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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: AUG 2 3 2013 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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
Chief, Administrative Appeals Office

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

The petitioner is an electronic design automation (EDA) tools developer. 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 a Staff Research and Development (R&D) Engineer. The director determined that the petitioner had not established that the beneficiary had attained the level of achievement required for classification as an outstanding researcher.

On appeal, counsel submits a brief. For the reasons discussed below, the AAO concurs with the director that the petitioner has not established that the beneficiary enjoys international recognition as outstanding.

Specifically, when the AAO simply "counts" the evidence submitted, the petitioner has submitted qualifying evidence under two of the regulatory criteria as required, judging the work of others and scholarly articles pursuant to 8 C.F.R. §§ 204.5(i)(3)(i)(D) and (F). As explained in the final merits determination, however, much of the evidence that technically qualifies under these criteria reflects routine duties or accomplishments in the field that do not, as of the date of filing the petition, set the beneficiary apart in the academic community through eminence and distinction based on international recognition, the purpose of the regulatory criteria.[1] *Employment-Based Immigrants,* 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)).

Beyond the decision of the director, the record lacks the actual job offer issued 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. Law

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

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> * * *
>
> (B) Outstanding professors and researchers. -- An alien is described in this subparagraph if –

[1] The legal authority for this two-step analysis will be discussed at length below.

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

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

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

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

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

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

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.

In the instant matter, the petitioner has not submitted its job offer letter to the beneficiary as required by 8 C.F.R. § 204.5(i)(3)(iii). Instead, the petitioner submitted a letter in support of the instant petition, addressed to the United States Citizenship and Immigration Services (USCIS), describing the petitioner's

offer of employment to the beneficiary. This letter is not addressed directly to the beneficiary and thus does not constitute a job offer letter to the beneficiary. The ordinary meaning of an "offer" requires that it be made to the offeree, not a third party. *See Black's Law Dictionary* 1189-90 (9th ed. 2009) (defining "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;" defining "offeree" as "[o]ne to whom an offer is made;" and defining "offeror" as "[o]ne who makes an offer").

In light of the above, the petitioner failed to submit required initial evidence pursuant to 8 C.F.R. § 204.5(i)(3)(iii).

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.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on September 18, 2012, seeking to classify the beneficiary as an outstanding researcher in the field of computer science, specifically, in the area of Electronic Design Automation (EDA). 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 has over eight years of research experience: from September 2004 to July 2009 he conducted research towards the acquisition of his Ph.D. in computer science and engineering; and in August 2009 he began working as a researcher for the petitioning entity. At issue in this matter is whether the petitioner has demonstrated that the beneficiary's work has been recognized internationally within the academic field as outstanding.

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

> (A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;
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> (B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;
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> (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;
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> (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;
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> (E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or
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> (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. *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 U.S. Citizenship and Immigration Services (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.[2] 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),

[2] 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)).

> 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.[3] 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 the classification sought in this matter. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. The AAO maintains *de novo* review. *See* 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *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) (recognizing the AAO's *de novo* authority).

B. Analysis

1. Evidentiary Criteria [4]

The petitioner initially asserted that the beneficiary was submitting qualifying evidence under three 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.

> *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 and papers for journals and conferences within the same or an allied academic field. 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 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

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[3] 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.

[4] The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

contemplated merely the submission of original research, it would have said so, and not have included the extra word "contributions."

As evidence that the beneficiary has made original scientific or scholarly research contributions to the academic field, the petitioner submitted reference letters from colleagues and peers within the academic field.

