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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAY 2 2 2015

FILE #:
PETITION RECEIPT #:

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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to 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 biotechnology 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 (Form I-140), the petitioner seeks to employ the beneficiary in the United States as a senior engineer. The director determined the petitioner had submitted evidence establishing that the beneficiary satisfied the categories of evidence at 8 C.F.R. § 204.5(i)(3)(i)(D), (E), and (F), but that the beneficiary had not attained the outstanding level of achievement and international recognition required for classification as an outstanding researcher.

On appeal, the petitioner submits a brief. The petitioner asserts that the beneficiary meets three out of the six criteria at 8 C.F.R. § 204.5(i)(3)(i) and that the beneficiary is recognized internationally as outstanding in his field.

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):
>
> * * *
>
> (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,

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

(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 was filed on January 9, 2014. The beneficiary earned a Ph.D. in Electrical Engineering (December 2011) and a Master of Science (M.S.) degree in Electrical Engineering (August 2003) from the The petitioner seeks to classify the beneficiary as an outstanding researcher in the field of electrical engineering specializing in electrowetting and digital microfluidics. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field as of the petition's filing date, and that the beneficiary's work has been recognized internationally within the academic 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 369, 376 (AAO 2010) (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).[2] *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[3]

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 had not established the beneficiary's eligibility for this criterion. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. When an appellant fails to offer argument on an issue, that issue is

[2] The immigrant visa classification at issue in *Kazarian,* section 203(b)(1)(A) of the Act, requires qualifying evidence under three criteria whereas the classification at issue in this matter, section 203(b)(1)(B) of the Act, requires qualifying evidence under only two criteria.

[3] On appeal, the petitioner does not assert, and the record does not show, that the beneficiary meets any of the regulatory categories of evidence not discussed in this decision.

abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 2011) (plaintiff's claims abandoned when not raised on appeal). Accordingly, 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 had not established the beneficiary's eligibility for this criterion. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The issue, therefore, is considered abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, 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 e-mails reflecting that the beneficiary peer reviewed the following:

1. Manuscript
2. Article
3. Manuscript
4. Article ; and
5. Article

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

In addition, the petitioner submitted a May 2013 Science Peer Reviewer "Deed of Confidentiality" that the beneficiary executed with The deed states that the beneficiary "will be involved in the science peer review of research proposals." The petitioner, however, did not submit documentary evidence from the demonstrating that the beneficiary completed any research proposal reviews. The plain language of this regulatory criterion requires "[e]vidence of the alien's participation . . . as the judge of the work of others." Entering into an agreement to review research proposals is not evidence of the beneficiary's actual "participation" as a reviewer or judge, and without such evidence, it is insufficient to establish eligibility for this criterion.

In response to the director's notice of intent to deny the petition, the petitioner submitted two e-mails reflecting that the beneficiary reviewed article in July 2014. The beneficiary reviewed the aforementioned article after the Form I-140 petition's filing

date of January 9, 2014. Eligibility, however, 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 peer review work performed by the beneficiary after January 9, 2014, as evidence to establish his eligibility at the time of filing.

Regardless, the evidence of the beneficiary's participation as a peer reviewer of five journal articles 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 had established the beneficiary's eligibility for this criterion. A review of the record of proceeding, however, does not reflect that the petitioner submitted sufficient documentary evidence establishing that the beneficiary meets this criterion and the director's determination on this issue will be withdrawn. 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 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 submitted nine letters of support, the beneficiary's publications and presentations, and citation evidence for his published work. With regard to the beneficiary's published 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 less extensive citation record, on the other hand, is generally not probative of the beneficiary's impact in the field.

The petitioner submitted citation information from and the websites reflecting:

1. was independently cited to seventeen times (plus two self-cites by the beneficiary or his coauthors);[4]

[4] Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers.

2. was independently cited to six times; and
3. was independently cited to four times.

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 to the academic field.

