



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF G-, INC.

DATE: APR. 11, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a biotechnology company that discovers, develops, manufactures, and commercializes medicines, seeks to classify the Beneficiary, a research associate, as an outstanding researcher. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(B), 8 U.S.C. § 1153(b)(1)(B). This first preference classification makes immigrant visas available to foreign nationals who can demonstrate international recognition as outstanding in their academic field.

The Director, Nebraska Service Center, denied the petition. The Director concluded that while the Beneficiary had served as a peer reviewer and authored published articles, those accomplishments did not demonstrate that she was recognized internationally as outstanding in the field.

The matter is now before us on appeal. In its appeal, the Petitioner states that the Director erred in concluding the Beneficiary does not meet two additional criteria and further maintains that the reference letters sufficiently demonstrate the Beneficiary's international recognition as an outstanding researcher and her eligibility for the classification.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(B) of the Act describes eligible foreign nationals as follows:

- (i) the [individual] is recognized internationally as outstanding in a specific academic area,
- (ii) the [individual] has at least 3 years of experience in teaching or research in the academic area, and
- (iii) the [individual] 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,

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(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 implementing regulation requires that a petition for an outstanding professor or researcher demonstrate that the individual “is recognized internationally as outstanding in the academic field specified in the petition” and must include initial evidence that meets at least two of the six criteria listed at 8 C.F.R. § 204.5(i)(3)(i). If a petitioner submits the required initial evidence, we then consider the totality of the record to determine if it establishes that the beneficiary is recognized internationally as outstanding in the relevant field. *See Matter of Chawathe*, 25 I&N Dec. 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 we examine “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).¹

Furthermore, the regulation at 8 C.F.R. § 204.5(i)(3)(ii) provides that a petition for an outstanding professor or researcher must be accompanied evidence that the foreign national has at least three years of experience in teaching and/or research in the academic field. In addition, experience in teaching or research while working on an advanced degree will only be acceptable if the individual 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. *Id.*

II. ANALYSIS

In this case, the Beneficiary received a Bachelor of Engineering degree in Biotechnology in 2009 from [REDACTED] in India. She earned a Master of Science degree in Biomedical Engineering in 2011 from [REDACTED]. Since graduating from [REDACTED] she has worked for the Petitioner, first as a contractor and, since 2013, directly as a research associate. She conducts research in the area of biomedical engineering.

The Director found that the Petitioner has satisfied at least two of the six criteria listed at 8 C.F.R. § 204.5(i)(3)(i), the judging criterion at subparagraph (D) and the scholarly articles criterion at

¹ 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 documentation under only two criteria.

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subparagraph (F). The Director ultimately concluded, however, that the Petitioner had not met its burden of proof as the evidence in the aggregate did not show that the Beneficiary is internationally recognized as outstanding in her academic field. For the reasons set forth below, we agree.

A. Initial Evidence

According to a letter from the editor-in-chief of the [REDACTED] the Beneficiary has served as a peer reviewer since 2013 and reviewed five scholarly articles for the publication. She has also been a peer reviewer for the [REDACTED] and [REDACTED]

[REDACTED] The record thus supports the Director's finding that the Beneficiary meets the participation as a judge criterion under 8 C.F.R. § 204.5(i)(3)(i)(D).

Similarly, the Beneficiary has authored articles published in scholarly journals with international circulation, including [REDACTED]

[REDACTED] The evidence therefore supports the Director's conclusion that the Beneficiary meets the authorship of scholarly articles in the academic field criterion under 8 C.F.R. § 204.5(i)(3)(i)(F). In light of the above, the Petitioner has satisfied the initial evidentiary requirement by presenting documentation that meets the criteria set forth under 8 C.F.R. § 204.5(i)(3)(i)(D) and (F).²

B. Final Merits Determination

As the Petitioner has satisfied the initial evidentiary requirement, the next step is a final merits determination that considers whether the record supports a finding that the Beneficiary is recognized internationally as an outstanding researcher in her academic field. *See* section 203(b)(1)(B)(i) of the Act. The controlling purpose of 8 C.F.R. § 204.5(i)(3)(i) is to establish that a researcher is recognized internationally as outstanding in the academic field, and the documentation in the aggregate must therefore be commensurate with international recognition.