The petitioner submitted a letter from Dr. a senior research scientist at a governmental research agency in computer science and applied mathematics. Dr. states that he is familiar with the beneficiary through the beneficiary's research publications. Dr. states that the beneficiary's paper describes a new technique that generalizes translation validation. Dr. asserts that this new technique "significantly improves upon the state-of-the-art in automatic compiler optimization validation" and provides an extension of the current system used for both once-and-for-all verification and translation validation. Dr. further states that the beneficiary's work on program equivalence opened "a novel and very promising approach" to elusive problems related to over loop transformations. Dr. asserts that he has cited and applied the beneficiary's work in two of his own publications, and that the beneficiary's work has "served as [a] building block for other researchers in academia and industry," particularly, for himself and three colleagues on software pipelining and value-graph translation validation. Dr. concludes: "Due to [the beneficiary's] high quality publications and their direct application to the development of electronic design automation, he is clearly an outstanding researchers [*sic*] among his peers in similar areas." However, Dr. fails to explain with specificity how the beneficiary's research has contributed to the academic field as a whole. While Dr. asserts that the beneficiary's publications have "direct application to the development of electronic design automation," Dr. fails to explain how the beneficiary's research is actually being applied in the field. Furthermore, while indicated that he cited the beneficiary's research in two of his own publications, Dr. failed to explain the nature of his citations to the beneficiary's work. Overall, Dr. letter contains primarily conclusory assertions regarding the beneficiary's contributions, and thus, bears little weight.

The petitioner submitted a letter from Dr. , Professor at the states that he is familiar with the beneficiary through the beneficiary's research publications. Dr. provides general background information on the beneficiary's research focus in the areas of implementation verification between high-level system descriptions and their lower-level implementations, and verification of concurrent software. Dr. then discusses the beneficiary's research findings and published articles. In particular, Dr. highlights the beneficiary's article ' , and asserts that the beneficiary made "a breakthrough that went beyond the translation validation paradigm . . . [and] demonstrated how to also highlights the beneficiary's work in the area of verification of concurrent software, and asserts that the beneficiary and his collaborators "pioneered a breakthrough technique called which uses measured behavior of a system to focus the verification only on relevant possibilities (thereby greatly reducing the complexity of the verification task), yet also generalized from the measured behavior, so that the verification is far more powerful at discovering bugs than previous techniques." Dr. then states: "This line of research is

probably not ready for commercialization yet, but it is exactly the sort of deep, impactful, groundbreaking research that is needed to maintain technological leadership and progress for the future. Dr. concludes that the beneficiary's research "is clearly of the utmost relevance, and [the beneficiary] himself is clearly an outstanding researcher in his field." While Dr. provides a detailed explanation of the beneficiary's research focus and highlights the beneficiary's research findings, Dr. fails to explain with specificity how the beneficiary's research has contributed to the academic field as a whole. Further, Dr. assertion, that the beneficiary's research in the area of verification of concurrent software is "probably not ready for commercialization yet" but may impact future progress, is insufficient to establish that the beneficiary's research has contributed to the academic field. Speculation as to potential future contributions cannot establish that the beneficiary has already made contributions to the academic field. Overall, Dr. letter contains primarily conclusory assertions regarding the beneficiary's contributions, and thus, bears little weight.

The petitioner submitted a letter from Dr. states that he is familiar with the beneficiary through the beneficiary's research publications. Dr. provides a brief explanation of the area of formal verification of system-level designs, asserts that the beneficiary's research "focuses on the verification of these high-level designs and their refinements," asserts that research problems in this area "are extremely hard," and states that the beneficiary's "contribution to the field of formal verification is apparent from the quality of the forums in which his papers are published." Dr. attests that he has cited the beneficiary's research article, and provides a brief description of the novel testing technique described in the article, which he asserts "is an important advancement to the EDA field because this technique exhaustively searches all execution paths for a given input, thereby increasing the coverage of a test in comparable runtime." Dr. concludes that the beneficiary "has significantly contributed to the research and development of EDA research," and that "[a]pplications of his work have the potential to improve many current state of the art systems." Dr. fails to explain with specificity how the beneficiary's research has contributed to the academic field as a whole. Furthermore, while Dr. asserts that he has cited the beneficiary's research, he fails to explain the nature of his citation to the beneficiary's work. Finally, Dr. assertion that the beneficiary's research has "the potential to improve many current state of the art systems" is insufficient to establish that the beneficiary's research has contributed to the academic field. Again, speculation as to potential future contributions cannot establish that the beneficiary has already made contributions to the academic field. Overall, Dr. letter contains primarily conclusory assertions regarding the beneficiary's contributions, and thus, bears little weight.

