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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED]
LIN 07 221 54232

Office: NEBRASKA SERVICE CENTER

Date: **MAR 15 2010**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

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).

2 Perry Rhew
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 healthcare management 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 senior research analyst. 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, we concur with the director that the petitioner has not demonstrated the beneficiary's international recognition as outstanding as of the date of filing. As will be discussed in more detail below, the petitioner must demonstrate the beneficiary's eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

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

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

* * *

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

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

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

(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 27, 2007 to classify the beneficiary as an outstanding researcher in the field of health services research. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching 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.

Moreover, the petitioner must demonstrate the beneficiary's eligibility as of July 27, 2007. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. In this matter, that means that the petitioner must demonstrate that the beneficiary met the requisite number of regulatory criteria, set forth below, as of that date. All of the case law on this issue focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l. Comm'r. 1977); *Matter of Katigbak*, 14 I&N Dec. at 49; *see also Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Comm'r. 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that we cannot "consider facts that come into being only subsequent to the filing of a petition.") Consistent with these decisions, a petitioner cannot secure a priority date in the hope that the beneficiary will subsequently gain international recognition as outstanding. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008).

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 criteria follow.

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

On appeal, counsel does not challenge the director's conclusion that the beneficiary's scholarship and the 2001 Science and Technology Progress Award of Beijing City awarded to [REDACTED] cannot serve to meet this criterion.

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

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

Competition for scholarships is limited to other students. Experienced experts in the field are not seeking scholarships. Similarly, experienced experts do not compete for fellowships and competitive postdoctoral appointments. Thus, they do not suggest that a beneficiary is internationally recognized.

The 2001 Science and Technology Progress Award appears to be a city award that is not indicative of international recognition. Moreover, as stated above, it was issued to a different individual. While the record includes a letter from [REDACTED] asserting that the beneficiary was in charge of the actual study design and analysis, it remains that the beneficiary did not "receive" the award. The regulation at 8 C.F.R. § 204.6(i)(3)(i)(A) requires evidence of the beneficiary's "receipt" of a qualifying award.

In light of the above, we concur with the director that the petitioner has not established that the beneficiary meets this criterion.

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

The petitioner initially submitted evidence that the beneficiary is a member of the International Health Economics Association (iHEA), the American Society of Health Economists (ASHE), Academy Health and the Sacramento Chapter of the American Statistical Association (ASA). While the petitioner submitted general information about the mission of these associations, it did not submit the actual membership requirements.

In response to the director's request for the constitutions or bylaws of the above associations documenting their membership criteria, counsel notes that the iHEA is an international association and that the beneficiary has now been elected to the association's Scientific Committee of the iHEA.

The petitioner submitted the mission statement for the iHEA indicating that it was formed to increase communication among health economists, foster a higher standard of debate in the application of economics to health and health care systems, and assist young researchers at the start of their careers. The materials also indicate that prospective members can now join online with no suggestion that prospective members will be evaluated prior to being accepted for membership. Finally, the petitioner submitted a letter from [REDACTED] of iHEA advising that the beneficiary was elected to the Scientific Committee of the iHEA "for the period 2009 to 2011." [REDACTED] indicates the election is a prestigious honor and requires scientific expertise as evidenced by publications and research reports, contributions to teaching, policy and research dissemination of health economics, representation of the various iHEA constituencies and contributions to the iHEA as an organization. While [REDACTED] indicates that the committee consists of senior academics and ministry officials from 11 different countries, he does not indicate the total number of committee members. Moreover, he does not explain how service on a committee within an association constitutes membership in an association in its own right.¹

The director concluded that the petitioner had not demonstrated that the committee requires outstanding achievements to serve on the committee. On appeal, counsel challenges that determination. As stated above, it is not clear that serving on a committee is a "membership." Regardless, as also stated above, the beneficiary did not serve on this committee until 2009, well after the petition was filed. Thus, his committee service cannot be considered evidence of eligibility as of the filing date, the date as of which the petitioner must establish the beneficiary's eligibility. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The record does not reflect that the organizations of which the beneficiary was a member as of the date of filing require outstanding achievements of their general membership. Thus, the petitioner has not established that the beneficiary met this criterion as of the date of filing.

¹ While some associations that do not generally require outstanding achievements for their general membership may require more exclusive standards for higher levels of memberships, such memberships still constitute memberships and can be easily distinguished from service on a committee.

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.

