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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

U.S. Citizenship
and Immigration
Services

DATE: Office: NEBRASKA SERVICE CENTER
AUG 06 2013

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:

SELF REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an institution of higher education/university. 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). The petitioner seeks to employ the beneficiary permanently in the United States as an assistant researcher. The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher.

On appeal, the petitioner asserts that the petition meets the legal, statutory and regulatory standards required for approval. The petitioner submits a brief and additional evidence in support of the appeal.

For the reasons discussed below, we uphold the director's findings through a careful two-step approach that first counts the evidence and then evaluates the merits of that evidence.¹ Beyond the decision of the director, the record lacks evidence of an offer of permanent employment by the petitioner to the beneficiary. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a de novo basis).

I. Statute

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

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

* * *

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

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

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

¹ The specifics of and legal basis for this approach will be explained at length under Part II(A) of this decision.

(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.

II. Job Offer from Qualifying Employer

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

An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or

(C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

The regulation at 8 C.F.R. § 204.5(i)(2) defines the term "permanent" in reference to a research position as meaning: "either tenured, tenure-track, or for an indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination."

Focusing on the language in 8 C.F.R. § 204.5(i)(3)(iii), the petitioner must submit evidence of an offer of permanent employment to the beneficiary. Here, however, the record does not contain an offer of permanent employment from the petitioner addressed to the beneficiary. The petitioner submitted a copy of its job offer letter to the beneficiary for the position of Assistant Researcher, dated October 22, 2010. This petition was filed on January 9, 2012. The letter specifically states that the beneficiary's appointment "is for an initial appointment term ending on June 30, 2011," and that renewal of the appointment "for a subsequent term is subject to performance and availability of funds."

This letter is not proof of a "permanent" job offer. The letter indicates that the beneficiary's appointment is for a finite term ending on June 30, 2011, and it does not indicate that the beneficiary will ordinarily have an expectation of continued employment. While the petitioner indicates in the letter that the beneficiary's appointment could be renewed for a subsequent *term* (singular tense emphasized), contingent upon the beneficiary's performance and the availability of funds, the petitioner did not indicate that the beneficiary's subsequent term would be for an indefinite term and that the petitioner has the intent to continue to seek funding and a reasonable expectation that funding will continue, such that employment can be considered "permanent" within the meaning of 8 C.F.R. § 204.5(i)(2).²

In addition, in its letter in support of the petition, the petitioner submitted a description of the beneficiary's proposed position as a full-time, permanent Research Scientist in the Department of Radiological Science. This description also does not constitute an offer of employment from the petitioner addressed to the beneficiary. First, according to Form I-140, the beneficiary's proposed job title is "Assistant Researcher," not "Research Scientist." Therefore, the record is not clear what employment the petitioner intends to offer to the beneficiary. Second, this description, addressed to the United States Citizenship and Immigration Services (USCIS), refers to the beneficiary in the third person. The ordinary meaning of an "offer" requires that it be made to the offeree (i.e., the beneficiary), not a third party.³ Third, other than stating his annual salary, the description does not discuss any specific terms of employment. For these reasons, this description falls short of a job offer to the beneficiary.

In light of the above, the petitioner has not submitted evidence of an offer of permanent employment to the beneficiary, which is required initial evidence pursuant to 8 C.F.R. § 204.5(i)(3)(iii). For this reason, the appeal must be dismissed.

² The petitioner has also submitted a Verification of Employment for the beneficiary dated November 17, 2011, showing the beneficiary's term of employment as an assistant researcher was extended to June 30, 2012.

³ *Black's Law Dictionary* 1189 (9th ed. 2009) defines "offer" as "the act or an instance of presenting something for acceptance" or "a display of willingness to enter into a contract on specified terms, made in a way that would lead a reasonable person to understand that an acceptance, having been sought, will result in a binding contract" and defines "offeree" as "[o]ne to whom an offer is made." In addition, *Black's Law Dictionary* defines "offeror" as "[o]ne who makes an offer." *Id.* at 1190.

III. Beneficiary's Qualifications

A. Law

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.

