

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

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John F. Grissom Acting Chief, Administrative Appeals Office

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

The petitioner is a research firm. 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 principal scientist. 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, counsel submits a brief and additional evidence. For the reasons discussed below, the petitioner has not overcome the director's valid concerns. Moreover, we find that the petitioner, at the time of filing, did not employ at least three full-time researchers in addition to the beneficiary.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v.* U.S. Dept. of Transp., NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. See, e.g., Dor v. INS, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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

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(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):

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(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,

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

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

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

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

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

The regulation at 8 C.F.R. § 204.5(i)(3) states that a petition for an outstanding professor or researcher must be accompanied by:

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from current or former employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

This petition was filed on July 26, 2007 to classify the beneficiary as an outstanding researcher in the field of chemical engineering. Therefore, the petitioner must establish that the beneficiary had at least three years of 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 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 six criteria, of which the beneficiary must satisfy at least two. It is important to note here 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 director concluded that the beneficiary had judged the work of others pursuant to 8 C.F.R. $\S 204.5(i)(3)(i)(D)$. Thus, the petitioner need only establish that the beneficiary meets one additional criterion. The petitioner claims that the beneficiary satisfies the following additional criteria.¹

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. 56 Fed. Reg. at 30705. 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).

Initially, counsel asserted that the beneficiary meets this criterion through a teaching award, technical paper awards, a graduate student poster award, a student "gold medal," scholarships and grants. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Similarly, the beneficiary's self-serving curriculum vitae cannot be considered evidence of her receipt of awards. 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'l. Comm'r. 1972)). The initial evidence submitted in support of this criterion included a "University Medal" from Jadavpur University for first standing on the Master of Chemical Engineering examination and a certificate from Chemcon 2001 a for second place oral presentation in the Modeling and Simulation and Control session. Counsel also references a letter from a professor at the University of Akron, who asserts that the beneficiary "was awarded prestigious grants as the Senior Research Engineer working [for the petitioner] based in NE Ohio."

We further note that **Sector** a research fellow at BASF Catalysts, LLC, asserts that the beneficiary was "awarded the prestigious SBIR project" from [the U.S. Department of Defense (DOD)] to design a sulfur sorbent to reduce sulfur from sulfur laden logistic fuel. **Sector** a manager with the Ohio Department of Development, asserts that the petitioner received a competitive Third Frontier

¹ The petitioner does not claim that the beneficiary meets any criteria not discussed in this decision and the record contains no evidence relating to the omitted criteria.

Fuel Cell Program (TFFCP) grant for a project conducted by the beneficiary as the primary investigator. According to **Mathematical**, the project was one of nine projects funded out of 36 proposals. **Mathematical** Wender, a professor at the University of Pittsburgh and a member of the beneficiary's Ph.D. dissertation committee, asserts that the beneficiary "has been rewarded three different projects in energy research and reactor design as well as support from the State of Ohio," the U.S. Army and the National Science Foundation (NSF).

On April 25, 2008, the director requested additional evidence relating to this criterion. Specifically, the director noted that scholarships, fellowships and awards that are open only to students cannot serve to meet this criterion and requested evidence from the entity issuing any awards to the beneficiary establishing the criteria for the award and the scope and nature of the competition.

In response, counsel referenced the beneficiary's curriculum vitae as evidence that she had received grants from NSF. Counsel also referenced a letter from the form of the professor emeritus at the Indian Institute of Technology, who asserts that the beneficiary, according to her curriculum vitae, "has recently received a very high quality peer reviewed award in the form of a grant (as principal investigator) from [the] National Science Foundation." **Concludes that** the grant, "by itself strongly indicates the excellence and outstanding character of her work." **Concludes that** the grant profess any first hand knowledge of the grant being awarded to the beneficiary.

