



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

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

In Re: 15983068

Date: AUG. 18, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Outstanding Professors/Researchers)

The Petitioner, a university, seeks to classify the Beneficiary as an outstanding professor or researcher in the field of laser physics. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(B), 8 U.S.C. § 1153(b)(1)(B).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary is internationally recognized as outstanding in his academic field.

On appeal, the Petitioner submits a letter asserting that the Director overlooked or did not properly evaluate evidence in the record, and that this evidence establishes that the Beneficiary qualifies under the high standards of this immigrant visa classification.

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

I. LAW

The statute requires that beneficiaries under this immigrant visa classification should stand apart in their academic area based on international recognition. To establish a professor or researcher's eligibility, a petitioner must provide initial qualifying documentation that meets at least two of six categories of specific objective evidence and demonstrates the beneficiary is recognized internationally within the academic field as outstanding.

Specifically, section 203(b)(1)(B)(i) of the Act provides that a foreign national is an outstanding professor or researcher if:

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

(iii) the alien seeks to enter the United States [for a qualifying position with a university, institution of higher education, or certain private employers].

To establish a professor or researcher's eligibility, a petitioner must provide initial qualifying documentation that meets at least two of six categories of specific objective evidence set forth at 8 C.F.R. § 204.5(i)(3)(i)(A)-(F). This, however, is only the first step, and the successful submission of evidence meeting at least two criteria does not, in and of itself, establish eligibility for this classification. When a petitioner submits sufficient evidence at the first step, we will then conduct a final merits determination to decide whether the evidence in its totality shows that the beneficiary is internationally recognized as outstanding in his or her academic field.¹ 8 C.F.R. § 204.5(i)(3)(i).

Finally, 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.

II. ANALYSIS

The Beneficiary received his Ph.D. in Physics from the University of [redacted] in 2016. He has been employed as a "Scientist" at the Petitioner's [redacted] since April 2016.

In his decision, the Director found that the Beneficiary met three of the evidentiary criteria, thus satisfying the initial evidence requirement, but that the totality of the record did not establish the requisite international recognition in his field. Upon review, we agree with the Director that the evidence demonstrates the Beneficiary's service as a judge of the work of others, original scientific or scholarly research contributions to the academic field, and authorship of scholarly articles. As he therefore meets the initial evidence requirements, we will consider all the evidence of record when conducting the final merits determination.

In a final merits determination, we analyze a researcher's accomplishments and weigh the totality of the evidence to evaluate whether a petitioner has demonstrated, by a preponderance of the evidence², that the beneficiary's achievements are sufficient to demonstrate that he has been internationally recognized as outstanding in the field of endeavor. *See* section 203(b)(1)(B)(i) of the Act; 8 C.F.R. § 204.5(i)(3)(i). In this matter, we agree with the Director that the Petitioner has not shown the Beneficiary's eligibility.³

¹ USCIS has confirmed the applicability of this two-step analysis to evaluate the evidence submitted with the petition to demonstrate eligibility for classification as an outstanding professor or researcher. *See* 6 *USCIS Policy Manual* F.3(B), <https://www.uscis.gov/policy-manual>.

² A petitioner must establish that the beneficiary meets the eligibility requirements of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what it claims is "more likely than not" or "probably" true. To determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

³ In the final merits analysis, the Director's decision discussed the documentation relating to the Beneficiary's peer review activities, research projects, published and presented work, and citation evidence, and explained why that evidence, as part of the entirety of the record, was insufficient to demonstrate the Beneficiary's recognition as outstanding at the international level.

The Petitioner argues on appeal that consideration of “the evidence together” shows that the Beneficiary “is internationally recognized as outstanding in his field.” The Petitioner asserts that the Beneficiary’s knowledge on the [redacted] laser system has served as the basis for numerous conference presentations and published articles in the top venues for his field,” including an article published in the journal *Nature*. It further contends that that the Beneficiary’s published and presented work, citation evidence, editorial service for the *LLE Review Quarterly Report*, participation as a session chair at the [redacted] conference, peer review work for scientific journals, and recommendation letters from experts in the field demonstrate “that it is more likely than not that the Beneficiary qualifies as an outstanding researcher.”