Dr. Professor of Solid State Electronics, Department of Electrical Engineering and Computer Systems, and Director of the Nanoelectronics Laboratory (Nanolab), states that he was the beneficiary's "advisor during his Ph.D. research work at Nanolab." Dr. further states:

> [The beneficiary] . . . proposed to pursue research on lipid bilayers using an approach called ". . . . [The beneficiary] discovered significant voltage effect on area, figured out the mechanism behind it to be similar to that of electrowetting, researched nanopore insertion currents in at various voltages, and postulated the active control of nanopores in with voltage. Our work was first published in a peer-reviewed scientific journal | . . . . [The beneficiary] also discovered controlled diffusion of molecules across using photopolymerizable lipids in Photo triggered release of molecules across lipid bilayer could have potential application in in-vitro drug-delivery studies. Our research work on this effect was also published in a peer-reviewed scientific journal |. . . . [The beneficiary] also automated formation by developing a

Dr. mentions the beneficiary's work on voltage control of lipid membrane dimensions and controlled diffusion of molecules across using photopolymerizable lipids, but does not provide specific examples of how the beneficiary's work has been applied by others in the academic field. In addition, while Dr. asserts that the beneficiary's work "could have potential application in in-vitro drug-delivery studies," there is no documentary evidence demonstrating that the beneficiary's work has already been utilized to that effect. 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(i)(3)(i)(E), which requires evidence of the beneficiary's "contribution" to the field. 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. continues:

> In addition to the above-mentioned journal article publications, [the beneficiary] was an active participant in several research meetings and presentations such as the in the meeting, and the meeting.

With regard to the beneficiary's participation in research meetings and 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. There is no documentary evidence showing that once disseminated at various conferences, the beneficiary's presented work has been extensively cited, has impacted the field as a whole, or has otherwise risen to the level of original contributions to the academic field.

Dr. , Professor of Control & Dynamical Systems and Bioengineering at the , states:

> [The beneficiary's] findings on the significant effect of voltage on lipid membrane characteristics are impressive. He reported the effect to be similar to that of electrowetting on dielectric using both theoretical and experimental approaches. [The beneficiary] also reported the development of a simple digital microfluidic chip to automate formation. In addition to exploring electrowetting and digital microfluidics, [the beneficiary] worked with nanopore insertions in and photo-induced transmembrane diffusion of molecules, which are useful for in vitro studies.

Dr. comments on the beneficiary's research findings in and describes the beneficiary's work as "impressive," but does not provide specific examples of how the beneficiary's findings have been utilized by others in the electrical engineering field or otherwise constitute contributions to the academic field. Although the beneficiary's Ph.D. 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 electrical engineer 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. While the beneficiary reported his research on in and at various scientific meetings, the petitioner has not established that the beneficiary's work has impacted the academic 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. further states that the beneficiary's "research work is recognized internationally, as evident from the number of downloads of his thesis." Dr. asserts that the beneficiary's M.S. thesis has "more than 500 downloads." Although others in the field may have reviewed the beneficiary's M.S. thesis after downloading it, there is no documentary evidence showing that the thesis has been extensively cited by independent researchers or has otherwise contributed to the academic field in a significant way. Furthermore, as stated above, authorship of scholarly articles falls under the regulatory criterion at 8 C.F.R. § 204.5(i)(3)(i)(F), and, thus, does not necessarily constitute qualifying evidence under 8 C.F.R. § 204.5(i)(3)(i)(E).

Dr. a co-founder and Chief Technology Officer (CTO) of a wholly owned subsidiary of the petitioner, states:

> [The beneficiary's] more recent research accomplishments with continue to demonstrate the very high level of outstanding ability. His research work on transformation of biological cells in digital microfluidic platform using integrated electroporation electrodes is of major significance not only to but also to the international research community and the U.S. genome engineering community. This project was funded by the]. . . . He has collaborated with world renowned researchers at universities. The potential of this novel research and its findings will immensely impact genome engineering worldwide.

Dr. mentions the beneficiary's -funded research work at involving "transformation of biological cells in digital microfluidic platform using integrated electroporation electrodes." Dr. asserts that the aforementioned research work "is of major significance not only to but also to the international research community and the U.S. genome engineering community," but does not provide specific examples of how others in the research field or the U.S. genome engineering community are applying the beneficiary's results outside of the project, or how the beneficiary's work was otherwise commensurate with research contributions to the academic field. USCIS need not rely on unsubstantiated claims. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications); s*ee also 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). In addition, while Dr. asserts that the "potential of this novel research and its findings will immensely impact genome engineering worldwide," he does not point to any evidence demonstrating that the beneficiary's work has already had such an 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. A petitioner cannot establish the beneficiary's eligibility based solely on the expectation of future eligibility. *Id.*

Dr. the other co-founder and CTO of , states: IP [Intellectual Property] portfolio includes over 100 issued patents and several hundred more applications pending worldwide. [The beneficiary] is the first inventor on a recently filed patent application by and he is a frequent idea contributor within "

Dr. and Dr. both mention that the beneficiary is the first inventor on a recent "patent application" filed by . There is no documentary evidence showing that a U.S. or an international patent was granted for the invention. Regardless, while issuance of a patent recognizes the originality of an idea, it does not demonstrate that the beneficiary has influenced the field as a whole through his development of the invention. A patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See In re New York State Dep't of Transportation*, 22 I&N Dec. 221, n. 7. Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* With regard to the beneficiary's invention, the petitioner must demonstrate that the innovation has demonstrably impacted the field. In this instance, there is

no documentary evidence showing that the beneficiary's invention has affected the genome engineering community in a significant way or that the innovation otherwise constitutes a research contribution to the academic field.