The director concluded that the grant was noteworthy but not outstanding as researchers are commonly financed through grants. On appeal, counsel asserts that all grants received by the petitioner, including those for which the beneficiary is the principal investigator, "contain the requirement that a researcher of outstanding ability and reputation (National and International) act as Principal Investigator." The petitioner submits a letter from its president, **Second Second Second**

We concur with the director that scholarships are generally based on past *academic* achievement, not for accomplishments in a field of endeavor. While 8 C.F.R. § 204.5(i)(3)(A) references outstanding achievements in one's academic field, 8 C.F.R. § 204.5(i)(2) defines "academic field" as "a body of specialized knowledge offered for study." The definition does not include typical bases for scholarships, such as grade point average and class standing. It remains, academic study is not a field of endeavor, academic or otherwise. Rather, academic study is training for a future career in an academic field. As such, scholarships in recognition of academic achievement, such as grade point average, are insufficient. Scholarships and the beneficiary's student award are simply not evidence of

international recognition in the field. Rather, they represent high academic achievements in comparison with her fellow students.

Regarding the beneficiary's research grants, we also concur with the director that research grants are awarded primarily to fund a scientist's future work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement.

In light of the above, the petitioner has not established that the beneficiary had personally received an NSF grant prior to the date of filing. Moreover, for the reasons stated above, a grant, even a competitive grant, is not an award or prize recognizing an outstanding achievement. Thus, the petitioner has not established that the petitioner meets this criterion.

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

On appeal, counsel notes that the regulation at 8 C.F.R. \S 204.5(i)(3)(i)(E) does not require that the contributions be of "major significance." While true, the petitioner cannot satisfy this criterion simply by listing the beneficiary's past projects and demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research. Research work that is unoriginal would be unlikely to secure the beneficiary a master's degree, let alone classification as an outstanding researcher. Because the goal of the regulatory criteria is to demonstrate that the beneficiary's research contributions have won comparable recognition. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

As stated above, outstanding 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. 56 Fed. Reg. 30703, 30705 (July 5, 1991). Any Ph.D. thesis, postdoctoral or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. To conclude that every researcher who performs original research that adds to the general pool of knowledge meets this criterion would render this criterion meaningless.

Furthermore, the regulations include a separate criterion for scholarly articles. 8 C.F.R. $\S 204.5(i)(3)(i)(F)$. Thus, the mere authorship of scholarly articles cannot serve as presumptive evidence to meet this criterion. To hold otherwise would render the regulatory requirement that a beneficiary meet at least two criteria meaningless.

In a similar vein, while the evidence that the beneficiary is named on a patent application is indicative of original work, the very existence of a patent application or even a patent does not show that the beneficiary's invention is more significant than those of others in her field. To establish the significance of the beneficiary's work, we review the evidence of record, including the numerous reference letters submitted.

The director concluded that the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of international recognition. U.S. Citizenship and Immigration Services (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.* We note that the submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *See id.* at 795. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). The director noted that many of the letters were from the beneficiary's immediate circle of colleagues and, thus, were not indicative of international recognition.

On appeal, counsel asserts that the director inappropriately disregarded the letters, many of which according to counsel, were from disinterested experts and should not require "objective" supporting evidence. Counsel opines that assigning less evidentiary weight to reference letters prepared in support of the petition is "innately illogical" and makes it "implausible for an alien to ever qualify" under section 203(b)(1)(B) of the Act. Counsel further asserts that the letters were consistent with the remaining evidence.

We do not question the usefulness of reference letters in explaining the nature of an alien's work and even how it has influenced the field. Such letters are also useful in explaining the significance of more objective evidence of record. In evaluating the reference letters, however, we note that letters containing mere assertions of widespread recognition and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through her reputation and who have applied her work are the most persuasive. Ultimately, however, we concur with the director that objective evidence in existence prior to the preparation of the petition carries should support the necessarily subjective opinions expressed in letters prepared especially for submission with the petition. An individual with international recognition should be able to produce unsolicited materials reflecting that recognition.