In the denial, the Director acknowledged the Beneficiary's work peer-reviewing papers for academic journals, as well as authorship of published papers. He concluded that the Beneficiary's experience under both of these criteria did not exceed that of other researchers or confirm international recognition. The Director stated that independent citations were a better indicator of international recognition, and that the level of citation to the Beneficiary's articles was not commensurate with a researcher recognized internationally as outstanding. On appeal, the Petitioner discusses the citations as published material about the Beneficiary, the Beneficiary's experience as a peer reviewer, and the letters of support with respect to the Beneficiary's contributions and overall recognition. We will address all of this evidence in the order it appears at 8 C.F.R. § 204.5(i)(3)(i).

² Having found that the Petitioner has met the initial evidentiary requirements, we need not consider if the Petitioner also satisfies two additional criteria under 8 C.F.R. § 204.5(i)(3)(i)(C) and (E). Instead, we will consider all the submissions in the record, including those in support of the two additional criteria, in the final merits determination, in which we assess whether the Beneficiary is recognized internationally as outstanding in her academic area.

In regard to the citations, which the Petitioner characterizes as published material about the Beneficiary's work under 8 C.F.R. § 204.5(i)(3)(i)(C), the Petitioner maintains that a number of articles have cited or discussed the Beneficiary's research. As the Petitioner notes on appeal, chapter 22.2 of the *Adjudicator's Field Manual (AFM)* provides that "Articles that cite the alien's work as one of multiple footnotes or endnotes are not generally 'about' the alien's work." In this case, the Petitioner has not shown that the articles that cited the Beneficiary's published research as one of multiple references were about her work in the academic field. Rather, these articles mentioned the Beneficiary's papers, along with numerous other articles, in support of certain underlying concepts in the field.

Regardless, the Petitioner has not demonstrated that the limited number of citations to the Beneficiary's work is indicative of her status as an internationally recognized researcher. Google Scholar confirmed that the Beneficiary authored seven published articles. It reflected that four of the seven articles had been cited a total of 23 times as of July 1, 2015, with each of the four papers garnering one to nine citations, and the remaining three articles receiving no citations.³ A document entitled "Average Citation Rates for Papers Published by Field, 2000-2010," provided that the average citation rate for a biology and biochemistry paper published in this 10-year period was 16.67. None of the Beneficiary's articles reached this average citation frequency. The Petitioner has not shown that the minimal citation rate supports a finding that she enjoys international recognition as outstanding.

On appeal, the Petitioner maintains that other scientists have considered the Beneficiary's work in their articles. For example, [REDACTED] Associate Professor at the [REDACTED] of [REDACTED] highlighted the Beneficiary's paper, [REDACTED] published in the [REDACTED]. He stated that the Beneficiary's findings "became bases for multiple studies in developing the therapeutics for Skin Cancer." As examples, [REDACTED] noted that [REDACTED] of the School of Medical Sciences at the [REDACTED] from [REDACTED] and [REDACTED] from the [REDACTED] cited the Beneficiary's article. [REDACTED] paper, citing 61 references, contained one sentence summarizing the Beneficiary's research. [REDACTED] article included 36 references, and mentioned the Beneficiary's research in one sentence. Likewise, [REDACTED] cited 128 references, discussing the Beneficiary's studies once in a table listing ubiquitin-specific proteases (USPs) implicated in human cancers. The Google Scholar printout confirmed that the Beneficiary's [REDACTED] article, one of her two most cited papers, received nine citations. The Petitioner has not shown that this limited citation frequency supports a finding that the record contains published material about the Beneficiary's work consistent with international recognition.

³ The Google Scholar printout noted that the "[d]ates and citation counts are estimated and are determined automatically by a computer program."

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The Petitioner also points to letters from [REDACTED] and [REDACTED] Assistant Professor, Department of Pharmacy, [REDACTED] as evidence of the Beneficiary's internationally recognized status. [REDACTED] and [REDACTED] cited the Beneficiary's 2013 article [REDACTED] in their papers. They stated that the Beneficiary's article provided "valuable insights into the central role of [REDACTED] in the regulation of [REDACTED] production, in and to develop therapeutics towards hypophosphatemic disorders," and "new insights in designing therapeutics towards [REDACTED]-related hypophosphatemia disorder." The Beneficiary's article was one of 72 references in [REDACTED] paper, and one of 112 references in [REDACTED] article. While the Beneficiary's articles, including ones not specifically mentioned, have been cited because they add to the pool of general knowledge in the field, the Petitioner has not shown that the extent of published material noting the Beneficiary's work is indicative of her standing as an internationally recognized researcher.