In addition, Dr. states that the beneficiary's -funded project "seeks to radically transform manufacturing by leveraging the power of synthetic biological organisms" and that the beneficiary "is also collaborating with industrial partners on the development of next-generation genomic analysis products." There is no documentary evidence showing, however, that the beneficiary's work has already transformed manufacturing processes, has significantly impacted the genomic analysis product industry, or otherwise equates to research contributions to the academic field. 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 Director of Engineering at the petitioning organization, states that the beneficiary was "instrumental in the success of product line for genomic sample preparation distributed by . In particular he was a critical contributor to the development and validation of thermal subsystems and droplet sensing for these products." Although the beneficiary's work contributed to product line, there is no evidence demonstrating that his work was recognized beyond the company such that his work constitutes original scientific or scholarly research contributions to the academic field. The plain language of the regulation requires that the contributions be "to the academic field" rather than just his research institution or employer. With respect to the beneficiary's occupation, the U.S. Department of Labor's *Occupational Outlook Handbook* (*OOH*), 2014-15 Edition states:

> Electrical engineers design, develop, test, and supervise the manufacturing of electrical equipment, such as electric motors, radar and navigation systems, communications systems, or power generation equipment.
>
> * * *
>
> Electrical engineers typically do the following:
>
> - Design new ways to use electrical power to develop or improve products
> - Do detailed calculations to develop manufacturing, construction, and installation standards and specifications
> - Direct manufacturing, installing, and testing of electrical equipment to ensure that products meet specifications and codes

See http://www.bls.gov/ooh/architecture-and-engineering/electrical-and-electronics-engineers.htm#tab-2, accessed on May 4, 2015, copy incorporated into the record of proceeding. If the regulation at 8 C.F.R. § 204.5(i)(3)(i)(E) is to have any meaning, performing duties inherent to the field of electrical engineering (such as product development) is not necessarily a contribution to the academic field as a whole.

Dr. Senior Research Scientist in the at states that he is a collaborator with the beneficiary on the project funded by Dr. continues:

> [The beneficiary's] work on transforming biological cells inside a digital microfluidic cartridge . . . is of major significance to the international research community and the U.S. genome engineering community. The potential of this novel technology and its functionalities will immensely impact the portable genomics and genome engineering products. In this project, [the beneficiary] made significant contributions in designing and integrating the electroporation electrodes in microfluidic cartridge, biological cell growth and cell transport in the form of microfluidic droplets, enabling automation of droplet pulsing, optimizing microfluidic droplet operations, and developing cost-effective on-cartridge cell growth monitoring technique. . . . Part of his work in this project is being presented at conference in Germany.

Dr. asserts that the beneficiary's "work on transforming biological cells inside a digital microfluidic cartridge . . . is of major significance to the international research community and the U.S. genome engineering community," but does not explain the extent to which the beneficiary's novel technology is already being utilized in the academic field. Rather, Dr. comments on the "potential" of the technology and his expectation that it "will immensely impact the portable genomics and genome engineering products." Dr. expectation regarding the future impact of the beneficiary's work is not evidence and does not establish eligibility for this regulatory criterion. 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. In addition, Dr. notes that the beneficiary's work from the project was "presented at conference in Germany." While presentation of the beneficiary's work at shows that his research findings were disseminated in the field, there is no documentary evidence showing that the beneficiary's work has been extensively cited, has been applied by other researchers in the engineering field, or has otherwise risen to the level of original scientific or scholarly research contributions to the academic field.

Dr. , Professor of Electrical Engineering, states:

> [The beneficiary] designed and developed an electrowetting technology based digital microfluidic chip prototype for automating the formation of droplet interface bilayers. His thin film process based and electrowetting technology based digital microfluidics work with droplet interface bilayer was detailed in a chapter in his Ph.D. dissertation as well as presented by him at meeting. I noticed that his Ph.D. dissertation electronic copy was downloaded by various researchers from at least 61 times so far.

