeable, motivated, hardworking, optimistic, and professional scientist. With her involvement, our collaborative project experienced exceptional progression and resulted in a 2013 publication in the esteemed journal,

Dr. comments on her collaboration with the beneficiary and mentions that their work resulted in an article in but does not explain how others in the field are applying their results or how the beneficiary's work was otherwise commensurate with scientific or scholarly contributions to the academic field.

Dr. Professor, Department of Microbiology and Immunology, states:

> I am very familiar with the research in the laboratory of Dr. where [the beneficiary] is a Research Associate. I have followed Dr. work in adenovirus entry closely because it is so complementary to the work we do. [The beneficiary] is one of a well-established and highly regarded group of scientists who have done cutting-edge research in the molecular biology of adenovirus receptors in Dr. laboratory. [The beneficiary] has done excellent science characterizing the primary attachment receptor for adenoviruses and a very different group of viruses, Coxsackie viruses. The receptor is known as CAR and has been studied for its basic science importance and its clinical importance in adenovirus-mediated gene therapy.
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> * * *
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> [The beneficiary's] independent and creative work on CAR and human adenovirus infections has addressed fundamental questions about how CAR contributes to efficient gene transduction by adenovirus gene therapy vectors and how it participates in trafficking of cell proteins such as ion channels. That research has led to a first author paper in the top European virology journal, , and a middle author paper in a biochemistry journal, Most recently, [the beneficiary] is first author on a paper in the prominent open access journal,

> in which she used her considerable training and skills in cellular and molecular biology to examine an important hypothesis. . . . [The beneficiary's] work showed that there are differences in epithelial response to sidestream smoke compared to mainstream smoke exposure. Only the former increases expression of the CAR molecule, and this leads to increased entry of the adenovirus. This is high impact research, providing a mechanistic understanding of the consequences of cigarette smoke exposure on increased susceptibility to respiratory virus infections. Moreover, her studies suggest a possible therapeutic intervention that can be further investigated.

Dr. points to the beneficiary's articles in the Again, there is no evidence showing that the beneficiary's journal articles were frequently cited by others in the biomedical field, that her findings have improved treatment methodologies available for viral infections, or that her work otherwise equates to original contributions to the academic field. In addition, although Dr. states that the beneficiary's "studies suggest a possible therapeutic intervention that can be further investigated," she does not point to specific examples of how the beneficiary's work has already resulted in an effective therapeutic intervention. Again, an expectation of a possible future impact of the beneficiary's work is not evidence, and cannot establish eligibility for this regulatory criterion. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Dr. , Professor, Department of Biology, states:

> I have known [the beneficiary] since 2008 when she was investigating the possibility of pursuing postdoctoral training in the Dayton area.
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> * * *
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> Her Ph.D. research focused on elucidating factors involved in reptilian regeneration. In order to conduct the study she developed and standardized molecular biology protocols specific for the reptilian system. To my understanding, her doctoral work provided unique evidence that prostaglandin E2 (PGE2) can regulate the rate of caudal regeneration in reptiles. The results from these studies were very novel as amphibians, urodeles (tailed amphibians) are extensively studied for their regenerative ability, however, caudal regeneration in reptiles is still remain largely unexplored. Nevertheless these finding [sic] will provide a platform to further extrapolate and understand whether the process of regeneration is evolutionary conserved or not. [The beneficiary] published several peer reviewed articles as a part of her Ph.D. work.
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> * * *
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> [The beneficiary's] impressive pre-doctoral training was identified by Dr. and under Dr. mentorship [the beneficiary] has developed in to an outstanding, independent researcher. Her research is focused on the understanding of molecular events involved in the pathogenesis of adenovirus infection and the regulation of its receptor, Coxsackie adenovirus receptor (CAR).

* * *

> [The beneficiary's] recent publications have been published in some of the top peer reviewed journals in the field of virology. [The beneficiary's] outstanding research qualities are further evident by the fact that she has also attended and presented in a number of international conferences – impressive for a young scientist at this career stage.