This petition was filed on January 9, 2012 to classify the beneficiary as an outstanding researcher in the field of magnetic resonance technology. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching and/or research experience in the field as of that date, and that the beneficiary's work has been recognized internationally within the field as outstanding. The beneficiary began working for the petitioning university in November 2005. At issue in this matter is whether the petitioner has demonstrated 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.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under a similar classification set forth at section 203(b)(1)(A) of the Act in *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion. With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations.⁴ Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court's reasoning persuasive to

⁴ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) (comparable to 8 C.F.R. § 204.5(i)(3)(i)(D)) and 8 C.F.R. § 204.5(h)(3)(vi) (comparable to 8 C.F.R. § 204.5(i)(3)(i)(F)).

the classification sought in this matter.⁵ In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*.

B. Analysis

1. Evidentiary Criteria

The petitioner initially asserted that the beneficiary was submitting qualifying evidence under each of the six criteria. The director determined that the petitioner had submitted qualifying evidence under two of the criteria. For the reasons discussed below, the AAO finds that the petitioner has submitted qualifying evidence under two of the criteria.

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

It is significant that the *proposed* regulation relating to this classification would have required evidence of a major *international* award. The final rule removed the requirement that the award be "international," but left the word "major." The commentary states: "The word "international" has been removed in order to accommodate the *possibility* that an alien might be recognized internationally as outstanding for having received a major award that is not international." (Emphasis added.) 56 Fed. Reg. 60897-01, 60899 (Nov. 29, 1991.)

Thus, the standard for this criterion is very high. The rule recognizes only the "possibility" that a *major* award that is not international would qualify. Significantly, even lesser international awards cannot serve to meet this criterion given the continued use of the word "major" in the final rule. *Compare* 8 C.F.R. § 204.5(h)(3)(i) (allowing for "lesser" nationally or internationally recognized awards for a separate classification than the one sought in this matter).

The director concluded that the beneficiary's [REDACTED] do not qualify as major prizes or awards for outstanding achievement in the academic field.

On appeal, the petitioner asserts that the [REDACTED] grant is a major award in the field because it is highly selective, the reputation of the granting organization is very high, and the monetary value of the award is very high. The petitioner asserts that over 538 applications for this particular grant were submitted, but only 54 grants were awarded, showing that the award was given to the top 10% of the applicants, thereby qualifying it as a "major" award. The petitioner further points out that as part of the approval process, the grant proposal was reviewed by a panel of peer scientists who found the reputation of the research team to be "outstanding" and the research to have "high scientific merit" and "considerable

⁵ The classification at issue in *Kazarian*, section 203(b)(1)(A) of the Act, requires qualifying evidence under three criteria whereas the classification at issue in this matter, section 203(b)(1)(B) of the Act, requires qualifying evidence under only two criteria.

impact.” The petitioner does not assert that the [REDACTED] or the beneficiary’s student awards (the [REDACTED]) constitute a major prize or award.

Upon review, the AAO concurs with the director’s conclusion that the petitioner did not submit qualifying evidence that meets the plain language requirements of this criterion, set forth at 8 C.F.R. § 204.5(i)(3)(i)(A). Specifically, the [REDACTED] grant does not constitute a major prize or award recognizing the beneficiary for outstanding achievement in the academic field.

The AAO first observes for the record that the [REDACTED] grant was not awarded to the beneficiary, but to the [REDACTED] Los Angeles, and more specifically, to Dr. [REDACTED] as the Principal Investigator (PI). According to the [REDACTED] formal grant proposal, the beneficiary is one of five members of Dr. [REDACTED] research team. There is no indication in the record that the [REDACTED] individually recognized the beneficiary as outstanding when it referred to Dr. [REDACTED] research team. While the [REDACTED] Peer Review Panel Summary Statement specifically recognized Dr. [REDACTED] as “a leader” in his field, it made only general references to the rest of the research team. Specifically, the report stated that Dr. [REDACTED] had assembled “a highly qualified team to aid him in this work” and that his research team is “outstanding.” The report did not discuss the beneficiary’s individual achievements or reputation as a researcher. The only reference to the beneficiary in the Peer Review Panel Summary Statement was that the beneficiary is a postdoctoral research associate who will work with the PI in implementation and optimization of the MRI and MRS sequences.