Dr. mentions that the beneficiary's thin film process based and electrowetting technology based digital microfluidics work was a part of his Ph.D. dissertation and was presented at an meeting, but there is no documentary evidence showing that the beneficiary's Ph.D. dissertation has been extensively cited by independent researchers or has otherwise affected the academic field. Dr. notes that the electronic version of the beneficiary's Ph.D. dissertation was downloaded by users of Ohio's academic library consortium at least 61 times. Again, the regulations include a

separate criterion for authorship of scholarly articles at 8 C.F.R. § 204.5(i)(3)(F). While users of may have downloaded and reviewed a copy of the beneficiary's Ph.D. dissertation, at issue is whether it is recognized in the wider field as a contribution to the academic field as a whole. There are no citation statistics or other documentary evidence showing the impact of the beneficiary's Ph.D. dissertation on the academic field.

Dr. M.P. Professor, states that he directed and advised the beneficiary "during his thesis and research work in the program" at Dr. further states:

> [The beneficiary's] research and thesis (2003) . . . was both unique and important to the field of . For example, in his remarkable thesis, '

Dr. asserts that the beneficiary's master's thesis offered "a very significant contribution to the field of and microsensors research," but does not provide specific examples of how the beneficiary's graduate work has influenced others in the academic field. There is no documentary evidence showing that the beneficiary's graduate work has been extensively cited, has been applied by other researchers in their work, or has otherwise risen to the level of original scientific or scholarly research contributions to the academic field. In addition, while Dr. asserts that the beneficiary's work "could have potential use in sensors and packaging," there is no documentary evidence demonstrating that the beneficiary's work has already been utilized to that effect.

Dr. a Microfluidics engineer at California, earned his Ph.D. in Electrical Engineering from in 2011. Dr. states:

> [The beneficiary] published results showing voltage tunability of membrane dimensions demonstrating new functionality in combination with electrowetting in the journal in 2011. . . . He later published an exciting application of relevant for drug delivery studies by demonstrating controllable pore formation through a membrane using external light actuation.

Dr. mentions the beneficiary's results in that demonstrate "new functionality in combination with electrowetting." While these findings have been moderately cited by others in the field, there is no documentary evidence showing that the beneficiary's results are being utilized by other research engineers at a level indicative of scientific or scholarly research contributions to the academic field. In addition, Dr. comments about the beneficiary's findings on "controllable pore formation through a membrane using external light actuation" and mentions their

applicability to "drug delivery studies." The record, however, does not include any documentary evidence showing that the beneficiary's findings have been implemented in any drug delivery studies or were otherwise commensurate with 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. *See 1756, Inc.*, 745 F. Supp. at 15. In addition, uncorroborated assertions are insufficient. *See Visinscaia*, 4 F.Supp.3d at 134-35; *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 petitioner submitted documentation of the beneficiary's authorship of two articles in [redacted] (2011 and 2012) and one article in [redacted] (2011).[5] Accordingly, the record 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

[5] As mentioned previously, the beneficiary co-authored a paper that was presented at the [redacted] conference, but the plain language of the regulatory criterion at 8 C.F.R. § 204.5(i)(3)(i)(F) requires authorship of scholarly articles "in scholarly journals with international circulation." A scientific conference is not a scholarly journal.

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)).

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. *See Kazarian,* 596 F. 3d at 1122.[6] On appeal, the petitioner cites to a July 30, 1992, correspondence memorandum from Lawrence Weinig, Acting Assistant Commissioner, legacy Immigration and Naturalization Service (INS) (now USCIS), discussing what constitutes "solid evidence" for individuals seeking extraordinary ability classification pursuant to section 203(b)(1)(A) of the Act. Mr. Weinig stated that "participation by the alien as a reviewer for a peer-reviewed scholarly journal would more than likely be solid pieces of evidence." In addition, Mr. Weinig stated that he was "inclined to believe that thesis direction (particularly of a Ph.D. thesis) would demonstrate an alien's outstanding ability as a judge of the work of others." Mr. Weinig concluded, however, that "we expect the examiner to evaluate evidence, not simply count it." Again, the truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe,* 25 I&N Dec. at 376.

As discussed, the petitioner submitted documentation showing that the beneficiary has completed five instances of peer review from 2012 to the petition's filing date. 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 engineering 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.

