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

(b)(6)

U.S. Citizenship and Immigration Services

Date: MAR 0 9 2015 Office: TEXAS 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,

for 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. We will dismiss the appeal.

The petitioner is a pharmaceutical products and consumer goods company. 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 Senior Safety Scientist to research and report on unmet medical needs. 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.

As the petitioner correctly points out in its appellate brief, 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 eligibility 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 his 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 for the beneficiary 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, 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):

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

* * *

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

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

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

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

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

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

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

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 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 December 5, 2013, to classify the beneficiary as an outstanding researcher of unmet medical needs "within the areas of neurology, cardiology and related specialties." The petitioner states: "[The beneficiary's] research focuses on areas of unmet medical need, in particular the heart and brain, in an effort to [ ] gain a deeper understanding of the roles of these organ systems. . . . [The beneficiary] is actively involved in designing and developing clinical trials and studies, analyzing data, interpreting results and disseminating results." Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field of unmet

medical needs as of the petition's filing date, and that the beneficiary's work has been recognized internationally within the field as outstanding.

The regulation at 8 C.F.R. § 204.5(i)(3)(i) states that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The regulation lists the following six criteria, of which the beneficiary must submit evidence qualifying under at least two:

> (A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;
>
> (B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;
>
> (C) Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;
>
> (D) Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field;
>
> (E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or
>
> (F) Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

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 U.S. Citizenship and Immigration Services (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[2]

[2] On appeal, the petitioner does not assert 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.

> *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 February 14, 2014, letter from Editorial Assistant, stating that the beneficiary has completed peer reviews of the following papers for the journal since April 2011:

1.
2.
3.
4.
5.
6.

In addition, the petitioner submitted a March 4, 2014 letter from the Editorial Office of stating that the beneficiary has completed peer reviews of the following papers for the journal since August 2012:

1.
2.
3.
4.
5.
6.

The twelve instances of peer review for meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(D).

The petitioner also submitted copies of e-mail messages from the editorial staff of various journals requesting that the beneficiary review manuscripts for There is no evidence of the beneficiary's response to the journal editors or documentary evidence showing that the beneficiary actually completed the reviews. 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 March 1, 2012, e-mail from stating: "Deae [sic] [the beneficiary], I am very please [sic] that you can read this letter. Given the achievement that you made in your research field, we sincerely invite you to join the Editorial Board for the " There is no documentary evidence, however, showing, that the beneficiary accepted the invitation to join the Editorial Board and that the beneficiary participated as a judge of the work of others in that capacity for the journal.

The petitioner also submitted an October 20, 2010, e-mail informing the beneficiary about his role and responsibilities as a panelist in an upcoming " session for the " scheduled for The e-mail states that a "Panelist Role and Responsibilities" include preparing a disclosure slide; reviewing abstracts to be presented and becoming familiar with their content "to prepare topics/questions for the Q&A/Dialogue portion"; posing questions to the presenter; and driving "the discussion between the presenter and the audience to enhance interaction and increase the learning experience of the attendees." The petitioner has not established that reviewing abstracts to familiarize one's self with their content, preparing topics/questions for a dialogue, and driving a discussion constitute participation as a judge of the work of others. While evaluating and then selecting abstracts for the session would likely constitute judging the work of others, there is no documentary evidence reflecting that the beneficiary performed such tasks. In addition, the submitted documentation does not specifically identify the work judged by the beneficiary (such as the titles of the abstracts). Furthermore, the petitioner did not submit any documentary evidence from the demonstrating that the beneficiary participated in the meeting on

Regardless, the evidence of the petitioner's participation as a peer reviewer for 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 eleven letters of support, evidence of the beneficiary's co-authorship of research articles and a chapter for a book published in , and documentation of the beneficiary's presented work. 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 his 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).