It is important to note that the controlling purpose of the regulation at 8 C.F.R. § 204.5(i)(3)(i) is to establish a beneficiary’s 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. *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)). Therefore, to the extent that the Director first determined that the evidence satisfied the plain language requirements of specific evidentiary criteria, and then evaluated whether that evidence, as part of the entirety of the record, was sufficient to demonstrate the Beneficiary’s recognition as outstanding at the international level, his analysis was in keeping with the statute, regulations, and policy pertaining to the requested immigrant visa classification.

As it pertains to the Beneficiary’s participation as a judge of the work of others, the Petitioner submitted documentation indicating that he reviewed one paper each for *Advanced Optical Materials* and *Journal of Physical Chemistry Letters*, and two papers for *Physical Review B*. For example, the Petitioner presented a letter from [redacted] *Advanced Optical Materials*, asserting that the Beneficiary “recently served as an expert peer reviewer for a research paper” submitted to her journal. [redacted] noted that [redacted] high quality scientists from the scientific community as peer reviewers for submitted manuscripts. . . . In dedicating some of his time to peer review, [the Beneficiary] participated in the scientifically crucial voluntary role in peer-reviewed scientific publishing”

Likewise, the Petitioner offered a letter from [redacted] the American Physical Society (which publishes *Physical Review B*), stating:

Physics researchers around the world submit roughly 40,000 manuscripts to us annually. To evaluate these submissions, we rely on the advice of expert reviewers such as yourself, whose expertise has been established by, for example, a strong record of publication in the field and the frequent citation of their work in various research journals. . . . The editors rely on this advice in making decisions about whether to publish manuscripts, reject them, or request changes in them.

The record also includes information from “Prudent Journals” listing the “benefits of becoming a reviewer.” This information states, in part:

- 1) If you receive an invitation to be a reviewer, that means, you are considered as an expert in your field. It is an honor for you.
- 2) Editorial board of any journals consists of senior professors and well known scientists in their respective fields. As a good reviewer you will have a chance to get recognized by those editorial board members. This will also serve as an advantage for you when you apply for grants or for academic jobs.
- 3) You can include reviewer experience in your CV/resume.
- 4) By reviewing several papers in your field you will be growing professionally by updating your knowledge and expertise within the field.

In addition, the Petitioner presented an article, entitled “Peer Review in Scientific Publications: Benefits, Critiques, & A Survival Guide.” This article defines peer review “as a process of subjecting an author’s scholarly work, research or ideas to the scrutiny of others who are experts in the same field” and notes “its wide-spread use by most journals.”

The Petitioner also provided two copies of its *LLE Review Quarterly Report*, a publication “prepared as an account of work conducted by the [redacted] Both copies of this publication identify the Beneficiary as its “Editor.”⁴ The Petitioner, however, has not submitted evidence showing the international stature of this LLE publication or that serving as its editor signifies eminence and distinction based on international recognition.

Furthermore, the Petitioner submitted a January 16, 2019 email thanking the Beneficiary “for agreeing to chair” an upcoming “session,” entitled “Laser Measurements/Analysis” as part of the “High Power Lasers for Fusion Research V” program at the SPIE Photonics West conference in February 2019.” The record also includes information from various SPIE Photonics West conferences identifying “Symposium Chairs,” “Program Chairs” and “Session Chairs,” but this information does not elaborate on the level of distinction associated with serving as a session chair. Here, the Petitioner has not offered evidence showing that the Beneficiary’s participation as a “Laser Measurements/Analysis” session co-chair for this single conference sets the Beneficiary apart as outstanding in his field or otherwise garners him a level of attention indicative of international recognition.