On appeal, counsel does not challenge the director's conclusion that the record contains no evidence to meet this criterion. We acknowledge the submission of evidence that the petitioner's articles had been minimally cited as of the date of filing. Articles which cite the beneficiary's work, however, are primarily about the author's own work, not the beneficiary's work. As such, they cannot be considered published material about the beneficiary's work.

In light of the above, we concur with the director that the petitioner has not established that the beneficiary meets this criterion.

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 a letter from [REDACTED] a Director of an executive graduate study program at the University of Minnesota, confirming that the beneficiary served as a research advisor for the program during the 2003-2004 academic year. The beneficiary was a student at the university at the time. [REDACTED] explains that the beneficiary provided advice to two Master's students and served in the final defense committee to provide comments and final scores on the thesis defense. The beneficiary also reviewed a project for the petitioner in 2005. All of this review represents internal duties.

In addition, the petitioner submitted e-mails from the World Bank addressed to "Dear Colleague" providing the initial output and several briefing notes from the Rural Health Analytical and Advisory Activities and inviting the recipient to suggest the names of others who might be interested. The beneficiary responded to one of these e-mails with comments. It is not clear that the World Bank actually solicited any comments in its e-mails, which appear to be informational only.

On November 22, 2006, the iHEA Board of Directors accepted the beneficiary's offer to review papers for the World Congress of Health Economists, but, given the number of "academically qualified" volunteers, put the beneficiary's services on hold until 2009. Finally, the record reflects that the beneficiary has refereed articles for *Medical Care*.

In response to the director's request for additional evidence, the petitioner submitted a letter from [REDACTED] for *Medical Care* advising that the journal publishes less than 20 percent of the manuscripts submitted and relies on the peer review process to choose the best work. [REDACTED] further asserts that reviewers are selected based on specialized expertise in a particular topic area as determined by the reviewer's background, academic publications, research reports, work experience and professional services. The petitioner also submitted a February 25, 2009 e-mail

addressed to the beneficiary from [REDACTED] and the other co-editor of *Medical Care* advising that the journal would publish the names of its exceptional reviewers for 2007 and 2008 in the June 2009 issue, which would include the top five percent for 2008, including the beneficiary. This e-mail postdates the filing of the petition.

The director stated that consideration as an expert does not suggest recognition as outstanding and concluded that peer review is routine in the sciences. On appeal, counsel asserts that the beneficiary is engaged as a reviewer by an internationally leading journal, the iHEA for its World Congress on Health Economics, by the world's oldest graduate healthcare executive program at the University of Minnesota and by the World Bank for its rural China healthcare reform paper series. Counsel notes that the petitioner was recognized as one of the top five percent of reviewers for *Medical Care*. The petitioner submits the actual list of exceptional reviewers, 2008, which includes 77 names.

We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Significantly, if 77 people represent the top five percent of reviewers for this one journal, this journal utilizes approximately 385 reviewers annually. The number of total reviewers for this one journal reinforces our conclusion that peer review is routine in the field; not every peer reviewer enjoys international recognition. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he had reviewed manuscripts for a journal that credits a small, elite group of referees, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the beneficiary meets this criterion.

While the beneficiary was credited as an exceptional reviewer for *Medical Care*, this recognition occurred after the date of filing. The petitioner must establish the beneficiary's eligibility as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Thus, we cannot consider the beneficiary's listing after that date. In fact, even the e-mail announcing his selection for this recognition postdates the filing of the petition and, thus, cannot be considered.

As stated above, the iHEA advised the beneficiary that it had too many volunteers to review submissions for a 2007 event and asked the beneficiary to review later submissions. It appears that the actual review services would have occurred in 2009, after the date of filing. Thus, these services cannot be considered. *Id.* Regardless, the e-mail from iHEA, which references a large number of academically qualified volunteers, does not suggest that the beneficiary's volunteer review services for the iHEA are indicative of or consistent with international recognition.

In addition, as stated above, the World Bank forwarded information to the beneficiary as someone who might be interested in the information and solicited other names of individuals who might be interested. While the beneficiary responded with comments, the record contains no evidence that these comments were either solicited or ultimately impacted the reports.

Finally, the beneficiary served as an internal reviewer for a program at the university where he was a Ph.D. student at the time. Internal review of student work is not indicative of or consistent with international recognition and, thus, cannot serve to meet this criterion. *See Kazarian v. USCIS*, 580 F.3d 1030, 1035 (9th Cir. 2009).

In light of the above, the petitioner has not established that the beneficiary met this criterion as of the date of filing in this matter.