Dr. asserts that the beneficiary's "doctoral work provided unique evidence prostaglandin E2 (PGE2) can regulate the rate of caudal regeneration in reptiles" and that her findings "will provide a platform to further extrapolate and understand whether the process of regeneration is evolutionary conserved or not." Dr. does not explain the extent to which the beneficiary's results are being utilized in the academic field. In addition, Dr. mentions the beneficiary's published and presented work on the pathogenesis of adenovirus infection and the regulation of its receptor, CAR, but there is no documentary evidence showing that the beneficiary's findings have been heavily cited, applied by a number of other researchers in the field, or have otherwise risen to the level of contributions to the academic field.

Dr. Associate Professor, Department of Neuroscience, Cell Biology, and Physiology, , states:

> I have had the opportunity to know [the beneficiary] and her research projects during our group meetings . . . . We have a long-standing collaboration on a grant which is funded by the

* * *

> Our collaborative work is focused on the discovery of methods and mechanisms that will improve the targeting of HIV-infected cells. We are doing this by exploring and exploiting cellular membrane composition changes associated with HIV infection. We are utilizing a directed evolution approach in order to develop new adeno-associated virus (AAV)-based gene therapy vectors specifically directed against HIV-1 infected cells. [The beneficiary] has been instrumental in the discovery of several novel AAV variants with improved gene transfer to HIV-infected T cells and we are currently testing the efficacy of these MV vectors, carrying an anti-HIV payload, on the elimination of HIV infection.

* * *

> [The beneficiary's] particular focus has been on adenovirus infection of lung epithelia. [The beneficiary's] article published in beautifully describes how a cell, which has been used for years as a model system to study adenovirus infections, can express CAR but still be highly resistant to adenovirus infection. Her research provides valuable insights into the mechanism of adenovirus infection of cells and has advanced the field of adenovirology forward in an important way.

* * *

> [The beneficiary] is developing novel therapeutics that could protect us all from the common cold that is caused by adenovirus, or could help enhance adenovirus-based therapeutics that have shown promise in the treatment of a variety of cancers.

Dr. asserts that the beneficiary was "instrumental in the discovery of several novel AAV variants with improved gene transfer to HIV-infected T cells," and points out that she and the beneficiary "are currently testing the efficacy of these MV vectors." Dr. does not provide specific examples of how the beneficiary's work has been implemented as a treatment protocol for HIV with corresponding improvement in patient outcomes, or was otherwise indicative of scientific or scholarly contributions to the academic field. In addition, Dr. comments that the beneficiary's research in "provides valuable insights into the mechanism of adenovirus infection of cells and has advanced the field of adenovirology forward in an important way," but there is no evidence showing that the beneficiary's article has been frequently cited or has otherwise contributed to the academic field. Furthermore, although Dr. asserts that the beneficiary "is developing novel therapeutics that could protect us all from the common cold that is caused by adenovirus, or could help enhance adenovirus-based therapeutics that have shown promise in the treatment of a variety of cancers," there is no evidence demonstrating that the beneficiary's work has already had this effect. Again, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Dr. Associate Professor, Department of Zoology, MSU, and Dr. Dean of the Faculty of Science, , states:

> [The beneficiary] worked in the division of Developmental Biology, Department of Zoology, Faculty of Science, at the India, as a Research Fellow. [The beneficiary's] duties included performing molecular and cellular biology experiments, including fluorescence and scanning electron microscopy with imaging analysis, cell culture, and biochemistry relating to tail regeneration in *Hemidactylus flaviviridis*, handling of animals, training undergraduate and master's degree students and writing, submission, and publication of research communications in peer reviewed journals. [The beneficiary] worked from August 2005 to July of 2008.
>
> During her tenure as a research fellow, [the beneficiary] was essential for the introduction of new molecular, cellular and biochemical techniques previously not performed in our institution. [The beneficiary] was found to be a sincere, hardworking, and technically gifted team player.