The beneficiary received her Master of Science in Chemical Engineering from Jadavpur University in Calcutta, India in 1999. She spent several months as a research fellow at Ruhr University in Germany

in 2000. In 2004, she received her Ph.D. in Chemical and Petroleum Engineering from the University of Pittsburgh. Since that time, the beneficiary has been working for the petitioner in Ohio. The petitioner submitted letters from 16 members of her field attesting to her original work. Of those letters, all but five are from the beneficiary's own coworkers, professors, collaborators, other members of the field in Ohio, the petitioner's customers and a fellow conference organizer who had the beneficiary recommended to him based on her organizing skills. Of the five independent letters, one is from **Mathematical Context**, birector of the Center of Catalytic Science and Technology, who asserts that he became aware of the beneficiary's work through his association with her advisor.

a professor at Ruhr University, explains that the university's Department of Geology, Mineralogy and Geophysics is the only laboratory where nanoscale thin film techniques are routinely used to study kinetics of mineralogical reaction and diffusion rates under high pressures and temperatures. The temperatures asserts that the beneficiary was a graduate student participant during the development of the thin films and "was responsible for many of the fundamental calibrations and managements of the setup procedure." While setup asserts that her protocols and calibrations continue to be used for regular measurements at the University of Ruhr, he does not explain how her work at the university has influenced the field as a whole. The petitioner did not submit any articles authored by her during this time or evidence that those articles have proven influential. Nor has she demonstrated that her work there led to any patents.

on the faculty of the Max-Planck Institute for Coal Research and then followed him to the University of Pittsburgh.

At the University of Pittsburgh, [the beneficiary] focused on the use of novel "microchemical" reactors for the development of ultra-clean combustion processes and involved advanced numerical simulation techniques for the investigation of coupling mechanisms between homogeneous and heterogeneous reaction pathways in this type of reactors as well as semi-empirical calculations for the energetics of surface reactions, based on Shustorovich's UBI-QEP method.

elaborates that the beneficiary performed computational, design and manufacturing work in the university's Petersen Institute of Nanoscience and Engineering (PINSE), recently ranked as one of the leading nanoscience centers in the United States. **Description** repaires the beneficiary's research publications reporting her work at the university and asserts that he was awarded a CAREER award from NSF based on results from the beneficiary's thesis. While the record contains an article coauthored by the beneficiary and it has only been cited a single time. Thus, even assuming that the potential of this single article, rather than **description** entire career, was initially considered significant enough to warrant **description** receiving a CAREER award, the record contains no evidence that this article has actually impacted the field.

another member of the beneficiary's dissertation committee at the University of Pittsburgh, asserts that the beneficiary's research has scientific and industrial interest, but fails to name any industrial entity other than the petitioner that has applied the beneficiary's work. While Dr. **Second Second** asserts that the beneficiary is one of only a few researchers focused on detailed elementary step kinetics and boundary problem issues, the issue of whether there are other available workers with the necessary education and experience to perform the beneficiary's job is under the jurisdiction of the U.S. Department of Labor. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 (Comm'r. 1998).

discusses the beneficiary's work for the petitioner. Specifically, the petitioner delivers high-technology catalytic and heat-exchanger solutions to the energy industry, particularly to the growing hydrogen production and fuel cell sectors. **Sector and the company's explains that the beneficiary** is the company's catalyst technology expert, an integral part of the company's technical and management team whose technical insight has enabled the company's recent growth. Dr. **Sector and the company's explains that the beneficiary** on these points, at issue is not whether the beneficiary is replaceable at the petitioning company, but whether she enjoys international recognition in general and, more specific to this criterion, for her original contributions. We note that the classification sought, pursuant to section 203(b)(1)(B) of the Act, does not take into account the employer's specific needs, however legitimate.

More specifically, asserts that the beneficiary began working with the petitioner's expert on the ability to "stick" catalyst materials on the surface of stainless steel foils and now exceeds this expert. According to **state state sta**

expensive metal Rhodiumin catalysts by a factor of ten.