The petitioner's appeal brief points to the letters of support, the beneficiary's conference presentations, and his journal publications as evidence that the beneficiary meets this criterion. 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 are familiar with his work and have been influenced by it. A minimal citation record, on the other hand, is less probative of the beneficiary's impact in the field.

Dr. , Chairman of Neurology and Director of the Alzheimer's Disease Center, states that he supervised the beneficiary's research for a period of two years on projects dedicated to a patient population suffering from mild cognitive impairment and Alzheimer's disease. Dr. continues:

> [The beneficiary] dedicated his efforts to reviewing and studying the various assessment scales used for diagnosing dementia and Alzheimer's disease, and studying the validity of the criteria used for diagnosing mild cognitive impairment at an early stage of the disease. . . . [The beneficiary's] findings were of interest and significant importance to the medical community and have been accepted for presentation at various national and international neurology conferences.
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> * * *
>
> The findings from [the beneficiary's] original research were selected for presentation at the conference. The selection of his work from among the several thousand papers submitted for consideration evidences the importance of his work to the field of Neurology since only the most outstanding original and/or significant research – as determined by a panel of recognized and respected experts in the field – are selected for presentation.

Dr. mentions that the beneficiary's findings "were of interest and significant importance to the medical community and have been accepted for presentation at various national and international neurology conferences" including "the conference." 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 necessarily equate to original contributions to the academic field. While Dr. asserts that "only the most outstanding original and/or significant research – as determined by a panel of recognized and respected experts in the field – are selected for presentation," there is no documentary evidence showing that once disseminated at various

conferences, the beneficiary's presented work has been heavily cited, has impacted the field as a whole, or has otherwise risen to the level of original contributions to the academic field.

Dr. further states that the beneficiary helped write a chapter in a textbook that Dr. developed and edited . The petitioner submitted documentation showing that the beneficiary coauthored a section of that was "focused on pharmacological approaches for treatment of " (part 23.1). According to the submitted documentation, Dr. textbook was not published until Thus, any impact resulting from the beneficiary's chapter in the textbook post-dates the December 5, 2013, filing of the Form I-140 petition. 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). Accordingly, we cannot consider the textbook published in as evidence to establish the beneficiary's eligibility at the time of filing.

Dr. , Executive Vice President and Chief Technology Officer, states:

> I wish to highlight the importance and significance of [the beneficiary's] work in the areas of unmet need with a focus on developing or validating the existing methodologies for diagnosing patients with Alzheimer's disease; available imaging markers for treatment of acute ischemic stroke; and the use of defibrillators in patients near their end of life. His research findings add significant scientific, quantitative and qualitative knowledge to the field of medicine. [The beneficiary's] work has been presented at national and international conferences in the field of neurology and such dynamic oral presentations validate the significance of his research when compared to static abstract and poster presentations.

Dr. mentions the beneficiary's work "on developing or validating the existing methodologies for diagnosing patients with Alzheimer's disease; available imaging markers for treatment of acute ischemic stroke; and the use of defibrillators in patients near their end of life," but does not provide specific examples of how the beneficiary's work has been utilized to develop novel diagnoses, prevention methods, or treatment protocols in the medical field. 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 academic or medical 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 physician 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 medical field in a demonstrable way, or that his work was otherwise commensurate with original scientific or scholarly research contributions to the academic field as a whole.

Dr. Interim Chairman, Department of Neurology, states that the beneficiary worked under his supervision "on a paper describing the imaging findings in patients with stroke and patent foramen ovale (PFO)." Dr. continues: "I am pleased with the significance of our findings. Our research was presented at a meeting of the and eventually published in a journal in the top tier of influence in clinical neurology as measured by impact factor." As with Dr. Dr. Clinical Chief of the Gastroenterology, Hepatology, and Endoscopy Division at

, refers to as a "top tier" journal. Although a journal's ranking and impact factor can provide an approximation of the prestige of the journal, those factors do not demonstrate the significance of every article published in that journal. The petitioner must establish that the findings in the beneficiary's article have influenced the academic field as a whole.