Even assuming *arguendo* that the team’s research was based upon the beneficiary’s individual research as the petitioner claims, the AAO finds that the award was not specifically granted to honor or recognize the beneficiary’s past outstanding achievement. Generally, a research grant is principally designed to fund future research, and not to honor or recognize past achievement. The documentation describing the [REDACTED] selection criteria supports the conclusion that the grant was not primarily given to honor or recognize the beneficiary’s past achievement. The Program Announcement for the [REDACTED] “Idea Development Award” specifically cites the review criteria as innovation, impact, research strategy and feasibility, and personnel, with innovation and impact being the two most important criteria, and personnel being the least important criterion. In light of the above, the petitioner has failed to establish that the [REDACTED] grant constitutes a major prize or award given to the beneficiary to honor or recognize his outstanding achievement in the academic field.

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

In denying the petition, the director concluded that the beneficiary did not meet this criterion because the petitioner did not submit evidence that the beneficiary’s membership in [REDACTED] and [REDACTED] required outstanding achievement as an essential condition for membership. On appeal, the petitioner did not address or refute this particular finding. Accordingly, the petitioner has abandoned this particular claim. See *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *9 (E.D. N.Y. Sept. 30, 2011).

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

In denying the petition, the director concluded that the petitioner had not submitted evidence that meets the plain language requirements for this criterion. Specifically, the director concluded that the petitioner failed to establish that the article in [REDACTED] the [REDACTED] Prostate Cancer Research Program Newsletter, was about the beneficiary or his accomplishments in the field.

On appeal, the petitioner asserts that this criterion was "clearly established" through the [REDACTED] article, and asserts that the beneficiary's work was the basis of the research discussed in the article. On appeal, the petitioner submits a letter from Dr. [REDACTED] attesting that the beneficiary "had designed the whole study, data collection, post processing and wrote the manuscript of the published work" and therefore "the entire credit goes to him." The petitioner does not indicate that any other published material meets this criterion.

A review of the [REDACTED] article reveals no discussion of the beneficiary's individual work. As the director stated, the article does not appear to mention the beneficiary by name or credit him with any findings, developments or other accomplishments. Rather, the article discusses the work of Dr. [REDACTED] and his unnamed "co-workers." Although Dr. [REDACTED] attested in his letter that the "entire credit" should go to the beneficiary, his letter does not constitute evidence that the [REDACTED] recognized the beneficiary and was referring to the beneficiary's individual work when it published the above article.

Upon review, the AAO concurs with the director's conclusion that the petitioner did not submit qualifying evidence that meets the plain language requirements of this criterion, set forth at 8 C.F.R. § 204.5(i)(3)(i)(C).

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 petitioner submitted evidence that the beneficiary has reviewed manuscripts submitted for publication as a peer reviewer. The AAO concurs with the director that this evidence qualifies under the plain language of the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(D).

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

The petitioner asserts that the beneficiary has made original scientific research contributions to the field of magnetic resonance (MR) imaging technology. Specifically, the petitioner asserts that the beneficiary's research has produced a new, non-invasive technique in MR imaging and spectroscopy to

detect, evaluate and monitor previously undetectable biomedical changes in the body which will have extremely important applications in the diagnosis and treatment of prostate cancer, brain cancer, and other diseases. As evidence of the beneficiary's original scientific or scholarly research contributions to the academic field, the petitioner submitted letters of support from members of the beneficiary's field, copies of some of the beneficiary's scholarly articles, and a viewing and citation history of those articles.

The director concluded that the evidence submitted does not establish that the beneficiary has made original contributions to his field.

On appeal, the petitioner asserts that the reference letters and citations to the beneficiary's articles constitute sufficient evidence with regards to this criterion. The petitioner also asserts the director erred by interpreting the word "contributions" as requiring a higher standard than just "original research."

The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(E) does not require that the beneficiary's contributions themselves be internationally recognized as outstanding. That said, the plain language of the regulation does not simply require original research, but original "research contributions." Had the regulation contemplated merely the submission of original research, it would have said so, and not have included the extra word "contributions." Moreover, the plain language of the regulation requires that the contributions be "to the academic field" rather than an individual laboratory, institution or research center.

With regard to the beneficiary's scholarly articles, the regulations include a separate criterion for scholarly articles at 8 C.F.R. § 204.5(i)(3)(i)(F). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly articles.