The record, however, lacks evidence that this achievement has been recognized in the field, such as trade journals reporting on the beneficiary's work in this area or even the petitioner's breakthrough technology in this regard. The petitioner did submit the "In the News" page from its website containing excerpts from three articles and a press release. The first excerpt is from the Wright Fuel Cell Group Newsletter reporting the collaboration between the petitioner and the University of Toledo. The record contains no evidence regarding the circulation of this newsletter. The second excerpt is from the *Record Courier*. This excerpt only relates to the petitioner's receipt of grant money. The record lacks evidence regarding the circulation of this publication or evidence that the article reported on any significant breakthroughs in catalysts by the petitioner or the beneficiary. Finally, the third excerpt is

from the *Tribune Chronicle* and relates to the "hopes" of a "local inventor." Once again, the record lacks evidence that this paper is internationally or even nationally circulated and appears to relate to the promise of the work being done at the petitioning company rather than remarking on the significance of the work it has already completed.

The petitioner submits two letters from its clients, Manager of Technology Transfer at Air Products and Chemicals, Inc. in Pennsylvania, and Venkat Venkataraman, Vice President of Product Development at Bloomenergy in California. and Chemicals, Inc. is the largest merchant hydrogen producer that is "leading the way to a hydrogen economy infrastructure with Air Products' hydrogen fueling stations for hydrogen powered vehicles now in over 70 locations." asserts that in 2003 Air Products and Chemicals, Inc. began collaborating with the petitioner to develop a more efficient method for producing hydrogen by replacing the ceramic pellets currently used with catalytically coated metal substrates. further states that his company expects to perform a field test of the new method within the next 24 months and that the beneficiary has been "a critical contributor to this effort, particularly in the area of developing the catalytic coatings." Concludes that the beneficiary is indispensable to commercializing this technology. The record, however, lacks evidence that these substrates are internationally considered outstanding contributions in the field, such as news reports in trade journals or the general media reporting on the breakthrough of using catalytically coated metal substrates.

explains that Bloomenergy began working with the petitioner in 2004 when the petitioner began making fuel reformers for Bloomenergy's 5 kilowatt fuel cell system. Dr. affirms that the petitioner has been "very adept at keeping pace with our research and development program" and has a "unique breadth and depth of knowledge regarding catalysts, methods for adhering catalysts to metal surfaces and the ability to create a broad range of structure designs that give us a great deal of flexibility in designing our fuel cell systems." The supplying component parts to the fuel cell industry with life cost advantages over competing products. Concludes that the beneficiary is critical to the petitioner. Once again, the record lacks evidence of the significance of the work being done by Bloomenergy or the petitioner such as any trade or general media reports on the significance of this work.

beneficiary "has been instrumental in the design of the spiral stackable reactor" to make the conversion of natural gas to hydrogen more efficient. **Construction** explains that the beneficiary's coating technology is critical to the success of the system and a unique capability provided by the petitioner. Once again, however, the record lacks evidence that this work is recognized internationally in the field as outstanding, such as trade journal articles or other media (especially outside of Ohio) remarking on the beneficiary's work in this area, the petitioner's breakthrough technology or the unique work being performed at the University of Toledo. While **Construction** asserts that he and the beneficiary have published four articles together, the record lacks any evidence that this work has been cited, let alone widely and frequently cited.

Vice President for Alternative Energy Technology at EMTEC in Ohio, praises the beneficiary's work on products that are projected to come on the market and prove influential. He also praises her poster presentation at a conference. These asserts are too general to explain how the petitioner's contributions are internationally recognized as outstanding.

energy solution and praises her articles without explaining how they have been influential. As will be discussed in more detail, only one of the petitioner's articles has been cited and that article was only cited a single time.

