U.S. Citizenship and Immigration Services

In Re: 17305280

Date: OCT. 4, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a [_____] financial information services company, seeks to classify the Beneficiary as an outstanding professor or researcher in the field of artificial intelligence. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(B), 8 U.S.C. § 1153(b)(1)(B).

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

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

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

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

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

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

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

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

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

Finally, the regulation at 8 C.F.R. § 204.5(i)(3)(ii) provides that a petition for an outstanding professor or researcher must be accompanied evidence that the foreign national has at least three years of experience in teaching and/or research in the academic field.

II. ANALYSIS

The Beneficiary received his Ph.D. in Computer Science from the University of   in June 2018. During his graduate studies, the Beneficiary worked as an intern for both   and   in 2017. He has been employed as a Senior Research Scientist with the Petitioner's   group since July 2018.

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

In a final merits determination, we analyze a researcher's accomplishments and weigh the totality of the evidence to evaluate whether a petitioner has demonstrated, by a preponderance of the evidence[2], that the beneficiary's achievements are sufficient to demonstrate that he has been internationally recognized as outstanding in the field of endeavor. See section 203(b)(1)(B)(i) of the Act; 8 C.F.R. § 204.5(i)(3)(i). In this matter, we agree with the Director that the Petitioner has not shown the Beneficiary's eligibility.[3]

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

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

[3] In the final merits analysis, the Director's decision discussed the documentation relating to the Beneficiary's peer review activity, research contributions, published and presented work, citation evidence, patent, and high salary, and explained

The Petitioner argues on appeal that "the Beneficiary's Google Scholar profile properly evidences his eligibility as an outstanding professor or researcher." The Petitioner asserts that the Beneficiary's citation information from Google Scholar offers "direct, objective evidence of other researchers who have been using and building upon [the Beneficiary's] scholarly contributions." It further contends that the record includes letters of support from experts in the field attesting "to the ground-breaking nature of [the Beneficiary's] research" and confirming "the far-reaching nature of [the Beneficiary's] work that has helped to influence the field." Additionally, the Petitioner claims that the Beneficiary's peer review work and high remuneration demonstrate his "status as an internationally recognized outstanding researcher in the field."

It is important to note that the controlling purpose of the regulation at 8 C.F.R. § 204.5(i)(3)(i) is to establish a beneficiary's international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. More specifically, outstanding professors and researchers should stand apart in the academic community through eminence and distinction based on international recognition. *Employment-Based Immigrants,* 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)). Therefore, to the extent that the Director first determined that the evidence satisfied the plain language requirements of specific evidentiary criteria, and then evaluated whether that evidence, as part of the entirety of the record, was sufficient to demonstrate the Beneficiary's recognition as outstanding at the international level, his analysis was in keeping with the statute, regulations, and policy pertaining to the requested immigrant visa classification.

As it pertains to the Beneficiary's participation as a judge of the work of others, the Petitioner submitted evidence indicating that he reviewed one paper each for the 2018 National Conference of the _____ and the 2016 Association for Computing Machinery (ACM) International Conference on Information Knowledge Management (CIKM).[4] The Petitioner also provided documentation showing that the Beneficiary served as a program committee member for the 2019 ACM International Conference on Web Search and Data Mining (WSDM). This documentation included a June 2018 email stating that the Beneficiary's duties as a program committee member involved "bidding on papers close to your areas of interest, writing detailed and constructive reviews, and actively participating in the discussions when required. You will be assigned no more than 10 papers to review and you will be expected to read each paper and conduct each review personally without delegation." In addition, the Petitioner presented a February 2019 follow-up email from the WSDM 2019 Program Committee Co-chairs thanking the Beneficiary for his service.[5]

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why that evidence, as part of the entirety of the record, was insufficient to demonstrate the Beneficiary's recognition as outstanding at the international level.

[4] This evidence is not limited to "invitations" from the conferences' organizers for the Beneficiary to review others' papers. Instead, the record contains documentation showing that he actually completed the reviews.

[5] This email also informed the Beneficiary that he was recognized as an Outstanding Program Committee member based on "[a] metric-based ranking . . . that combined scores for Timeliness of reviewing, Contribution to discussion, and Comprehensiveness of reviews." While the Beneficiary's Outstanding Program Committee member honor shows that he provided valuable peer review service for the 2019 ACM WSDM conference, the Petitioner has not established that this honor is recognized beyond the context of the conference program committee in which the Beneficiary participated, or otherwise signifies his international recognition in the academic field. Nor is there information regarding how many other program committee members were similarly recognized at this conference.