The petitioner submitted two letters from Dr. [REDACTED] Professor of Radiological Sciences, [REDACTED] and Director of [REDACTED] at the petitioning university, and one of the beneficiary's co-authors. In the letters, Dr. [REDACTED] highlighted the beneficiary's research focus, the fact that one of the beneficiary's publications has been viewed online more than 6000 times, the beneficiary's proficiencies in computer languages, his status as a peer reviewer for three journals, his membership in three major societies, his first rank in Spectroscopy on his MS thesis at [REDACTED] and his 2009 [REDACTED] award for best paper. Dr. [REDACTED] asserted that the beneficiary's achievements are "only part of his contribution" and are "not only vital to ongoing projects on imaging of the brain and prostate cancer, but also extremely important for other scientific studies." Dr. [REDACTED] then concluded that "researchers of [the beneficiary's] caliber are very few" and that the beneficiary "has emerged as a top-level scientist in [REDACTED] research focused (*sic*) several human diseases." While Dr. [REDACTED] asserted in a conclusory manner that the beneficiary's research is "vital" and "extremely important," and that the beneficiary is a "top-level scientist," he did not explain with any specificity how the beneficiary's work has contributed to the academic field.

The petitioner submitted two letters from Dr. [REDACTED] Head of [REDACTED] [REDACTED] and one of the beneficiary's co-authors. In the letters, Dr. [REDACTED] highlighted two of the beneficiary's publications and his numerous presentations at highly regarded conferences. Dr. [REDACTED] asserted that the beneficiary "has risen to the top of his field by his important contributions in the field of prostate cancer imaging and spectroscopy" and that he has "made significant contributions in the field of magnetic resonance spectroscopy, and specifically in the specialty of cancer imaging." Dr. [REDACTED] asserted that based on the beneficiary's achievements, "he has clearly risen above his peers in prostate MR spectroscopy, especially in the role of spermine in different Gleason scores in the prostate cancer. I would rank him in the top 5% of scientists in his field." Again, while Dr. [REDACTED] asserted in a conclusory manner that the beneficiary has made "significant" contributions to the field and is "in the top 5% of scientists in his field," he did not explain with any specificity how the beneficiary's work has contributed to the academic field.

The petitioner submitted a letter from Dr. [REDACTED] Assistant Professor at the Department of Psychiatry and Behavioral Sciences in [REDACTED] School of Medicine, who was the beneficiary's colleague at the petitioning university. In this letter, Dr. [REDACTED] ranked the beneficiary as being "in the top 5% of postdoctoral scientists" he has encountered in the area of specialization, and asserted that the beneficiary is "one of a handful of nationally and internationally renowned specialists in the magnetic resonance research technique involving high throughput, high resolution functional profiling." Dr. [REDACTED] asserted that he is "enthusiastic about the innovations spearheaded by [the beneficiary] and colleagues." Dr. [REDACTED] asserted that "the current state-of-the-art has been plagued by technological problems and limitations" and that it is "imperative that investigators like [the beneficiary] make considerable efforts to innovate and improvise." Dr. [REDACTED] asserted that he is "optimistic that further developments in this field will lead to earlier identification and better treatment of a host of medical disorders." Dr. [REDACTED] assertions regarding the beneficiary as being one of the top scientists in his field are conclusory and do not explain with any specificity how the beneficiary's work has contributed to the academic field. Furthermore, Dr. [REDACTED] enthusiasm and optimism as to the beneficiary's potential future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole.

The petitioner submitted a letter from Dr. [REDACTED] Assistant Professor and Director of [REDACTED] [REDACTED] In this letter, Dr. [REDACTED] discussed how she first met the beneficiary at a 2008 meeting in Chicago, and based upon this meeting, she "can confirm that [the beneficiary's] scientific accomplishments have propelled him the very top of his field [*sic*]." Dr. [REDACTED] asserted that the beneficiary ranks "in the top 3% of scientists in his specialty worldwide" based upon his "exceptional credentials, pioneering discoveries and tremendous research contributions." Dr. [REDACTED] discussed the nature of the beneficiary's research, and the fact that he has been published in highly respected journals. Dr. [REDACTED] then asserted that the beneficiary has made "important progress in studying this area [of research involving prostate cancer tumors]" and that he has been "a vital scientific leader whose expertise and generation of novel ideas are critical to the successful continuation of current projects."