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

Obviously, 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 has won international recognition as an outstanding researcher, it stands to reason 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. § 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.

We further note that the Department of Labor's Occupational Outlook Handbook, available at <http://www.bls.gov/oco/ocos045.htm> (accessed February 18, 2010 and incorporated into the record of proceedings), states that statisticians, which include research analysts, design surveys and interpret results. These results play an important role in quality control and product improvement. Thus, merely performing useful statistical analyses that are utilized by the entities commissioning the analysis does not necessarily set the research analyst apart from any other competent research analyst.

The petitioner relies on several reference letters. Prior to the appeal, the only letters from independent references were from professionals in California where the beneficiary works.

The beneficiary received his Master's degree in biostatistics from Shandong Medical University in 1996. Upon graduation, he began working for the Chinese National Institute of Hospital Administration (CNIHA). In 1999, the beneficiary left CNIHA to begin pursuing his Ph.D. in health services research, policy and administration at the University of Minnesota. The beneficiary received his degree in 2006 and now works for the petitioner.

██████████ a former professor at Shandong Medical University, discusses the beneficiary's research at that institution. ██████████ asserts that the beneficiary performed the first study on the current status of and public opinions on child abuse in China. The beneficiary's analysis formed the first public definition of child abuse and negligence in China. ██████████ asserts that the study received national and international interest and recognition, prompting ██████████, director of the United National Children's Fund (UNICEF) office for China to write the preface. In addition, ██████████ asserts that the beneficiary established China's first cost-based relative value scales for thousands of itemized hospital services and validated the reliability of those scales. The record lacks independent corroboration of the impact of this work. While one of the beneficiary's Chinese-language articles appears to have been cited 15 times, a comparison of the Chinese characters reveals that the cited article is a 1998 overview of methods of medical service cost accounting rather than original proposals by the beneficiary.

██████████ asserts that he appointed the beneficiary to the position of Department Vice Director for Social Insurance Research at CNIHA. ██████████ explains that in this position, the beneficiary was responsible for the national maternity insurance research project funded by the Ministry of Labor and Social Security and the Ministry of Health. ██████████ asserts that the project had a far-reaching impact and influence on protecting and improving the health of Chinese women during pregnancy as well as newborns. ██████████ notes that the project won the Science and Technology Progress Award from the Beijing Municipal Government. While ██████████ acknowledges that his name appears on the award certificate as the principal investigator, he asserts that the beneficiary was in charge of the actual study design and analysis. ██████████ further asserts that the studies' findings were accepted as guidelines for maternity insurance plans in China.

More specifically, ██████████ asserts that the beneficiary proposed that maternal benefits can be divided into medically basic and optional benefits. Optional benefits would be supplement basic benefits based upon the financial strengths of city maternity insurance pooling funds. As stated above, ██████████ asserts that both funding ministries approved the approach, leading to the first clearly-defined national basic maternal benefits package. The petitioner did not submit letters from the funding ministries confirming the national implications of the beneficiary's work. On his curriculum vitae, the beneficiary indicated only that this was a pilot program. As noted above, the award this project received is a municipal award. The award also suggests the study was limited to Enterprise Employees rather than a national plan regardless of employer.

██████████ at the University of Minnesota, discusses the beneficiary's research at that institution. Specifically, ██████████ explains that the beneficiary identified the following issues in various medical plans: the State of Minnesota significantly overpaid the Minnesota Senior Health Options (MSHO) demonstration and the Wisconsin Partnership Program was overpaid by both the Centers for Medicare and Medicaid Services (CMS) and the State of Wisconsin for its elderly enrollees and overpaid by CMS but underpaid by the State of Wisconsin for its disabled enrollees. ██████████ asserts that these findings led to a review and rate changes by both CMS and the State of Wisconsin. The fact that the beneficiary produced useful results for entities whose plans he was studying does **not imply** that his contributions have garnered him international recognition as outstanding. ██████████ **further asserts that these studies were published and cited.** The evidence submitted initially, however, indicates that, as of that date, the petitioner's 2004 article on the MSHO program, the beneficiary's dissertation and the first to focus on elderly dual eligibles, had been cited twice, once by ██████████. While ██████████ speculates that the beneficiary's research "will serve as a model for future research," the record contains no letters from independent researchers utilizing the beneficiary's research as a model for their own research.