The petitioner submitted a letter from Dr. and Editor-in-Chief of the journal states that he became familiar with the beneficiary's work when he was looking for experts for an invited paper for and was referred to the beneficiary by Dr. the beneficiary's doctoral advisor. Dr. states that the beneficiary's contribution to the area of high level verification "is internationally renowned" and that the beneficiary's research "presents a novel direction to hardware verification . . . [that] can possibly lead to faster verification time and in turn reducing time to market for the integrated chip." Dr. lists the

journals and conferences in which the beneficiary's research has been published. Dr. then states that, in his capacity as Editor-in-Chief of he invited the beneficiary to submit an invited paper for the journal, and that he was "extremely pleased for his contribution to the journal." Dr. concludes that he has no doubt that the beneficiary "will continue to make outstanding contributions to this research area." Dr. fails to explain with specificity how the beneficiary's research has contributed to the academic field as a whole. Further, Dr. statement that the beneficiary's research "can possibly lead to faster verification time and in turn reducing time to market for the integrated chip" indicates that the beneficiary's research may make potential future contributions; however, as stated above, speculation as to potential future contributions cannot establish that the beneficiary has already made contributions to the academic field. Overall, Dr. letter contains primarily conclusory assertions regarding the beneficiary's contributions, and thus, bears little weight.

The petitioner submitted a letter from Dr. Senior Research Staff Member, who was the beneficiary's supervisor at and has co-authored two patents and several papers with the beneficiary. Dr. explains the research he and the beneficiary worked on during the beneficiary's two internships at in 2007 and 2008, which formed the basis of their two patent applications and their several joint publications. Of the work they performed in 2007, Dr. states: "This approach increased the coverage of a test input significantly in comparison to simulation techniques." Of the work they performed in 2008, Dr. states: "Our approach improves the current state of the art both in performance and in size of the verification condition." Dr. concludes that the beneficiary's research has "influenced research activities in the area of high-level verification research" and is "recognized internationally," as evidenced by the publication of the beneficiary's work in "the most prestigious international peer-reviewed journals and conference proceedings in our field" and the "numerous citations" to his published work. While Dr. describes his and the beneficiary's research findings in technical terms, Dr. fails to explain with specificity how the beneficiary's research has contributed to the academic field as a whole. Overall, Dr. letter contains primarily conclusory assertions regarding the beneficiary's contributions, and thus, bears little weight.

The petitioner submitted a letter from Dr. Professor and Dr. was the beneficiary's Ph.D. advisor and has also co-authored several publications with the beneficiary. Dr. provides a brief description of the beneficiary's educational background. Dr. then discusses the beneficiary's current research findings. With respect to the beneficiary's work in the area of validation of high-level descriptions of system designs, Dr. asserts that the beneficiary "has contributed solutions both to the problems of equivalence checking as well as property verification," which Dr. characterizes as "some of the toughest technical problems with enormous practical impact." Of the beneficiary's other work with verification techniques, Dr. asserts that the beneficiary has provided "creative solutions that have a measureable impact on research practice and are demonstrably superior in practice." Dr. concludes that the beneficiary "has an established track record of making important contributions to both science and technology." While Dr. describes his and the beneficiary's research findings in highly technical terms, Dr. fails to explain with specificity how the beneficiary's research has

contributed to the academic field as a whole. Overall, Dr. letter contains primarily conclusory assertions regarding the beneficiary's contributions, and thus, bears little weight.