Dr. [REDACTED] assertions regarding the beneficiary's qualifications and contributions are conclusory, and she did not explain with any specificity how the beneficiary's work has already contributed to the academic field.

The petitioner submitted a letter from Dr. [REDACTED] Group Leader for the [REDACTED]

[REDACTED] In this letter, Dr. [REDACTED] stated that the beneficiary is a "top researcher" and a "strong scientist, as is evident from his 15 publications and numerous abstracts." Dr. [REDACTED] does not state how he first became aware of the beneficiary's work. Dr. [REDACTED] highlighted the beneficiary's research focus, his educational history, his publications and presentations, and his current employment. Dr. [REDACTED] then concluded that he has no doubt that the beneficiary "will continue to contribute in the developing area of MR imaging and spectroscopy." Dr. [REDACTED] assertions regarding the beneficiary's qualifications and contributions are conclusory, and he did not explain with any specificity how the beneficiary's work has already contributed to the academic field.

The petitioner submitted a letter from Dr. [REDACTED] Associate Professor of Medicine and Pharmacology at [REDACTED] In this letter, Dr. [REDACTED] highlighted the beneficiary's research focus, his academic history, his publication history, and his role at the Department of Radiological Sciences at the [REDACTED] Dr. [REDACTED] asserted that the beneficiary has "established a high-throughput in the field of in vitro multidimensional spectroscopic imaging" and that these "groundbreaking efforts lead to differentiate tumor necrosis from active tumors and its potential to noninvasively classify tumors." Dr. [REDACTED] also asserted that the beneficiary has identified some metabolites that inhibit the growth of the Hepatitis C virus. Dr. [REDACTED] then concluded that the beneficiary is "a scientist of outstanding ability who has reached the top 5% of his field." While Dr. [REDACTED] discussed some of the beneficiary's particular achievements, this letter falls short of specifically explaining how the beneficiary's work has contributed to the academic field.

The petitioner submitted a letter from Dr. [REDACTED] Professor of Urological Surgery, Faculty of Medicine in [REDACTED] In this letter, Dr. [REDACTED] highlighted the beneficiary's academic history, his research focus, his current employment, and his publication and presentation history. Dr. [REDACTED] asserted that beneficiary's research efforts at the petitioning university "make possible radiologists to more accurately distinguish benign from cancerous biomedical changes," "allowed the researchers to study brain and prostate cancer tissues simultaneously by non-invasive method," and "led to the identification of metabolites that inhibit the growth of Hepatitis C." Dr. [REDACTED] concluded: "[The beneficiary's] research has far reaching impact in developing the successful combination of the imaging and spectroscopic techniques (sic) will enable anatomical and metabolic data to be obtained from a single site without the need for biopsy. [The beneficiary's] continued presence in the U.S. is critical for the advancement of the field of tumor metabolism." Again, while Dr. [REDACTED] discussed some of the beneficiary's particular achievements, this letter falls short of specifically explaining how the beneficiary's work has already contributed to the academic field. Rather, this letter indicates the beneficiary's research could lead to a "successful combination" of

techniques in the future. Speculation as to a future contribution cannot establish that the beneficiary has already contributed to the academic field as a whole.

The petitioner submitted a letter from Dr. [REDACTED] Professor and Chair of the Department of NMR and MRI Facility in [REDACTED]. In this letter, Dr. [REDACTED] stated that the beneficiary's research "greatly facilitates the understanding of the magnetic resonance spectroscopy (MRS), which provides bio-chemical information from body tissue in a safe and non-invasive method," and that the beneficiary's continued presence in the United States "will greatly benefit tumor metabolism research and many patients who rely on its advances." Dr. [REDACTED] then highlighted the beneficiary's academic history, his current research focus, and his publication and citation history. While Dr. [REDACTED] asserted that the beneficiary's research has facilitated the understanding of the MRS technology and will benefit tumor metabolism research, this letter falls short of specifically explaining how the beneficiary's work has contributed to the academic field.