An evaluation of the significance of the Beneficiary’s judging experience is appropriate to determine if such evidence is indicative of the outstanding achievement required for this classification.⁵ Here, the Petitioner has not established that the level and frequency of the Beneficiary’s participation as a manuscript reviewer (four instances), editor, and session chair (one instance) are indicative of or consistent with being recognized internationally as outstanding in his academic area. In many scientific and academic fields, peer review is a routine part of the process through which articles are selected for publication or presentation at conferences. Participation in the peer review process does not automatically demonstrate that an individual is internationally recognized as outstanding in his

⁴ This publication states that “[t]he work described in this volume includes current research at the [redacted] [redacted]” The Petitioner has not shown that the Beneficiary’s service as an editor for a publication that reports on the scientific work in his own laboratory is commensurate with being recognized internationally as outstanding in the academic field.

⁵ See 6 USCIS Policy Manual, *supra*, at F.3(B)(1) (stating that a beneficiary’s participation as a judge should be evaluated to determine whether it was indicative of the beneficiary being recognized internationally as outstanding in a specific academic area).

academic field. Without evidence that sets the Beneficiary apart from others in the field, such as evidence that he has completed reviews for a substantial number of distinguished journals or conferences relative to others in his field, served in editorial positions for highly regarded journals or publications, or chaired prominent evaluation committees for reputable conferences, the Petitioner has not established that the Beneficiary's peer review experience has resulted in, or is reflective of, recognition at an international level for being outstanding in the field.

With respect to the Beneficiary's research contributions, the record includes letters of support discussing his research projects at the Petitioner, and at [redacted] under the guidance of [redacted].⁶ For example, regarding the Beneficiary's graduate research involving [redacted] [redacted] an associate professor of physics and materials science at [redacted] indicated that the Beneficiary "successfully demonstrated the ability of [redacted] to exhibit highly efficient [redacted] properties [redacted] and later used these novel properties for the subsequent energy transfer to a novel class of [redacted] layered materials such as [redacted]."⁷ While [redacted] asserted that this research has "broad implications in [redacted] and [redacted] based technologies," he did not offer specific examples of how the Beneficiary's findings have been widely utilized in the [redacted] field or have otherwise influenced his field at a level commensurate with being internationally recognized as outstanding.

Regarding the Beneficiary's research relating to physical processes that govern the [redacted] properties of [redacted], [redacted] professor and director of the [redacted] [redacted] in [redacted] Mexico, indicated that the Beneficiary presented "data demonstrating a very basic, yet never experimentally observed property of [redacted]. This property, termed [redacted] is highly desirable as it is a direct indicator of high overall [redacted] efficiency of an [redacted] structure." [redacted] also stated that the Beneficiary "has shown efficient transfer of energy from [redacted] to [redacted] of a [redacted] semiconductor called [redacted], which is a well-known material, but had not yet been shown to exhibit favorable [redacted] properties when used to play the role of an [redacted] from other [redacted] materials." Additionally, [redacted] asserted that the Beneficiary's aforementioned "scientific findings have explored and explained crucial phenomena at a fundamental level," but he did not provide specific examples indicating that the Beneficiary's work has affected the field of [redacted] in a substantial way that signifies international recognition or outstanding achievement in the academic field.

With regard to the Beneficiary's work for the Petitioner, [redacted] of the Petitioner's [redacted] stated that the Beneficiary "serves as a [redacted] for the [redacted] at [redacted] and that his "work has significantly improved the power balance performance of the [redacted] laser." [redacted] further indicated that the Beneficiary's "research, which was published in the prestigious journal of *Applied Optics*, greatly improved the understanding of this problem at the forefront of the [redacted] laser community," but the record does not show that the Beneficiary's power balancing techniques have had a meaningful impact in the academic field

⁶ While we discuss a sampling of these letters, we have reviewed and considered each one.