The petitioner cites to *Buletini v. INS,* 860 F. Supp. 1222 (E.D. Mich. 1994), in which the court held that 8 C.F.R. § 204.5(h)(3)(iv) does not require that participating as a judge was the result of having extraordinary ability. *Id.* at 1231. In contrast to the broad precedential authority of the case law of a

[6] The regulation at issue in *Kazarian,* 8 C.F.R. § 204.5(h)(3)(iv), is comparable to the regulation at 8 C.F.R. § 204.5(i)(3)(i)(D). As mentioned previously, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. *Kazarian,* 596 F. 3d at 1119-20. *See also Rijal v. USCIS,* 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming USCIS' proper application of *Kazarian*), *aff'd,* 683 F.3d. 1030 (9th Cir. 2012); *Visinscaia v. Beers,* 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review).

United States circuit court (such as with *Kazarian*), we are not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before us; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. Regardless, the court in *Buletini* did not reject at any time the concept of evaluating the quality of the evidence presented. Specifically, the court in *Buletini* acknowledged that "the examiner must evaluate the quality, including the credibility, of the evidence presented to determine if it, in fact, satisfies the criteria." *Buletini*, 860 F. Supp. at 1234. The court continued:

> Once it is established that the alien's evidence is sufficient to meet three of the criteria listed in 8 C.F.R. § 204.5(h)(3), the alien must be deemed to have extraordinary ability *unless the INS sets forth specific and substantiated reasons for its finding that the alien, despite having satisfied the criteria, does not meet the extraordinary ability standard.*

Id. (Emphasis added.) As is clear from the italicized language, the *Buletini* court considered the possibility that an alien can submit evidence satisfying three criteria and still not meet the extraordinary ability standard if USCIS provides specific and substantiated reasoning for its conclusion.

We do not find it violates the reasoning in *Buletini* to examine the evidence submitted as to whether it is indicative of, or inconsistent with, being recognized internationally as outstanding in the academic area. The court was concerned that an individual would need to first demonstrate "extraordinary ability" in order to meet the criterion at 8 C.F.R. § 204.5(h)(3)(iv). We are not following this "circular exercise" that troubled the court. Rather, we are looking at the level and frequency of the beneficiary's peer review activities and whether reviewing five manuscripts significantly sets him apart from others in his field, and what review responsibilities are indicative of, or at least consistent with, being recognized internationally as outstanding in the academic area. Moreover, we are bound by and following the higher court's finding in *Kazarian* that the nature of the beneficiary's judging experience is "relevant to a final merits determination." *Kazarian,* 596 F.3d at 1122.

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 Associate Editor for a joint publication of the . In addition, Dr. states that he has "served on the Editorial Board of a number of international research journals." These credentials are more indicative of recognition from the field as an outstanding researcher.

Regarding the beneficiary's original research submitted for the category of evidence at 8 C.F.R. § 204.5(i)(3)(i)(E), we find that it does not rise to the level of contributions to the academic field. Although the petitioner submitted nine letters of support indicating that the beneficiary's research findings were "original," simply demonstrating that the beneficiary's work did not just duplicate prior research is not useful in setting him apart in the academic community through eminence and distinction based on international recognition. 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 commented favorably on the beneficiary's published and presented findings, they were limited to only U.S.-based researchers and they did not provide specific examples of how the beneficiary's work has affected the academic field at a level commensurate with being internationally recognized as outstanding. In addition, all of the letters' authors are from the beneficiary's current or former colleagues at or the petitioner, or from individuals whose institutions have collaborated on the beneficiary's -funded project.

Although the petitioner submitted evidence of the beneficiary's co-authorship of three journal articles that meet the plain language requirements of the criterion at 8 C.F.R. § 204.5(i)(3)(i)(F), the *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 May 8, 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 May 8, 2015, 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. When viewed in context with the publication records of Dr. , whose research "has resulted in over 400 publications"; Dr. who has "published over 100 technical papers in international refereed journals"; Dr. whose "work has been published in over 200 articles in peer-reviewed journals and conferences with international circulation"; and Dr. whose authorship "includes 134 conference proceedings and journal articles," 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. The petitioner submitted evidence of less than thirty cites to the beneficiary's body of published and presented work. In comparison, Dr. résumé includes citation statistics reflecting 1293 cites to his research publications. As the petitioner has not established that the beneficiary's research findings have been extensively cited internationally and the record contains no other evidence demonstrating the impact of the beneficiary's scholarly articles in the academic field beyond his U.S.-based references, the petitioner has not demonstrated that the beneficiary's publication record of three 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, participation as a peer reviewer of five articles and publishing three journal articles that have not garnered extensive international 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

The petitioner has shown that the beneficiary is a talented electrical engineering researcher, 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 at 741; *Soltane v. DOJ*, 381 F.3d at 145; *Dor v. INS*, 891 F.2d at 1002, n. 9.

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.