The petitioner submitted a letter from Dr. [REDACTED] Director, Biomedical Physics Program at the [REDACTED]. In this letter, Dr. [REDACTED] stated that he collaborates with the petitioner's [REDACTED] and that through this collaboration he has gotten to know the beneficiary. Dr. [REDACTED] stated that the beneficiary "has become invaluable for most clinical acquisitions of MR spectra as well as research protocols and publications," and that the beneficiary "is approached by most physicians for research protocols in MRS whether it is prostate, breast, brain, or any other organ." Dr. [REDACTED] then highlighted the beneficiary's publication history, his professional memberships and presentations, and then concludes that the beneficiary "will prove himself as an outstanding researcher in this field." Dr. [REDACTED] did not explain with any specificity how the beneficiary's work has contributed to the academic field.

The petitioner submitted a letter from Dr. [REDACTED] Assistant Professor at [REDACTED]. Dr. [REDACTED] stated that the beneficiary "has achieved the level of international renown in magnetic resonance spectroscopy" and is in the top 3% of scientists in his specialty. Dr. [REDACTED] further stated that the beneficiary "has made a tremendous impact in the field of prostate MR spectroscopy in the US and internationally" and that the beneficiary has made "completely original contributions to the field of magnetic resonance that have placed [the beneficiary] at the very top of the field." Dr. [REDACTED] stated that the beneficiary's discoveries have been acknowledged by the international scientific community as outstanding, and his accomplishments have been widely published in internationally circulated scholarly journals and are frequently quoted by other experts. While Dr. [REDACTED] asserted that the beneficiary has made a "tremendous impact" on the field, his assertions regarding the beneficiary are conclusory and fall short of specifically explaining how the beneficiary's work has impacted or contributed to the academic field.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial

evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The letters considered above primarily contain conclusory assertions of international recognition and vague claims of contributions, without specifically identifying the contributions and providing specific examples of how those contributions have influenced the field. Therefore, as a whole, the AAO does not afford them much evidentiary weight. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Similarly, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In discussing the evidence of the beneficiary's original scientific contributions, the petitioner highlights the number of citations to the beneficiary's work, as well as evidence that the beneficiary's June 2010 paper, published in [REDACTED] has been viewed over 8000 times.⁶ On appeal, the petitioner provides a letter from the editor-in-chief of [REDACTED] attesting that the beneficiary's article has been viewed over 8000 times since its publication in June 2010, which is significantly more than the average number of views for a typical article, usually around a few hundreds, and has received international feedback. The petitioner asserts that evidence of the beneficiary's publications, and the number of citations and viewings they have received, constitute "substantial evidence to corroborate the claims made in the letters that the beneficiary's work has made an impact in the field."

The petitioner submits evidence that the beneficiary's research – consisting of more than fifteen articles - has been cited approximately thirteen times in the aggregate. The petitioner characterizes this citation history as "extensive." However, the petitioner has failed to establish that thirteen

⁶ With the initial petition, the petitioner asserted that this paper had been viewed more than 7000 times. In response to the RFE, the petitioner asserted that this paper has been viewed more than 8600 times.

citations – when the beneficiary has published more than fifteen articles altogether – is an “extensive” number of citations, or that the citing articles are indicative of the beneficiary’s contributions to his academic field. For example, the citing authors cite the beneficiary’s work merely for background material rather than as the foundation of the research reported in the citing article. Moreover, the fact that one of the beneficiary’s articles has been viewed over 8000 times does not establish that the beneficiary has made original scientific contributions to his field. As the petitioner explained, the viewing of a paper “is the first step toward citation.” Merely viewing an article does not carry as much weight as a citation to the article. One can view the article and realize it is not useful, whereas if an article is cited, it is used in some manner, at least as background material. The petitioner has not claimed nor submitted any evidence to show that the specific article which has been viewed over 8000 times has actually been cited.

The beneficiary’s citation history 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. The beneficiary’s citation history will again be considered below in the final merits determination.

In light of the above, the petitioner has not submitted corroborating evidence to establish that the beneficiary has made original contributions to his field. The petitioner has failed to submit evidence that meets the plain language requirements of the criterion at 8 C.F.R. § 204.5(i)(3)(i)(E).

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

The petitioner submitted evidence that the beneficiary has authored several articles. Thus, the petitioner has submitted evidence that qualifies under 8 C.F.R. § 204.5(i)(3)(i)(F).