Dr. and Dr. comment on the beneficiary's work at but they do not provide specific examples of how the beneficiary's work has influenced the academic field as a whole. A contribution to the beneficiary's research institution is not necessarily an original contribution to the academic field as a whole.

The petitioner submitted letters of varying probative value. We have addressed the specific assertions above. Generalized conclusory assertions that do not identify specific contributions or their impact in the field have little probative value. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990). In addition, uncorroborated assertions are insufficient. *See Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *6 (D.D.C. Dec. 2013) (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the beneficiary's eligibility. *Id. 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").

Considering the letters and other evidence in the aggregate, the record does not establish that the beneficiary's research, while original, can be considered scientific or scholarly research contributions to the academic field. Accordingly, the petitioner has not established that the beneficiary meets this regulatory criterion.

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

The petitioner submitted documentation of the beneficiary's authorship of scholarly articles in journals such as
Accordingly, the evidence supports the director's finding that the beneficiary meets this regulatory criterion.

Summary

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 demonstrating that the beneficiary meets the criteria set forth at 8 C.F.R. § 204.5(i)(3)(i)(D) and (F).

B. Final Merits Determination

The next step is a final merits determination that considers whether the evidence is consistent with the statutory standard in this matter, being recognized internationally as outstanding in the academic area. Section 203(b)(1)(B)(i) of the Act. In addition, the controlling purpose of the regulation at 8 C.F.R. § 204.5(i)(3)(i) is to establish that the researcher is recognized internationally as outstanding in the academic field, and any evidence that meets the preceding categories of evidence must therefore be commensurate with 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)). On appeal, the petitioner asserts that the director failed to consider all of the evidence, including that evidence that does not satisfy the given criteria. We will consider all of the evidence below.

With regard to the category of evidence at 8 C.F.R. § 204.5(i)(3)(i)(D), 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 in the final merits determination. *See Kazarian*, 596 F. 3d at 1122. As previously discussed, the e-mail from the Monitoring Editor of was unaccompanied by documentary evidence showing that the beneficiary actually completed the review. In addition, while the petitioner submitted documentation identifying the beneficiary among eight members of the Editorial Board, the petitioner did not provide documentary evidence establishing the specific duties of the editor position or the selection criteria and process for editors at this journal. Submitting a webpage reflecting that the beneficiary served on an editorial board without documentary evidence showing the significance of the position is not probative of the beneficiary's international recognition as outstanding. Notably, the petitioner did not submit any evidence documenting the prestige or impact factor of to demonstrate its international standing.

The petitioner has also not established that performing a single manuscript review for as of the petition's filing date is commensurate with being internationally recognized as outstanding in the field. We note that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Normally a journal's editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication to ask multiple reviewers to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Thus, peer review is routine in the field and not every peer reviewer enjoys international recognition. Without evidence that sets the beneficiary apart from others in her field as of the petition's filing date, such as evidence that she completed numerous manuscript reviews for a substantial number of distinguished journals or served in an editorial position for a distinguished journal as a judge of the work of others, the petitioner has not established that the beneficiary's judging experience is indicative of or consistent with being internationally recognized as outstanding.

Regarding the beneficiary's original research submitted for the category of evidence at 8 C.F.R. § 204.5(i)(3)(i)(E), it does not rise to the level of contributions to the academic field. 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."

Although the beneficiary has coauthored eight journal publications with her superiors at and that meet the plain language requirements of the criterion at 8 C.F.R. § 204.5(i)(3)(i)(F), the U.S. Department of Labor's Occupational Outlook Handbook (OOH), 2014-15 Edition provides information

about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See* http://www.bls.gov/ooh/education-training-and-library/postsecondary-teachers.htm#tab-3, accessed on October 27, 2014, copy incorporated into the record of proceeding. The handbook states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. In addition, doctoral programs require graduate students to prepare "a doctoral dissertation, which is a paper presenting original research in the student's field of study." *See* http://www.bls.gov/ooh/education-training-and-library/postsecondary-teachers.htm#tab-4, accessed on October 27, 2014, copy incorporated into the record of proceeding. This information reveals that original published research, whether arising from research at a university such as or a private employer, does not set the researcher apart from faculty in that researcher's field.