As relating to the participation as a judge criterion under 8 C.F.R. § 204.5(i)(3)(i)(D), the Petitioner has not established that the Beneficiary's level of participation in the peer review process 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 evaluate submitted articles. It is common for a publication to ask multiple reviewers to assess a manuscript and to offer comments. Thus, peer review is routine in the field and not every peer reviewer enjoys international recognition.

[REDACTED] of the [REDACTED], [REDACTED] stated that the Beneficiary peer-reviewed a total of twelve manuscripts for four academic journals. He characterized the four scientific publications as prestigious with an international circulation. [REDACTED] Editor-in-Chief of the [REDACTED] provided that "[the Beneficiary]'s selection as a reviewer was made in recognition of her expertise in her specialty." Neither [REDACTED] nor [REDACTED] offered details on the criteria for selection, or the percentage of researchers in the field who serve as peer-reviewers. Without documentation that sets the Beneficiary apart from others in her field, such as evidence that she completed numerous manuscript reviews for a substantial number of distinguished journals or served in an editorial position for a distinguished journal, the Petitioner has not established that the Beneficiary's judging experience is indicative of or consistent with being internationally recognized as outstanding.

In regard to the original scientific or scholarly research contributions criterion under 8 C.F.R. § 204.5(i)(3)(i)(E), the Petitioner submitted various letters of support, and referenced the Beneficiary's publications, presentations, and citation information for her published work as supporting evidence. The Beneficiary's references were individuals with previous knowledge of her research and those who reviewed her work product specifically for this petition.⁴ The Petitioner emphasizes letters from a number of individuals, who discussed the Beneficiary's educational and professional history and offered opinions regarding her abilities.

⁴ We have read and considered each of the letters submitted, but discuss only a sampling to avoid repetition.

While the Beneficiary's research has impacted her past and current employers, the record lacks sufficient documentation showing that it contributed to the field as a whole. In reaching this conclusion, we look separately at her publicly disseminated work that she presented or published, and her proprietary work for her employer, which we acknowledge would not be disseminated. While we will take into account the proprietary nature of work that has not been disseminated, where the Petitioner relies on her research that she presented or published, the citation rate of those abstracts and articles remains relevant. Specifically, there is no presumption that every published article or conference presentation is a contribution to the academic field; rather, the Petitioner must illustrate the actual impact of the article or presentation.

Even assuming that the Beneficiary has contributed to the field, the record does not demonstrate that these contributions have garnered her international recognition as an outstanding researcher. As discussed, the Petitioner has not illustrated that the limited citation rate is indicative of the Beneficiary's international recognition as an outstanding researcher. The Petitioner has also pointed to the impact factor of journals that published the Beneficiary's articles or articles that cited her work as evidence of her eligibility for the classification. Impact factor may establish the importance of a particular journal in the field, but it does not show that authors of all the articles appearing in the publication are internationally recognized researchers.

Similarly, although the record includes reference letters that discussed the Beneficiary's published and presented research, they did not establish her status as internationally recognized. For example, [REDACTED] Professor and Assistant Chair of Research at [REDACTED] assessed the Beneficiary based on a review of her resume, publications, citations, and reputation in the field. He indicated that she is "at the top tier in the field of biomedical engineering research," and concluded:

Through her publications and citations, it is evident that [the Beneficiary] has been constantly involved in outstanding research that has had significant impact in the field of biomedical science. In her research journey starting from [REDACTED] India in 2008 to [REDACTED] USA and currently at [the petitioning company], [the Beneficiary] has been involved in multiple prominent projects to date, which became bases for many other significant projects.

More specifically, [REDACTED] credited the Beneficiary with developing a unique technique to determine a chemical compound in pharmaceutical formulations. He stated that "[t]his unique finding led to the development of a simple chemical method to detect chemicals in the bulk dosage forms, replacing all the expensive analytical techniques." He further provided that "This technique has found applications in many fields of analysis, especially in pharmaceuticals, cosmetics and food industries." The record does not, however, substantiate his statements. According to the Google Scholar printout submitted, the Beneficiary's [REDACTED] article in which the technique was published was estimated to have been cited four times, a rate inconsistent with [REDACTED] remark that her work "replac[ed] all the expensive analytical techniques" across multiple

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industries. The record also lacks other proof showing a widespread application of the Beneficiary's studies in this area, such as letters from individuals in multiple industries confirming that they have replaced their techniques with the Beneficiary's simple chemical method.