⁷ [redacted]'s curriculum vitae indicated that he supervised the Beneficiary's graduate research at [redacted] from 2010 until 2016.

beyond the [redacted] have been extensively cited by independent researchers, or have otherwise risen to the level of a contribution that is recognized internationally as outstanding.⁸

Likewise, [redacted], [redacted] Group Leader at [redacted] [redacted] Laboratory, also pointed to the Beneficiary's article in *Applied Optics* and asserted that this work "on laser power balance and characterization of the laser beam profile inside the [redacted] brings new critical insights in this area of research." [redacted] further indicated that results from the Beneficiary's research "on [redacted] [redacted] characterization of laser beam focal spots" are "critical in understanding not only laser physics, but also in validating target physics models that rely heavily on laser [redacted] that, until now, has been modeled based on assumptions." We recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, but not every research finding that broadens knowledge in a particular field renders an individual's work as outstanding or internationally recognized in his academic area.

The record indicates that the Beneficiary was among 54 coauthors of an article in *Nature*, entitled [redacted] Regarding this work, [redacted] Chief Scientist at the Petitioner's [redacted] and a coauthor of the aforementioned article, stated that "[t]he series of experiments described in the paper is the culmination of a three year long effort" at the [redacted] [redacted] indicated that the Beneficiary "has served as the primary laser system scientist for the [redacted] laser for the past four years and is credited for its effective and uninterrupted operation. . . . He is in charge of configuring the laser to meet the highly specific and stringent requirements set forth by the experimentalists." Additionally, [redacted] asserted that the paper in *Nature* "has received remarkable attention due to not only the novelty of the approach, but also the unprecedented success rate of the methodology."⁹ While the Beneficiary was responsible for operation of the [redacted] laser, [redacted]'s statements do not indicate that the Beneficiary played a principal role in devising the statistical approach reported in the *Nature* article relative to the 53 other authors, including its first author. Furthermore, the collective reputation of a large research group does not necessarily translate into international recognition for individual members of that group. Nor is there evidence to support a conclusion that any article published in a highly ranked journal such as *Nature* automatically constitutes a contribution that is recognized internationally as outstanding in the academic field.

The Petitioner also provided letters from several researchers who have cited to the Beneficiary's research in their own work. For instance, [redacted], a postdoctoral researcher at the [redacted] [redacted] for [redacted] Science in Japan, stated: "I cited the work done by [the Beneficiary], because in his paper, the problem of the low [redacted] was overcome by appropriately designing the sample structure, allowing for data that can be measured with high accuracy and

⁸ According to December 2019 citation information the Petitioner submitted from Google Scholar, the Beneficiary's article in *Applied Optics* presenting this work had not received any citations since its publication in 2018. In response to the Director's notice of intent to deny (NOID), the Petitioner provided an updated Google Scholar list (dated June 29, 2020) reflecting six citations received by this article, but the Petitioner did not indicate how many of these citations occurred in papers published prior to or at the time of initial filing. See 8 C.F.R. § 103.2(b)(1).

⁹ The December 2019 Google Scholar information indicated that this article in *Nature* had received one citation since its publication in January 2019. The Petitioner's response to the Director's NOID included a June 2020 Google Scholar list showing an increase to 22 citations, but again, the Petitioner did not indicate how many of these additional citations occurred in papers published prior to or at the time of initial filing. See 8 C.F.R. § 103.2(b)(1).

reliability.” In addition, [redacted] asserted that the Beneficiary’s work “provided new, important insights into the [redacted] process in the [redacted] conversion.” Similarly, [redacted], assistant professor at [redacted] University, noted that he published a paper in which he referenced the Beneficiary’s work relating to [redacted]. [redacted] asserted that the Beneficiary’s work presented “a comprehensive study on this subject. It is therefore natural to use the empirical model proposed in his publication to further refine the conclusions drawn from the data observed by our group.” [redacted] and [redacted] did not further elaborate or discuss whether the Beneficiary’s findings have been implemented beyond informing the research of other scientists in the same field, and if so, the extent of their application. While their letters praise the Beneficiary’s research as original, valuable and promising, they have not sufficiently detailed in what ways his findings have already advanced the state of research in the academic field or explained how his work has already influenced the wider field beyond the teams of researchers who have directly cited his articles.