Director of Research and Development at Saint Gobain NorPro in Ohio, praises one of the beneficiary's oral conference presentations and asserts that the beneficiary's work has "radically improved our knowledge base in this field." While **Sector asserts** that only the best quality papers are approved for oral presentation at this conference, we note that the beneficiary is one of 28 authors listed on a page that does not even include all of the "C's." While some of the authors are presenting only poster presentations, 16 oral presentations are listed on the page. **Sector asserts** further asserts that the beneficiary has "an unusual degree of recognition for a scientists working in this extremely vital research area" and "international exposure" due to having worked in India, German and the United States. We cannot conclude that Congress intended to characterize international recognition for this classification of aliens as merely having worked or studied in more than one country.

The record does contain letters from five independent experts. asserts that he met the beneficiary at a conference and is basing his opinion on her published work. asserts generally that the beneficiary's work on hydrogen production "has impacted the field significantly," but provides no examples of how the field has changed in light of the beneficiary's work or of independent laboratories using the beneficiary's methods. does assert that her work helped him to improve his own work, but provides no specifics. The record lacks evidence that Dr. has cited the beneficiary's work. In a second letter, opines that the beneficiary's project synthesizing a sulfur sorbent for sulfur laden logistic fuel "will reduce the high sulfur content to a minimal level" and "will have a huge impact on [the] US Army where they will no longer face the constraint [of] having a continuous energy supply [on the] battle field." The record does not contain any letters from high level officials or anyone else with the U.S. Army confirming the importance of the beneficiary's work to the U.S. Army. While concludes that the beneficiary "outshines other similarly qualified researchers of her age group," that is not the standard for the classification sought. While also concludes that the beneficiary's work has "garnered an unusual degree of recognition for a scientist working in this extremely significant field," examples of this recognition are extremely general, somewhat speculative and do little to support his conclusion.

a professor at Louisiana State University, asserts that he met the beneficiary at a conference one month before authoring his letter. provides general praise of the

beneficiary's presentation and overall knowledge and expresses his belief that the beneficiary "will help to address our Nation's lack of researchers to help solve our critical need for clean energy." Dr. provides no examples of how the beneficiary has impacted the field or her international recognition as outstanding based on her contributions. He does not claim to have been influenced himself by the beneficiary's work.

a professor at the University of Nottingham in Great Britain, asserts that he was introduced to the beneficiary through a researcher at the Pacific Northwest National Laboratory "due to her great organizational skills." While he mostly discusses the beneficiary's work as session chair for two sessions at American Chemical Society conferences, he also asserts that one of the beneficiary's presentations "made a huge impact on the attendees." He does not provide any specifics regarding the significance of the information in this presentation or how it has impacted the field and is recognized internationally as outstanding. Vague assertions of an impact without any specifics explaining how the work has impacted the field are insufficient.

asserts that he initially became familiar with the beneficiary from her 2006 article in the *Journal of the American Institute of Chemical Engineers (AIChE)* and that subsequently another professor at the Indian Institute of Technology, Kharagpur, invited the beneficiary to give a presentation at his department. **The provide** praises the beneficiary's presentation but does not provide specific examples of how the presentation has impacted the work done at the institute. Rather, he asserts that her presentation demonstrated that she is "a very competent mechanical engineer as well besides [sic] being an excellent chemical engineer, which she is by training." He also asserts that the presentations at other Indian institutions, but does not explain how these presentations have impacted the work being done at these institutions.

Finally, asserts that he became aware of the beneficiary's doctoral work through his own association with the beneficiary's Ph.D. advisor. The praises the beneficiary's 2006 article in the *Journal of AIChE*, asserting that it provides novel estimates of the intrinsically safe conditions for operating catalytic microreactors for highly explosive hydrogen oxidation reaction in the premier journal for chemical engineering research. The record, however, lacks evidence that this article has been cited by any researcher, independent of the beneficiary or otherwise.

While the beneficiary's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or published research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. The record does not establish that the beneficiary's work has been recognized internationally as outstanding.