██████████, the petitioner's California External Quality Review Organization (CAEQRO) division Information Systems Director, asserts that this division is responsible for conducting annual external quality review of all 56 Mental Health Plans (MHPs) in California. ██████████ explains that the beneficiary has contributed in the performance studies of these MHPs and that CAEQRO's report on MHP approved claims relied heavily on the beneficiary's statistical analysis and research findings. ██████████ characterizes this work as "one of the most important performance measurement and improvement tools in our external quality reviews for the MHPs." Once again, providing useful statistical analysis for his employer does not necessarily set the beneficiary apart from any other competent research analyst.

More specifically, ██████████ asserts that the beneficiary's studies reveals significant mental health services disparities among different age, gender and race/ethnicity groups, with disproportionately high amount of MHP expenditures incurred for a small fraction of all mental health patients. According to ██████████ these findings helped MHPs identify existing problems and improve services for underserved populations. Once again, while the analysis identified problems that are now being addressed by the entities studied by the beneficiary, the fact that his work has applications is not necessarily indicative of or consistent with international recognition.

██████████ at the California Department of Mental Health, asserts that she knows of the beneficiary through his work on the petitioner's technical reports to the department and MHPs. ██████████ asserts that the beneficiary performed important work that assists in evaluating the 56 California MHPs which allows an MHP to compare their performance with its neighbor and look for solutions to improve performance. ██████████ confirms requesting the beneficiary's research findings from his executive director, ██████████ after watching ██████████ present the findings. Once again, completing a project for California's

MHP that results in useful results for those MHPs demonstrates competence rather than international recognition.

██████████, a professor at the University of California, San Francisco (UCSF), asserts that she has reviewed the beneficiary's research and is basing her opinion on a paper submitted to *Health Service Research*. ██████████ notes that the beneficiary studied the MSHO program, nationally known as the first state program to pool Medicare and Medicaid payments and provide integrated services to dually eligible populations. ██████████ asserts that the beneficiary showed that the MSHO program was more effective in reducing short-term medical care utilization than in reducing the real needs for long-term nursing care by the frail elderly dually eligible populations. ██████████ explains that the beneficiary was able to control for potential selection bias and has advanced the state of science in selection bias research. ██████████ does not suggest she has designed any studies based on the beneficiary's methods.

On appeal, the petitioner submits a letter from another professor at UCSF, ██████████. ██████████ also discusses the beneficiary's research on the MSHO program, asserting that the beneficiary demonstrated that the pooled payments did not save costs and the need for improvements in the payment methods for dual eligibles. ██████████ notes that CMS adjusted the payment methods in light of the beneficiary's research and that the work is important to other states that may want to learn from the MSHO program and establish similar programs. ██████████ does not identify any state that is utilizing the beneficiary's work to design their own pooled payment system.

Finally, the petitioner submits a letter from ██████████ a professor at the University of North Carolina at Chapel Hill. ██████████ indicates that she chaired a panel where the beneficiary presented a paper and has read his published work. She notes the beneficiary's original development of a method to deal with selection bias in observational studies. ██████████ concludes that the beneficiary is "an extremely promising and productive researcher in Medicare and Medicaid HMO selection bias studies." ██████████ does not identify any independent research team that has adopted the beneficiary's method for dealing with selection bias and does not imply that she has done so.

The opinions of experts in the field are not without weight and have been considered above. 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.* 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. 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 bare assertions of widespread recognition and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions have influenced the field. The petitioner submitted only a single independent letter from a non-local source and this letter does not suggest the author has applied the beneficiary's work. The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

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 postdoctoral 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 Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at www.bls.gov/oco on February 18, 2010 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 www.bls.gov/oco/ocos066.htm. 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.

The beneficiary's work in the United States had not been cited to any significant degree as of the date of filing. The beneficiary's only article in China to have received even moderate citation is an overview rather than original work. Moreover, the article does not appear to have been cited outside of China as would be expected if this article was internationally recognized. On appeal, counsel asserts that it will take time for other researchers to "catch up" to the voluminous work performed by the beneficiary's team. Moreover, counsel asserts that it takes time from publication to garner citations. While we do not contest counsel's assertions, at best, it implies that the petition was filed prematurely, before the beneficiary's scholarly articles could garner international recognition.

In light of the above, the petitioner has not demonstrated that the beneficiary met this criterion as of the date of filing.

The petitioner has shown that the beneficiary is a talented and prolific researcher, who has won the respect of his collaborators, employers, and mentors, while securing some degree of international

exposure for his 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. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

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.