█ also noted the presentation of the Beneficiary's work at conferences:

Her research has been presented at national and international conferences in her field which includes █

█ and

█ These conferences are widely recognized as some of the most prominent annual international gathering of leaders and specialists in the field of biomedical engineering research, where only a few researchers with outstanding contributions to their fields are selected to present their work.

The Petitioner supplied corroborating evidence showing that the Beneficiary's research was presented at the above conferences. █ and other recommendation writers cited these events as an indication of the Beneficiary's international recognition as outstanding. The Petitioner does not, however, give specific information about the specific conferences, their prestige, or the process for selecting presenters. Although █ refers to them as "some of the most prominent annual international gathering of leaders and specialists in the field of biomedical engineering research," the record does not contain objective material to substantiate this characterization. Similarly, █ statement that "only a few researchers with outstanding contributions to their fields are selected to present their work," is not supported by independent documentation. The record contains no information regarding the acceptance rates for submissions to these conferences or other criteria used for selection. Poster presentations at research symposia are often regarded a necessary activity in research fields.

In addition, the Beneficiary's conference presentations showed that the Beneficiary disseminated her research, which without more, did not confirm her status as an internationally recognized researcher. A number of reference letters stated that the Beneficiary's presentations impacted the field, but none offered sufficient corroboration that she stood apart in the academic community through eminence and distinction based on international recognition. For example, █ affirmed that "[the Beneficiary]'s achievements are truly significant and have an exceptional impact in the biomedical research which has been internationally recognized." He also said there was "clear evidence of her outstanding scientific abilities." The record includes letters from: (1) █

█ Switzerland; (2) █ and (3) █, a scientist at

the Petitioner's █ These references indicated that the Beneficiary was an outstanding researcher. They pointed to the Beneficiary's research, citation frequency, authorship, and judging experience as support for their opinions. They did not, however, explain how these achievements set the Petitioner apart from others in the field. Statements that repeat the language of

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the statute or regulations do not satisfy the Petitioner's burden of proof. See *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, *1, 5 (S.D.N.Y. Apr. 18, 1997).

Beyond her disseminated research, the Petitioner also provided letters pertaining to the Beneficiary's contributions to her employers. According to [REDACTED] Scientist, Division of [REDACTED]

[REDACTED] the Beneficiary engaged in valuable research that was helpful to her former and current employers. [REDACTED] also stated that the Beneficiary's "innovative technique will be very valuable to study the cartilage loss in joint disease models," and her research on enhancing the wound healing process "will make a significant difference in the lives of many diabetic patients." Evidence of influence on one's employer and speculation of future achievements in the field may show the Beneficiary's potential in the field, but it is insufficient to demonstrate that she has already achieved the status of an internationally recognized researcher.

The Petitioner highlighted the letter of [REDACTED] who stated that "[u]pon reviewing [the Beneficiary's] scientific research contributions and excellent publication and citation track record, I find that [she] is exceedingly qualified as an outstanding researcher, and that she has been recognized on an international level." As noted above, we consider the opinions of letter writers. Their conclusions must, however, be supported by the evidence.

[REDACTED] stated that "[the Beneficiary]'s track record of significant original research work in biomedical engineering is remarkable for its innovation, and has clearly influenced the field on an international level." As the reasoning for this conclusion, [REDACTED] cited the Beneficiary's accomplishments at [REDACTED] and at the Petitioner's laboratory. He noted that, "[the Beneficiary] has significantly characterized transgenic mouse models of human AD [Alzheimer's Disease] This temporal data is being used as a key endpoint to assess the efficacy of [the Petitioner]'s in-house antibody against AD." While this may demonstrate the Beneficiary's impact on her employer, [REDACTED] did not explain how the Beneficiary achieved international recognition as an outstanding researcher. [REDACTED] further noted: "These significant findings of [the Beneficiary] were presented at the [REDACTED] and the [REDACTED]. As discussed above, however, the presentation of research at a conference may indicate the field's general interest of the presented studies, but does not necessarily convey international recognition as outstanding on all those associated with the presentation. Without more, this research referenced by [REDACTED] does not show the Beneficiary is an outstanding researcher enjoying international recognition.