The Petitioner argues that he has “been recognized repeatedly for original contributions to the field” and that “[t]his recognition is confirmed in the expert letters.” The expert testimonials offered by the Petitioner, however, do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Beneficiary’s work is viewed by the overall academic field, rather than by a solicited few, as substantially influential or otherwise indicative of international recognition.

The Petitioner also maintains that the Beneficiary’s publication and presentation record renders him internationally recognized as outstanding in his field. The Petitioner states that the Beneficiary has “published his research over 15 times (including five first author publications) in prestigious peer reviewed publications” and “presented his research over 20 times at national and international conferences and workshops” since 2010. Regarding the Beneficiary’s presented work, the Petitioner submitted documentation showing, for example, that his papers have been presented at multiple [redacted] conferences and at the 2nd International Conference on [redacted]. The Beneficiary’s participation in conferences and workshops demonstrates that his research findings were shared with others in his field, but without documenting the impact of his presented research, such participation is not sufficient to demonstrate that his work is recognized internationally as outstanding in the academic field.

The record also contains information about many of the journals in which the Beneficiary has published his work, including *Nature*, *Nano Letters*, *Scientific Reports*, *Physical Review B*, *ACS Photonics*, *Applied Optics*, *Nuclear Fusion*, and *Nanoscale*.¹⁰ For instance, the Petitioner provided Google Scholar rankings listing *Nature* as 1st, *Nano Letters* as 20th, and *Scientific Reports* as 35th among all journals. Additionally, among “Life Sciences & Earth Sciences” journals, Google Scholar listed *Nature* as 1st and *Scientific Reports* as 9th. For [redacted] journals, Google Scholar ranked *ACS Photonics* as 8th and *Applied Optics* as 18th. Furthermore, the record includes Scimago “Journal Rankings” information listing *Nano Letters* as 5th among “Bioengineering” journals, *ACS Photonics* as 13th among “Biotechnology” journals, and *Nuclear Fusion* as 7th among “Nuclear and High Energy Physics” journals. The Petitioner also presented webpages from the publishers of

¹⁰ We discuss representative examples here, but have reviewed and considered the information relating to each journal.

Scientific Reports, Nano Letters, ACS Photonics, Physical Review B, Nanoscale, Nuclear Fusion, Applied Optics and other journals providing information and metrics relating to their publications.

Publication in a highly ranked journal in-and-of-itself is insufficient to demonstrate that a beneficiary is recognized internationally as outstanding in the academic field. Moreover, that a publication bears a high ranking or impact factor is reflective of the publication's overall citation rate. It does not, however, show the influence of any particular author or demonstrate how an individual's research has had an impact within the field. As authoring scholarly articles is often inherent to the work of professors and researchers, the citation history or other evidence of the influence of the Beneficiary's articles can be an indicator to determine the impact and recognition that his work has had on the field and whether his articles demonstrate that he is internationally recognized as outstanding in the academic field.¹¹

Here, the Petitioner submitted December 2019 information from Google Scholar indicating that the Beneficiary's five highest cited articles, entitled [REDACTED]

[REDACTED] (2011),
[REDACTED] (2012),
[REDACTED] (2014),

[REDACTED] (2016), and [REDACTED]

[REDACTED] (2016) each received 90, 53, 32, 30, and 21 citations, respectively.¹²

The Petitioner did not specify how many citations for each of these individual articles were self-citations by the Beneficiary or his coauthors. Moreover, in response to the Director's NOID, the Petitioner provided an updated Google Scholar list (dated June 29, 2020) reflecting a moderate increase of citations to the Beneficiary's individual articles, but the Petitioner did not indicate how many of these additional citations occurred in papers published prior to or at the time of initial filing. See 8 C.F.R. § 103.2(b)(1).