In light of the above, the petitioner has submitted evidence that meets two of the criteria that must be satisfied to establish the minimum eligibility requirements for this classification. Specifically the petitioner submitted evidence to meet the criteria set forth at 8 C.F.R. §§ 204.5(i)(3)(i)(D) and (F). The next step is a final merits determination that considers whether the evidence is consistent with the statutory standard in this matter, international recognition as outstanding. Section 203(b)(1)(B)(i) of the Act.

2. Final Merits Determination

It is important to note at the outset that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of 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 respect to the regulation at 8 C.F.R. § 204.5(i)(3)(i)(D), the nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators in the final merits determination. *See Kazarian*, 596 F.3d at 1122.

On appeal, the petitioner asserts that the beneficiary's judging experience as a peer reviewer is indicative of international recognition. To support the appeal, the petitioner submits copies of emails inviting the beneficiary to act as a peer reviewer. The petitioner also submits a Wikipedia article discussing the peer review process in general, highlighting the following:

Finally, anonymity adds to the difficulty in finding reviewers in another way. In scientific circles, credentials and reputation are important, and while being a referee for a prestigious journal is considered an honor, the anonymity restrictions make it impossible to publicly state that one was a referee for a particular article. However, credentials and reputation are principally established by publications, not by referring; and in some fields refereeing may not be anonymous.

As there are no assurances about the reliability of the content from Wikipedia, an open, user-edited internet site, we will not assign weight to information from Wikipedia. *See Lamilem Badasa v. Michael B. Mukasey*, 540 F.3d 909 (8th Cir. 2008). Nevertheless, from the submitted Wikipedia article and email invitations, the petitioner has not established that the beneficiary's judging experience is indicative of international recognition. While the Wikipedia article does state that "being a referee for a prestigious journal is considered an honor," it also states that "credentials and reputation are principally established by publications, not by refereeing." Furthermore, none of the emails contains information that would suggest that the beneficiary's participation is indicative of international recognition. As the director observed, peer review is routine in the field and not every peer reviewer enjoys sustained national or international recognition. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed manuscripts for a journal that credits a small, elite group of referees, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the beneficiary's judging experience is indicative of international recognition. The petitioner has failed to present any significant evidence to corroborate its claims that the beneficiary's judging experience is indicative of international recognition.

Regarding the beneficiary's original research, as discussed above, the petitioner has not established that it rises to the level of a contribution to the academic field as a whole. While the petitioner has submitted several letters from others in his field, these letters contain conclusory assertions regarding the beneficiary's achievements and contributions, and do not adequately explain the specific contributions the beneficiary has made to the field.

The beneficiary's citation history is another relevant consideration when evaluating the beneficiary's recognition in the field. *See Kazarian*, 596 F.3d at 1122. Here, the petitioner has not presented evidence establishing that the beneficiary's articles have been cited at a level consistent with international recognition. Moreover, as previously discussed, the fact that one of the beneficiary's articles has been viewed over 8000 times does not establish that the beneficiary has made original scientific contributions to his field.

While the beneficiary has published articles, the beneficiary's act of publishing research, by itself, is not indicative of international recognition. In fact, the beneficiary's specific job duties, as an Assistant Researcher, require him to continue to "write and publish manuscripts on relevant research topics in journals such as the [REDACTED]" The record contains no evidence that the beneficiary's articles have been cited at a significant level or other comparable evidence that demonstrates that the beneficiary's publication record is consistent with international recognition.

In light of the above, our final merits determination reveals that the evidence in the record regarding the beneficiary's participation in the peer review process and publication of professional articles is insufficient to set the beneficiary apart in the academic community through eminence and distinction based on international recognition, which is the purpose of the regulatory criteria. 56 Fed. Reg. at 30705. For this additional reason, the appeal must be dismissed.

IV. Conclusion

The petitioner has shown that the beneficiary is a talented scientist and researcher who has won the respect of his employer, collaborators, and peers. The record, however, stops short of elevating the beneficiary to the level of an alien who is internationally recognized as an outstanding researcher. The petitioner has also not submitted evidence of an offer of permanent employment to the beneficiary. Therefore, the petitioner has not established eligibility for the benefit sought.

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