With regard to the beneficiary's article in , Dr. further states: "Perhaps even more important when assessing the overall significance of this work is the fact that this article was recognized as a highlight by the well-known medical community website which focuses on educating physicians with current academic literature." The petitioner submitted a copy of an April 16, 2012, e-mail from the Editorial Team to Dr. stating that the article in was featured on the site on that same date. Although the article may have caught the attention of the Editorial Team, the petitioner did not submit any evidence of frequent citation by independent researchers showing that the article's findings are indicative of scientific or scholarly research contributions in the academic field. In addition, there is no documentary evidence showing that the findings have affected diagnostic protocols for stroke patients at a significant number of hospitals or medical centers or otherwise equate to original contributions to the academic field.

With respect to the beneficiary's research regarding management of stroke patients, Dr. Director of Surgical Critical Care Research, states:

> [The beneficiary's] research focused on outlining decision strategies for managing these patients medically or surgically based on their imaging markers. . . . None of the previously published studies in the medical and scientific literature outlined using the imaging surrogate markers as predictive markers of recurrent stroke. The acceptance of his work for publication in the top journals in the field of Neurobiology and his invitations to present at several conferences clearly document his international recognition and his novel contributions to the advancement of medicine.

Dr. asserts that acceptance of the beneficiary's "work for publication in the top journals in the field of Neurobiology and his invitations to present at several conferences clearly document his international recognition and his novel contributions to the advancement of medicine." Again, the regulations include a separate criterion for authorship of scholarly articles at 8 C.F.R. § 204.5(i)(3)(i)(F). While publication and presentation of the beneficiary's work on predictive markers of recurrent stroke show that his research findings were disseminated in the field, there is no documentary evidence demonstrating that the beneficiary's findings were heavily cited by independent researchers, have resulted in effective diagnostic protocols that are being utilized throughout the field, or otherwise constitute original scientific or scholarly research contributions to the academic field.

Dr. Academic Surgeon, , Colombia, asserts that the beneficiary's work "is helping to ensure the best possible current outcomes for patients suffering from stroke while also helping to direct the medical community to develop additional research and data for areas in which conclusions cannot be made." Dr. does not provide specific examples of how others in the field are applying the beneficiary's results or how the beneficiary's work was otherwise commensurate with research contributions to the academic field.

Dr. , Head of the Scientific and Organizational Department of the , Ukraine, comments on the beneficiary's article in stating:

> His chapter is primarily intended for physicians managing patients who present with stroke in ER [Emergency Room]. . . . I make every effort to provide the best quality care to my patients but physicians like [the beneficiary] go above and beyond by reviewing and synthesizing the literature published in the last two decades to keep the physician community worldwide apprised of the latest trends in the field of medicine. Though lacking the high profile of discovery of a cure for a disease, this type of work is incredibly important to the medical community by helping to ensure that only the most recent and effective treatments are utilized and identifying areas that require further study. In the absence of a cure, [the beneficiary's] research provides critical and essential guidance for the best options to treat and manage stroke and thereby allows for the best possible outcome and highest possible quality of life for the patient.

While Dr. states that the beneficiary's reviews and syntheses of literature keep the physician community apprised of the latest trends in the medical field, he does not state that the beneficiary provided original contributions to the academic field. Additionally, while Dr. discusses the beneficiary's findings in he does not provide specific examples of how the beneficiary's work has been implemented by others in the academic field. Furthermore, the petitioner has not established that the number of independent citations to the beneficiary's article is indicative of a demonstrable influence on the academic field as a whole.

Dr. , Assistant Professor of Clinical states:

> [The beneficiary's] work on predicting the future risk of heart disease in patients using new imaging techniques and cardiac MRI to understand the exact disease location and mechanisms (including the anatomy, physiology and pathology) was presented at a national presented by the . . . [The beneficiary] and colleagues identified the existence of a correlation and revealed that further large scale studies will be required since not much literature is available for predicting the overall risk burden associated with this correlation.