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, as of the date of filing, had authored six published articles and had presented her work both orally and as a poster presentation at conferences. The petitioner submitted requests for reprints for some of her work, but these do not demonstrate that her work was ultimately found useful by those researchers. In response to the director's request for additional evidence, the petitioner submitted evidence that a single article had cited one of her own articles. The director concluded that authorship of scholarly articles is routine in the beneficiary's field and concluded that the petitioner had not demonstrated the impact of her published articles. On appeal, counsel asserts that the peer-review process limits publication to the most significant articles and that citation by others "is specified as a completely separate criteri[on]."

Counsel appears to be suggesting that citations should be considered separately under the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(C), which requires published material in professional publications written by others about the alien's work in the academic field. Citations, however, do not fit under this criterion as they are not primarily "about the alien's work" but the author's own work or, in the case of a review article, about the field in general. Rather, citations are best considered under this criterion as evidence of the beneficiary's published work.

The Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at <u>www.bls.gov/oco</u> on April 16, 2009 and incorporated into the record of proceedings), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See <u>www.bls.gov/oco/ocos066.htm</u>*. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field.

In this matter, the petitioner has provided only a single citation of the beneficiary's work and no evidence that it is assigned reading in course curricula internationally or even locally. Thus, the beneficiary's publication record is merely evidence of international exposure rather than international recognition.

The petitioner has shown that the beneficiary is a talented and prolific researcher, who has won the respect of her collaborators, employers, and mentors, while securing some degree of international exposure for her work. 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. While the director found that the beneficiary meets the judging criterion at 8 C.F.R. § 204.5(i)(3)(i)(D), much of this evidence was either only moderately significant, such as evidence of participation in the peer-review process that requires the volunteer services of countless researchers, or local, such as evidence that the beneficiary's own collaborator at the University of Toledo requested her assistance in evaluating theses. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

Beyond the decision of the director, section 203(b)(1)(B)(iii)(III) of the Act, 8 U.S.C. § 1153(b)(1)(B)(iii)(III), directs that an alien may qualify as a priority worker based on an offer of employment from a private research department, division, or institute, only "if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field." The requirement of three full-time research employees is also set forth in 8 C.F.R. § 204.5(i)(3)(C)(iii).

The petitioner initially asserted that its three full-time researchers included its President and Vice President of Research in addition to **Example 1** the company's Mechanical Engineering manager. The director requested evidence regarding the percentage of time spent on research for these individuals. In response, the petitioner submitted evidence that its President and Vice President of Research spend less than one third of their time on research. The response does indicate that **Example 100** percent of their time on research. The other three employees dedicated full-time to "research" are the "Tech II," the "Lab Technician" and the beneficiary.

The job duties for the Tech II and the Lab Technician are described as developing and testing mechanical structures and systems and "testing." The Department of Labor's Occupational Outlook Handbook, in describing science technicians, explains their duties as follows:

Chemical technicians work with chemists and chemical engineers, developing and using chemicals and related products and equipment. Generally, there are two types of chemical technicians: research technicians who work in experimental laboratories and process control technicians who work in manufacturing or other industrial plants. Many chemical technicians working in research and development conduct a variety of laboratory procedures, from routine process control to complex research projects. For example, they may collect and analyze samples of air and water to monitor pollution levels, or they may produce compounds through complex organic synthesis. Most *process technicians* work in manufacturing, testing packaging for design, integrity of materials, and environmental acceptability. Often, process technicians who work in plants focus on quality assurance, monitoring product quality or production processes and developing new production techniques. A few work in shipping to provide technical support and expertise.

See <u>http://www.bls.gov/oco/ocos115.htm</u> (accessed April 2, 2009 and incorporated into the record of proceeding.