In response to the director's request for evidence (RFE), the petitioner provided additional reference letters, including a second letter from Dr. In this letter, Dr. provides additional details explaining how his and the beneficiary's joint research has reduced the runtime overhead without significant loss of precision, increased the coverage of a test input significantly in comparison to simulation techniques, and improves the current state-of-the-art both in performance and in size of the verification condition. Again, while Dr. describes the beneficiary's research in highly technical terms, his letter fails explain with specificity how the beneficiary's research has contributed to the academic field as a whole.

The petitioner submitted a letter from Dr. Department Head, who first became acquainted with the beneficiary during the beneficiary's 2007 internship at and co-authored a paper with the beneficiary during this time. Dr. briefly describes the beneficiary's research areas and his research findings. In particular, Dr. characterizes the beneficiary's work in concurrent program verification as "innovative" and "more precise" than existing models. Dr. also characterizes the beneficiary's work in validating high-level synthesis (HLS) as an "extremely practical approach" that "improved the state-of-the-art of translation validation by handling concurrent programs." Dr. asserts that he is the of many leading journals and conferences in the area of EDA, and as such, is aware of the highly selective and strict process of choosing reviewers for the journals and conferences in which the beneficiary has served as a reviewer. Dr. asserts that he invited the beneficiary to review two papers based upon the beneficiary's "solid record" as an outstanding researcher whose publications have been "well received in the EDA community." Dr. concludes that the beneficiary "is an innovative researcher who has developed viable solutions for core problems in the EDA field" who will "continue to make excellent contributions to the area in the future." While Dr. describes the beneficiary's research findings in highly technical terms, his letter fails explain with specificity how the beneficiary's research has contributed to the academic field as a whole. Overall, Dr. letter contains primarily conclusory assertions regarding the beneficiary's contributions, and thus, bears little weight.

The petitioner submitted a letter from Dr. states that he is familiar with the beneficiary through the beneficiary's research publications and conference presentations. Dr. highlights that the beneficiary, for the first time, "generalized translation validation for concurrent programs and demonstrated that his approach is practical by integrating it with and "generalized this verification technique even further to work with parameterized programs." Dr. asserts that the beneficiary's research "explored and demonstrated new directions for demonstrating optimizations correctly once and for all." Dr. asserts that the beneficiary was the first researcher to present how to use static analysis techniques for partial-order reduction to improve the performance of the systematic search for flaws and bugs. Dr. asserts that the beneficiary developed another process to find bugs that may have been missed by existing simulation techniques. Dr. asserts that the beneficiary's research has been "beneficial" to his own research group as well as to the entire formal methods

community. Dr. concludes: "Overall, [the beneficiary's] research, including his doctoral thesis, has contributed significantly to advancement of high-level verification." While Dr. describes the beneficiary's research findings and emphasizes the novelty of his work, Dr. letter fails to explain with specificity how the beneficiary's research has contributed to the academic field as a whole. Furthermore, while Dr. asserts that the beneficiary's research has been "beneficial" to his own work, he does not explain in detail how the beneficiary's research has benefitted his own. Overall, Dr. letter contains primarily conclusory assertions regarding the beneficiary's contributions, and thus, bears little weight.

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 regarding the beneficiary's contributions, without specifically identifying the beneficiary's contributions and providing specific examples of how those contributions have influenced the field. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 17 (D.D.C. 1990). 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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). As such, the letters, alone, are insufficient to establish that the beneficiary's research can be considered a contribution to the academic field as a whole, beyond his immediate circle of collaborators.

As additional evidence of the beneficiary's purported contributions to the field, the petitioner submitted evidence that the beneficiary's work has been cited by other researchers. Specifically, the petitioner provided highlights from other researchers' publications, and provided copies of the publications that reference or cite to the beneficiary's research.