Dr. mentions that the beneficiary work on predicting the future risk of heart disease in patients was presented at an conference, but does not explain the extent to which the beneficiary's results are being utilized in the academic field. There is no documentary evidence showing that the beneficiary's findings have been heavily cited, applied by a number of other researchers in the medical field, or have otherwise risen to the level of original scientific or scholarly research contributions to the academic field.

Dr. continues:

> Another published work in the area by [the beneficiary] revealed that further research is needed to accurately assess improvements in the quality of life for patients implanted with defibrillators. . . . [The beneficiary's] research work proposed that we need more data driven studies to increase the physician-patient interaction by showing the data on poor quality of life scales post defibrillator implantation. His research was published in the with a message for the physician community nationwide that studying the use of ICD's in near end of life patients will help to determine the positive and negative impacts of these devices as well as help to improve the physician-patient relationship overall.

Dr. comments on the beneficiary's article in the but does not provide specific examples of how the beneficiary's findings have affected treatment protocols for patients implanted with defibrillators with corresponding improvement in patient outcomes, or were otherwise indicative of scientific or scholarly contributions to the academic field. In addition, there is no evidence showing that the beneficiary's article has been frequently cited or has otherwise contributed to the academic field. Furthermore, while the beneficiary's article recommends further studies relating to the use of ICD's in near end of life patients, there is no documentary evidence demonstrating that the beneficiary's article has already achieved this effect or has otherwise risen to the level of contributions to the academic field.

In the appeal brief, the petitioner does not point to any additional reference letters that demonstrate the beneficiary's eligibility for this regulatory criterion. The remaining letters submitted in support of the petition and written by the beneficiary's former supervisors Dr. and Dr. include statements and assertions similar to those previously discussed. The information provided in their letters does not establish that beneficiary's work has impacted the medical field in a demonstrable way, or that his work was otherwise commensurate with original scientific or scholarly research contributions to the academic field.

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*, 4 F.Supp.3d 126, 134-35 (D.D.C. 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 director determined that the petitioner had established the beneficiary's eligibility for this regulatory criterion. The record supports that finding.

The petitioner submitted documentation of the beneficiary's authorship of five scholarly articles in In addition, the petitioner submitted an e-mail from the Managing Editor of stating that the beneficiary's article entitled " " was accepted for publication, but the date of publication was not provided. There is no documentary evidence showing that the article had been published in at the time of filing the I-140 petition. 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. Regardless, the documentary evidence showing five journal articles that had been published at the time of filing supports the director's finding that the beneficiary meets this regulatory criterion.

Summary

In light of the above, the petitioner has submitted evidence for the beneficiary 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, through counsel, asserts that the director erred by not considering the content of the letters of support in the "final merits determination" part of the denial decision. Counsel discusses the beneficiary's work in "areas of unmet medical need" stating: "As the letter from Dr. describes, this type of research greatly influences the direction and course of future

research endeavors but is rarely cited by others since, by its very nature, the only concrete conclusions it draws relates to a lack of information." Counsel's assertions are not supported by the record. While Dr. comments that the beneficiary's work "focused on unmet need in the field of vascular neurology," "adds valuable and significant information to the literature on stroke," and provides "needed direction for physicians to review additional research literature on the specific treatment and management measures most appropriate for their specific patient," contrary to counsel's statement, Dr. letter does not state that unmet medical need research is a type of research that is "rarely cited by others." The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Significantly, although the petitioner did not submit a citation history for the beneficiary's published work, the second to last paragraph in Dr. letter states that the beneficiary's research work has "been published and/or cited." With regard to the beneficiary's vascular neurology research, not every physician scientist who performs original research that adds to the general pool of knowledge in the field knowledge has inherently made an original scientific or scholarly research contribution to the academic field. The letter from Dr. does not provide specific examples of how the beneficiary's work has affected others in the academic field at a level that is commensurate with being recognized internationally as outstanding. USCIS need not rely on unsubstantiated statements. *See 1756, Inc.,* 745 F. Supp. at 15 (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