[REDACTED] further noted that, in addition to the area of research, publishing and citation statistics for the Beneficiary are influenced by the fact that she has worked in the private sector since obtaining her graduate degree:

Due to the highly secretive nature of the research in medicine and pharmaceuticals industries, companies don't often publish their work till the licensing and drug rollout

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into market is in place. The intellectual property and trade secrets in industrial labs are not available publically. Thus, journal citations are not a comprehensive indicator of the impact of research.

We do not question this concept and acknowledge that a limited number of citations does not preclude eligibility. Regardless of the Beneficiary's particular area of research, however, the burden of proof remains on the Petitioner to establish eligibility in these proceedings. Where citations are not available due to the proprietary nature of the research, the Petitioner must provide alternative evidence that the Beneficiary is recognized internationally, such as corroboration that the employer has garnered attention in the industry for innovations credited to the Beneficiary.

With respect to the authorship of scholarly articles criterion, although the Beneficiary has met this criterion, her publication record does not illustrate her status as an internationally recognized researcher. Google Scholar indicated that the Beneficiary authored seven papers. The reference letters discussed the importance of Beneficiary's articles. For example, [REDACTED] stated that the Beneficiary "has first authorship of several full-length articles accepted for publication" and concluded that her publication "record is impressive and demonstrates the international recognition of the significance of her original research in the field." [REDACTED], however, does not sufficiently explain how the dissemination of her research, without evidence that it has been widely applied, for example through frequent citation, shows her international recognition. Pursuant to the reasoning in *Kazarian*, 596 F.3d at 1122, the field's response to the Beneficiary's articles is a valid inquiry in a final merits determination.

Finally, the Petitioner relies generally on the letters as showing her international recognition. The opinions of the Beneficiary's references are not without weight. However, we are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought. See *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). As a result, we evaluate the content of letters to determine whether they support her eligibility. See *id.* at 795-96; 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"). Thus, the references' statements regarding the bases for their opinions and how they became aware of an individual's reputation are important considerations. See also *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (D.D.C. Dec. 16, 2013) (concluding our decision to give little weight to uncorroborated statements from professionals in the field was not arbitrary and capricious).

In support of the appeal, the Petitioner cites *Matter of Skirball Cultural Center*, 25 I&N Dec. 799 (AAO 2012), stating that "expert opinion letters should be accepted unless they are inconsistent with other evidence." *Skirball Cultural Center* involved a P-3 nonimmigrant petition that sought to classify a beneficiary as an entertainer in a culturally unique program. See § 101(a)(15)(P)(iii) of the Act. A P-3 nonimmigrant petition is governed by statutory and regulatory requirements that are distinct from those relevant to the instant immigrant petition. Specifically, the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A), which relates to P-3 nonimmigrant cases, expressly lists expert letters as qualifying documentation that can demonstrate the culturally unique nature of an artist. This

regulation, however, does not apply to the immigrant visa classification that the Petitioner seeks here. Ultimately, we may, as this decision has done, evaluate the content of the expert letters to determine if they support the Beneficiary's eligibility. *See Caron Int'l*, 19 I&N Dec. at 795; *V-K-*, 24 I&N Dec. at 500, n.2.

In summary, the Petitioner has pointed to letters of recommendation, the Beneficiary's peer review experience, published articles, and citations to her work as support that she qualifies for the classification. While the Petitioner has provided the requisite documentation to satisfy two evidentiary categories, we find that these submissions do not show that the Beneficiary is recognized internationally as outstanding when considered in the aggregate.

III. CONCLUSION

Although the Petitioner has provided evidence that falls into at least two of the six categories listed at 8 C.F.R. § 204.5(i)(3)(i), the record does not show that the Beneficiary is recognized internationally as outstanding in the academic field specified in the petition. *See* § 203(b)(1)(B)(i) of the Act; 8 C.F.R. § 204.5(i).

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. The burden is on the Petitioner to show 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, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of G-, Inc.*, ID# 16032 (AAO Apr. 11, 2016)