Moreover, the beneficiary's citation history 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. The citation evidence submitted for the beneficiary's research articles indicates that none of them have been cited to more than twice by independent researchers as of the petition's filing date. As the petitioner has not established that the beneficiary's research findings have been heavily cited and the record contains no other evidence demonstrating the impact of the beneficiary's scholarly articles, the petitioner has not demonstrated that the beneficiary's citation record is consistent with international recognition.

Regarding the remaining categories of evidence at 8 C.F.R. § 204.5(i)(3)(i)(A), (B), and (C), the deficiencies in the documentation submitted for those categories have already been addressed. The petitioner has not established that the beneficiary meets the plain language requirements of those categories, or that the evidence submitted is indicative of, or consistent with being internationally recognized as outstanding in the academic field. Although the beneficiary claims various prizes and awards, the petitioner has not submitted evidence showing that her travel grants and best paper honor are major prizes or awards for outstanding achievement in the academic field. In addition, the two grant applications list Dr. as "Project Director/Principal Investigator" and the beneficiary as her subordinate. Moreover, the petitioner did not submit evidence showing that the associations in which the beneficiary holds membership require outstanding achievements. Furthermore, the published material the petitioner submitted did not identify the author and was not indicative of the beneficiary's international recognition. The summary appeared the same volume as the beneficiary's article featured in the summary, and, thus, garnered the beneficiary no exposure in the field beyond that afforded by the dissemination of the article itself.

Lastly, we note that many of the beneficiary's references' qualifications far outweigh those of the beneficiary. Their achievements are far more consistent with international recognition than the beneficiary's achievements. For example, Dr. states:

> I am currently serving as the Chief of Pulmonary and Critical Care at I am also the Vice Chair of the As a clinician scientist, I have authored of more than 140 peer-reviewed articles in many in high profile journals, such as I also hold a number of

> patents. Currently, I am principal investigator for a number of federally funded grants for cystic fibrosis, gene therapy and epithelial biology. I serve as a reviewer for numerous leading journals including and also serve as an reviewer for different study sections at the I am on the editorial board of the . . . I have also been honored with numerous honors and awards such as admission to the

With regard to his qualifications, Dr. states: "I am now the Director of the I have been heavily involved in research and I have published more than 170 scientific papers and several books." According to his Curriculum Vitae, Dr. scientific papers have been cited to more than 3,350 times. In addition, Dr. has served on seven editorial boards, reviewed grants for numerous research foundations and government agencies, and served as a peer reviewer for more than 50 journals.

Regarding his qualifications, Dr. states:

> Currently I am the director of and hold joint appointments as a Professor in the Department of
>
> I am currently serving as a member of Editorial Board for several international journals, including Since in 2004, I have been active in several scientific advisory boards for international companies and scientific communities, such as and the . . . . I was recently elected the Treasurer and a member of the Board of the Directors for the positions I will hold until 2014.

In discussing his qualifications, Dr. states:

> I am presently a Professor of Pediatrics at the of Medicine and participate in clinical service, teaching, and research. I direct a translational research laboratory and am actively involved in training undergraduate and graduate students, post-doctoral fellows, and junior faculty in their research experiences. I also serve as the Vice Chair for Research in the Department of Pediatrics.

According to his Curriculum Vitae, Dr. is an Associate Editor for and has been an invited reviewer for twenty journals. In addition, he has authored more than 175 research publications.

With regard to her qualifications, Dr. states:

> I am a newly tenured professor in the Department of Biological Sciences at . . . My work is internationally recognized and the work I initiated during my Ph.D. studies, and for which I hold a patent, has recently become the first clinically approved gene therapy in the Western world. I have published 34 peer-reviewed manuscripts in esteemed journals such as (cited over 1500 times). I have served as a grant reviewer on a study section panel for the and the and I review manuscripts for various microbiology and virology journals etc.).