With respect to the final merits determination, the appellate brief does not point to any other specific statements or supporting evidence demonstrating that the beneficiary's work is recognized internationally as outstanding in the academic field. The letters of support submitted by the petitioner have already been individually considered under the category of evidence at 8 C.F.R. § 204.5(i)(3)(i)(E) and found insufficient to meet that criterion. Accordingly, the letters are not sufficient to show that the beneficiary and his work are recognized internationally as outstanding in the academic field. Again, 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. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. at 795; *see also Matter of V-K-*, 24 I&N at 500, n.2. Regardless, we will consider all of the petitioner's evidence below.

With regard to the category of evidence at 8 C.F.R. § 204.5(i)(3)(i)(D) in the final merits determination, the nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. As previously discussed, the petitioner submitted documentation showing that the beneficiary has completed twelve instances of peer review for . There is no documentary evidence (such as journal rankings or impact factor statistics) demonstrating the international reputation of the aforementioned journals. In addition, the petitioner has not established that the beneficiary's level of participation in the peer review process as of the petition's filing date is commensurate with being internationally recognized as outstanding in the academic field. Scientific and medical 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.

Furthermore, as previously mentioned in our discussion of the documentation submitted for the criterion at 8 C.F.R. § 204.5(i)(3)(i)(D), the five e-mails inviting the beneficiary to review various manuscripts and the e-mail inviting the beneficiary to join the Editorial Board did not demonstrate the beneficiary's acutal participation as a judge of the work of others. Moreover, the international reputation of the is undocumented. In addition, the "Panelist Role and Responsibilities" pertaining to the beneficiary's were not shown to have involved judging of the work of others. Without evidence that sets the beneficiary apart from others in his field as of the petition's filing date, such as evidence that he 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. For example, Dr. states that he is "editor of the journal ," a distinguished publication that is the official journal of the .

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. Although the petitioner submitted eleven letters of support indicating that the beneficiary's research work was "original," demonstrating that the beneficiary's work did not merely duplicate prior research is not useful in setting him 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. While the letters of support comment favorably on the beneficiary's published and presented findings, they do not provide specific examples of how the beneficiary's work has affected the academic field at a level commensurate with being recognized internationally as outstanding.

Although the petitioner submitted evidence of the beneficiary's co-authorship of five journal articles 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 February 17, 2015, copy incorporated into the record of proceeding. The handbook states that faculty members are pressured to perform research and to publish their findings 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 February 17, 2015, copy incorporated into the record of proceeding. This information reveals that original published research, whether arising from research at a university such as (where the beneficiary is pursuing a second master's degree) or a private employer, does not set the researcher apart from faculty in that researcher's field. When viewed in context with the records of Dr. whose research results "have been published

via more than 60 articles and have also been presented at nearly 50 congresses and conferences worldwide"; Dr. , whose "research has resulted in more than 90 presentations at professional conferences and scholarly articles published in journals"; and Dr. who has "published over 200 original research papers, chapters, reviews and abstracts," the petitioner has not established that the beneficiary's publication record is commensurate with being internationally recognized as outstanding

Moreover, the beneficiary's citation history is a relevant consideration as to whether the evidence is indicative of his recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. 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 in the academic field beyond a few independent references, the petitioner has not demonstrated that the beneficiary's publication record of five journal articles is consistent with being internationally recognized as outstanding.

In light of the above, our final merits determination reveals that the beneficiary's qualifying evidence, participating in the widespread peer review process for two journals with undocumented reputations and publishing articles that have not garnered significant citations or other substantial impact 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 scientist, who has won the respect of his colleagues and supervisors, while securing a degree of international exposure for his 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.

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. We conduct 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).

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.