The petitioner highlighted two references made by Dr. [redacted] in his Ph.D. thesis regarding the beneficiary's work, including one characterizing the beneficiary's work as "[t]he most advanced validator following [redacted] The petitioner highlighted a reference made by Dr. [redacted] stating that he follows the beneficiary's approach to express parameterized versions of programs. The petitioner highlighted references made by Dr. [redacted] illustrating how he used and adapted benchmarks from the beneficiary's research, among more than 30 other research results, to experiment with their own approaches. The petitioner highlighted a reference made by Dr. [redacted] regarding the beneficiary's work, specifically, that the beneficiary's approaches did not claim the minimality of the generated schedules, whereas Dr. [redacted] approach does. The petitioner highlighted one reference made by Dr. [redacted] to the beneficiary's work as "related work." The petitioner highlighted two references to the beneficiary's work made by Dr. [redacted] and Dr. [redacted], which briefly discuss the beneficiary's read/write approach and explain why their own approach is novel and different from the beneficiary's approach. The petitioner highlighted one reference to the beneficiary's work made by Dr. [redacted] et al., which states that the beneficiary's research on correctness of transformations provides "[o]ne possible solution" to check their own approach. The petitioner highlighted one reference to the beneficiary's work made by Dr. [redacted] et. al., which not only states that the beneficiary's work is one of "several works" that model the whole computation logically to guarantee feasibility but have "too big an overhead to scale to large executions," and goes on to state that Dr. [redacted]'s research team uses another approach that is "the most precise." The petitioner highlighted one reference made by Dr. [redacted] et. al. to the beneficiary's work as "related work." The petitioner highlighted one reference made by Dr. [redacted] et al. to the beneficiary's work on [redacted] as introductory information. The petitioner highlighted one reference made by Dr. [redacted] that briefly cites the beneficiary's work as advancing on generalizations of translation validation that validates classes of programs rather than single input-output pairs. The petitioner highlighted one reference made by Dr. [redacted] et. al. that briefly cites the beneficiary's work as one of several works that address verification of the phase of scheduling. The petitioner highlighted one reference made by Dr. [redacted] to the beneficiary's work, which stated that the beneficiary's [redacted] system "managed to catch two bugs in the [redacted] compilations, which were unknown before." The petitioner highlighted one brief reference made by Dr. [redacted] et. al. to the beneficiary's work with the [redacted]. The petitioner highlighted one reference made by [redacted] et. al. to the beneficiary's work as an authority for the following statement: "Since such considerations are entangled with low-level heuristics, it is easy to have errors in the synthesis tool implementation, resulting in buggy designs." Finally, in a different article, the petitioner highlighted one reference made by Dr. [redacted] to the beneficiary's work as "related work," explaining the commonalities between translation validation and product constructions among the beneficiary's and other researchers' works.

While the petitioner has established that other researchers have cited the beneficiary's work in the above articles, none of the above articles explain how the beneficiary's work has contributed to the academic field. The fact that the beneficiary's work has been cited or briefly discussed in articles by other researchers does not establish that the beneficiary has made a contribution to the academic field as a whole. Notably, none of the above articles discussed or cited the beneficiary's work in a substantial manner; instead, all of the articles merely cite to the beneficiary's work as one among many other research findings in the related topic, as introductory material, or as work upon which the author seeks to improve, indicating that the beneficiary's

work is part of a growing interest in that area of research. In light of the above, the petitioner has not established that the beneficiary's research has contributed to the field as a whole. Thus, the petitioner failed to submit qualifying evidence that meets the plain language requirements set forth 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 of several articles by the beneficiary published in scholarly journals with an international circulation, and evidence that the beneficiary's doctoral thesis has been published in book form. 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)(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)).

The nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. Here, the petitioner submitted letters from editors of journals or conferences attesting to their selection of the beneficiary as a reviewer or referee. Specifically, the letter from [redacted] Associate Editor, [redacted] (2005-2008), states that submissions to this journal "undergo a rigorous review process, with extremely selective criteria," and that the beneficiary was invited based on his "expertise in the field of electronic design automation." The letters from Dr. [redacted] Associate Editor, [redacted], state that the beneficiary was selected "based on his internationally recognized expertise" and that "[a]cting as a reviewer is by no means routine for every researcher in the field." The letter from [redacted] states that every submission "undergoes rigorous scrutiny by experts in the field." The letter from Dr. [redacted] general co-chair of [redacted] and member of the program committee

for asserts that "[s]election of an reviewer is based mainly on the researcher's technical concentration area, research abilities and publication record in the related research fields," and that reviewers are "experts in the field . . . [who] have published research that shows significance, correctness and originality; and have made important contributions to the literature." The letter from Dr. , who worked with the beneficiary at states that in his capacity as associate editor, co-chair, and a program committee member of many leading journals and conferences in the area of EDA, he is "aware of the highly selective process of choosing reviewers to judge the work of their peers" and that "[f]or the journals and conferences that [the beneficiary has served as a reviewer, the criteria for being a reviewer are very strict." However, all of these letters make general, conclusory assertions regarding the selection criteria for peer reviewers. None of these letters provide any specific, factual information as to the actual selection criteria utilized to select the beneficiary as a reviewer.

Without factual information to establish the actual selection criteria, along with 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, the petitioner failed to establish that the beneficiary's judging experience is indicative of or consistent with international recognition. Again, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. at 17.

The AAO cannot ignore the fact that, generally, peer review is routine in the field, and not every peer reviewer enjoys international recognition. Furthermore, not every journal's peer review selection criteria are the same, and the selection criteria can vary greatly among journals. For instance, the background information for indicates that this particular journal utilized at least 900 reviewers in 2010 alone. The sheer number of reviewers utilized for this particular journal in a single year, alone, is not indicative of a selection process that credits a small, elite group of reviewers.

Furthermore, the record reflects that the beneficiary's Ph.D. advisor, Dr. , serves as the Editor-in-Chief of one of the journals in which the beneficiary has served as a reviewer. The record reflects that for the beneficiary was a sub-reviewer for his previous supervisor, Dr. . The record also reflects that the beneficiary was invited to be a reviewer for by Dr. who worked with the beneficiary at Thus, the beneficiary's judging record is not entirely indicative of international recognition beyond his own circle of collaborators.

In addition, 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. On appeal, counsel for the petitioner highlights that the beneficiary's publications have been independently cited approximately 107 times. Counsel also highlights the evidence establishing that other researchers have "used and built upon" the beneficiary's research, asserting that this establishes that

"[i]nternationally recognized researchers from all over the world have agreed that [the beneficiary's] work is original and path breaking."

However, the number of 107 citations appears moderate within the academic field; the petitioner submitted no objective, credible evidence to establish that this number of citations is high within the beneficiary's academic field. Moreover, as discussed above, the petitioner has not established that the nature of the citations and references to the beneficiary's work is substantial or significant. The petitioner submitted no evidence that the articles that cite to or reference the beneficiary's work substantively discuss or rely on the beneficiary's work; instead, the submitted articles merely reference the beneficiary's work as one among many other research findings in the related topic. All of the articles submitted to support the petition briefly cite or reference the beneficiary's work as introductory material, related work, or work upon which the author seeks to improve. These letters fall significantly short of establishing that the other researchers have relied upon the beneficiary's work in a manner that recognizes the beneficiary's work as "original and path breaking," as the petitioner claims.[5]

In light of the above, the final merits determination reveals that the beneficiary's qualifying evidence fails to set the beneficiary apart in the academic community through eminence and distinction based on international recognition, the purpose of the regulatory criteria. 56 Fed. Reg. at 30705.

IV. Conclusion

The petitioner has shown that the beneficiary is a talented researcher, who has won the respect of his collaborators, employers, 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 or professor. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

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[5] On appeal, counsel also highlights that the beneficiary's work has been downloaded over 550 times by researchers around the world. However, merely downloading an article does not carry as much weight as a citation to the article. One can view or download an article and realize it is not useful, whereas if an article is cited, it is used in some manner, even if only as background material.