Regarding the Beneficiary's citation record, the Petitioner offered a letter from [REDACTED] a senior scientist at [REDACTED] Laboratory, asserting that "[t]he number of citations is a strong function of the discipline itself, the time elapsed since the publication and the relative size of the field." [REDACTED] further stated that the Beneficiary's "2018 publication in *Applied Optics* titled [REDACTED] has been cited six times, which is three times higher than the journal average."¹³ The Petitioner, however, has not demonstrated that a paper with just six citations and an above average citation rate is necessarily internationally recognized in the academic field as outstanding. Nor has the Petitioner indicated whether [REDACTED] factored in any self-citations by the Beneficiary and his coauthors in determining the citation rate for the aforementioned article. Without comparative statistical evidence indicating how often others in the Beneficiary's field are cited, the Petitioner has not demonstrated that the number of citations received by his publications and

¹¹ See 6 USCIS Policy Manual, *supra*, at F.3(B)(1) (stating that a beneficiary's authorship of books or articles should be evaluated to determine whether they were indicative of the beneficiary being recognized internationally as outstanding in a specific academic area).

¹² These five articles were all coauthored with [REDACTED] at [REDACTED]. The Beneficiary's remaining articles were each cited less than 20 times.

¹³ [REDACTED]'s letter was unaccompanied by statistical evidence to support this claim.

presentations represents interest at a level consistent with outstanding achievement in the academic field.

Additionally, the Petitioner submitted examples of several articles, including international articles, which cited to the Beneficiary's work. A review of those articles, though, does not show the significance of his research or demonstrate that it has widely impacted the field.¹⁴ For instance, the Petitioner provided an article, entitled [REDACTED]

[REDACTED] (*Nanoscale*), in which the authors cited to the Beneficiary and [REDACTED]'s paper, entitled [REDACTED] (*ACS Photonics*). The article's authors identified the Beneficiary and [REDACTED]'s paper as one of two studies which reported methods [REDACTED]

[REDACTED]"¹⁵ This article, however, does not distinguish or highlight the Beneficiary's work from the 50 other papers referenced in the article.

Another article presented by the Petitioner, entitled [REDACTED] (*Chemical Reviews*), cites to the Beneficiary and [REDACTED]'s paper, entitled [REDACTED] (*ACS Photonics*). In this article, the authors referenced the Beneficiary and [REDACTED]'s paper, stating: [REDACTED]

[REDACTED] This article, however, does not differentiate the Beneficiary's paper from the 634 other papers referenced in the article or otherwise demonstrate that his work is outstanding.

While the Beneficiary's citations, both individually and collectively, show that the field has taken some notice of his work, the Petitioner has not established that the number of citations received by his published and presented work is sufficient to demonstrate a level of attention commensurate with being recognized internationally in his field. See section 203(b)(1)(B)(i) of the Act. Nor has the Petitioner shown that the amount of citations to the Beneficiary's work represents interest at a level consistent with outstanding achievement in the academic field.

Although the evidence indicates that the Beneficiary is a skilled laser physics researcher, the Petitioner has not established that he stands apart in the academic community through eminence and distinction based on international recognition. After consideration of the totality of the evidence of the Beneficiary's work in the areas of photonics, material science, and nanotechnology, including evidence of his research articles, citations to those articles by others in the field, his participation as a peer reviewer, his service as an editor for [REDACTED] *Review Quarterly Report*, and the opinions of experts in the field, we conclude that this documentation does not sufficiently establish that he has been internationally recognized as an outstanding researcher in the field.

¹⁴ Although we discuss representative sample articles here, we have reviewed and considered each one.

¹⁵ Specifically, the authors referenced the Beneficiary and [REDACTED]'s paper (endnote 27), as well as a paper by another research team (endnote 14), stating that [REDACTED] "..."

III. CONCLUSION

The evidence in the record demonstrates that the Beneficiary meets at least two of the evidentiary criteria, and thus the initial evidence requirements for this classification. A review of the totality of the evidence, however, does not establish that he is internationally recognized as an outstanding professor or researcher in the academic field. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.