Chemical engineering researchers, on the other hand, perform the following:

Chemical engineers apply the principles of chemistry to solve problems involving the production or use of chemicals and biochemicals. They design equipment and

processes for large-scale chemical manufacturing, plan and test methods of manufacturing products and treating byproducts, and supervise production. Chemical engineers also work in a variety of manufacturing industries other than chemical manufacturing, such as those producing energy, electronics, food, clothing, and paper. They also work in health care, biotechnology, and business services. Chemical engineers apply principles of physics, mathematics, and mechanical and electrical engineering, as well as chemistry. Some may specialize in a particular chemical process, such as oxidation or polymerization. Others specialize in a particular field, such as nanomaterials, or in the development of specific products. They must be aware of all aspects of chemicals manufacturing and how the manufacturing process affects the environment and the safety of workers and consumers.

See <u>http://www.bls.gov/oco/ocos027.htm#nature</u> (accessed April 2, 2009 and incorporated into the record of proceedings).

The regulation at 8 C.F.R. § 204.5(i)(3)(iii)(C) requires evidence that the private employer employ "at least three persons full-time in research *positions*." (Emphasis added.) A comparison of chemical engineering researchers with those of laboratory technicians reveals that the technicians are not full-time research positions. For example, laboratory technicians' duties do not include the type of creative design and planning duties inherent to research positions.

If the Tech II and the Lab Technician cannot be considered full-time researcher positions, we must consider whether the beneficiary herself might qualify as one of its full-time research employees. The alien beneficiary is currently employed in a nonimmigrant classification.

Neither the statute nor the legislative history clearly indicates whether the alien beneficiary can himself be the third full time research employee for purposes of a private entity's eligibility to file a visa petition under section 203(b)(1)(B) of the Act. H.Rep. 101-723(I), 1990 USCCAN 6710, 6739 indicates that a private employer is eligible to file this petition "if there are at least three persons employed full-time in research." Like the statute itself, however, the legislative history neither endorses nor forecloses the possibility of including the beneficiary's position as one of the three research positions. Nor does the issue appear to have arisen during the rulemaking process. *See* 56 Fed. Reg. 60,897 (Nov. 29, 1991) (final rule) and *id.* 30.703 (July 5, 1991) (proposed rule).

That said, it is worth noting that section 203(b)(1)(B)(iii)(III) of the Act, 8 U.S.C. § 1153(b)(1)(B)(iii)(III), requires that "the alien seeks to enter the United States" to work for "a department, division, or institute of a private employer" that "employs at least 3 persons full-time in research activities." The phrases "seeks to enter" and "employs at least 3 persons" are both in the present tense. If an alien researcher is currently outside the United States, and intends to enter the United States with an immigrant visa, then the prospective employer must already employ at least three full-time researchers in the relevant department, division, or institute. In such a case, the three researchers obviously do not include the alien. Thus, the statutory construction demonstrates that the

alien seeks to become the fourth researcher in a company that already employs three *other* researchers. In instances where the alien is already in the United States as a nonimmigrant, and the alien has joined *two* other researchers to become the *third* researcher, then the employer does not satisfy the statutory construction.

There is no regulatory or statutory justification for the arbitrary assumption that a company too small to petition for a worker who is still overseas can, nevertheless, petition for that same worker if the worker is already in the United States as a nonimmigrant. Therefore, the position held by the alien beneficiary shall not be counted as one of the three persons involved full-time in research activities. Even if the alien beneficiary is lawfully employed in a nonimmigrant classification, the petitioner may not count the alien beneficiary toward the requirement of "3 persons [employed] full-time in research activities." The apparent purpose of 203(b)(1)(B)(iii)(III) is to limit this immigrant visa classification to well-established research institutes. If the – by definition temporary – employment of a nonimmigrant alien can be counted toward this requirement then it would appear that hiring three nonimmigrant aliens could make all three of them eligible. This result would, with little effort, render meaningless the requirement that the petitioner employ three employees.²

In light of the above, the petitioner has not demonstrated that, as of the date of filing, it employed three individuals in full-time research positions.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

 $^{^{2}}$ Granted, for at least some nonimmigrant classifications, the position itself need not be temporary, but the alien must be coming temporarily to the United States.