Regarding her qualifications, Dr. states:

> I am a tenured Associate Professor at where I have served for the past 18 years as Principal Investigator on projects related to HIV/AIDS, gene therapy, viral vector safety, and biodefense. I currently serve on the (one of only 21 members selected in the United States) reviewing cutting-edge research protocols for clinical trials involving gene therapy. . . . I serve on the editorial board for *Applied Biosafety* and have reviewed manuscripts for prestigious journals including I have published 30 articles in scientific journals and 44 abstracts at national and international scientific conferences.

In light of the above, our final merits determination reveals that the beneficiary's qualifying evidence, serving as an editor of a journal with undocumented significance, participating once in the widespread peer review process and publishing articles that have not garnered significant 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.

III. Conclusion – International Recognition as Outstanding

The petitioner has shown that the beneficiary is a talented research associate, who has won the respect of her collaborators and supervisors, while securing a small degree of international exposure for her work. The record, however, stops short of elevating the beneficiary to the level of an individual who is internationally recognized as an outstanding researcher or professor. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

IV. Job Offer

The director determined that the petitioner did not submit an offer of employment in the form a letter from the petitioner to the beneficiary.

The regulation at 8 C.F.R. § 204.5(i)(3)(iii) provides that a petition must be accompanied by:

> An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:
>
> (A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;
>
> (B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or
>
> (C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

Black's Law Dictionary 1189 (9th ed. 2009) defines "offer" as "[t]he 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. The online law dictionary by American Lawyer Media (ALM), available at http://dictionary.law.com/, defines offer as "a specific proposal to enter into an agreement with another. An offer is essential to the formation of an enforceable contract. An offer and acceptance of the offer creates the contract." Significantly, the same dictionary defines offeree as "a person or entity to whom an offer to enter into a contract is made by another (the offeror)," and offeror as "a person or entity who makes a specific proposal to another (the offeree) to enter into a contract."

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, a letter addressed to USCIS affirming the beneficiary's employment is not a job offer within the ordinary meaning of that phrase.

The regulation at 8 C.F.R. § 204.5(i)(2), provides, in pertinent part: "*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."

In Part 6 of the Form I-140 petition, the petitioner indicated that the proposed employment was a permanent position. The petitioner submitted an April 29, 2013 letter from General Counsel, addressed to USCIS, stating that "proposes to employ [the beneficiary] permanently in the United States in the position of Research Associate on a permanent, full-time basis." This letter does not constitute an offer of employment from the petitioner to the beneficiary. On October 25, 2013, the director requested evidence that the petitioner had extended a permanent offer of

employment to the beneficiary. The director's request for evidence advised the petitioner that the "offer of employment must be a copy of the actual letter from [the petitioner] to the alien, dated at the time [the petitioner] made the offer . . . ."

In response, the petitioner submitted a letter from Human Resources Operations Analyst, , stating: "We affirm the terms of employment as set forth in our letter to Immigration dated 04/29/13. Those terms of employment existed before that filing and were effective at the time of the filing of the I-140."

On appeal, the petitioner focuses on what constitutes a qualifying permanent research position rather than what constitutes an offer of employment. The petitioner has not submitted the primary required initial evidence, the original offer of employment to the beneficiary predating the filing date of the petition. Confirmations after the fact are not evidence of eligibility as of the date of filing. *See generally* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak* at 49. The petitioner has not complied with the regulation at 8 C.F.R. § 103.2(b)(2) regarding the submission of secondary evidence. Specifically, the petitioner has not demonstrated that the original offer of employment does not exist or is unavailable. Although we do not question the credibility of those who have confirmed the beneficiary's employment, the petitioner has not sufficiently explained why we should accept attestations about the terms and conditions in a document in lieu of the document itself.

We affirm the director's finding that the petitioner has not submitted the required primary initial evidence, the original offer of employment to the beneficiary. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). Without evidence of the initial job offer to the beneficiary, we cannot consider the petitioner's explanations about the terms and conditions set forth in that job offer.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved.

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. The AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.