The Petitioner also submitted emails *inviting* the Beneficiary to review papers submitted to *ACM* [   ] (2018), the 2019 ACM Conference on Computer Supported Cooperative Work (CSCW), the 2017 ACM Conference on Interaction Design and Children (IDC), the 2017 and 2019 ACM [   ] Conference(s) [   ] *Data Mining Knowledge and Discovery* (2017), and the 2017 ACM International Conference on Interactive Experiences for Television and Online Radio (IETOR). The record, however, does not include evidence showing that the Beneficiary accepted these invitations and completed manuscript reviews for the aforementioned journals and conferences. *Invitations* to serve as a peer reviewer or program committee member do not constitute evidence of one's *participation* as the judge of others' work.[6] Here, the Petitoner has not provided evidence from the editorial staff of *ACM* [   ] [   ] and *Data Mining Knowledge and Discovery*, or from the organizers of the 2019 ACM CSCW conference, the 2017 ACM IDC conference, the 2017 and 2019 ACM RSC conferences, and the 2017 ACM IETOR conference, indicating that the Beneficiary has actually performed peer review services in response to their email invitations.

An evaluation of the significance of the Beneficiary's judging experience is appropriate to determine if such evidence is indicative of the outstanding achievement required for this classification.[7] In many scientific and academic fields, peer review is a routine part of the process through which articles are selected for publication or presentation at conferences. Participation in the peer review process does not automatically demonstrate that an individual is internationally recognized as outstanding in his academic field. Here, the Petitioner has not established that the level and frequency of the Beneficiary's participation as a reviewer of manuscripts (one paper each for the 2018 National Conference of [   ] and the 2016 ACM CIKM conference, and once as a program committee member for 2019 ACM WSDM conference) are indicative of or consistent with being recognized internationally as outstanding in his academic area.

The Petitioner argues that the Beneficiary "has participated as a peer reviewer and Program Committee member" for "some of the most prestigious international conferences and journals in the field."[8] The record contains rankings from Google Scholar and the Computing Research and Education (CORE) Conference Portal for conference proceedings for which the Beneficiary was invited to review manuscripts. For instance, the Petitioner provided information from Google Scholar ranking the [   ] Conference on [   ] as 7th in its subject matter sub-category [   ] [   ] in terms of its "h5-index," a measure related to the journal and conferences' respective impact factors. However, the record does not contain evidence demonstrating, for example, that the specific conferences and journals that invited the Beneficiary to serve as a peer reviewer or program committee member reserve those invitations for researchers who are recognized internationally as outstanding in the academic field.

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[6] The regulation at 8 C.F.R. § 204.5(i)(3)(i)(D) specifically requires "[e]vidence of the alien's *participation*, either individually or on a panel, as the judge of the work of others" (emphasis added).

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

[8] As previously explained, the record does not establish that the Beneficiary has completed peer review work for *ACM* [   ], *Data Mining Knowledge and Discovery*, or any other journal in his field.

At issue here is the extent to which the Beneficiary's peer review activities have required, reflected, or resulted in his being recognized internationally as outstanding in his field. As noted, the Petitioner did not establish the journal and conferences' specific requirements for selection of peer reviewers and program committee members, and therefore we are unable to evaluate the Beneficiary's peer review activities in light of those requirements. For instance, reviewing manuscripts for conferences that select program committee members based on subject matter expertise would not provide strong support for the petition, because possessing expertise in a given field is a considerably lower threshold than being recognized internationally within the academic field as outstanding.

Therefore, although the record shows that the Beneficiary has reviewed papers for the 2018 National Conference of _____, the 2016 ACM CIKM conference, and the 2019 ACM WSDM conference, this evidence does not demonstrate how his peer review activity compares to or differentiates him from his peers in the field. Similarly, the evidence in the record does not demonstrate that the Beneficiary has received any international recognition for his service as a peer reviewer. Without this or other evidence differentiating him from others in his field,[9] the Petitioner has not established how the Beneficiary's peer review experience contributes to establishing that he is internationally recognized as outstanding in his academic field. 8 C.F.R. § 204.5(i)(3)(i).

With respect to the Beneficiary's research contributions, the record includes letters of support discussing his graduate research projects at the University of _____ and his internship work for both _____ and _____ For example, regarding the Beneficiary's research involving _____ _____, a lead data scientist with _____ in the Netherlands, summarized three of the Beneficiary's papers that were presented at the ACM _____ Conference.[10] _____ indicated that the Beneficiary "conducted controlled _____ studies to collect and model the data about _____ while browsing the dynamically changing _____ in a _____," collected and modelled "data about why users _____ in real usage scenarios on a _____ platform," and proposed and validated "a comprehensive _____ based model for modeling the _____ processes have users while browsing _____ online page _____." While _____ asserted that the Beneficiary's _____ work "makes great strides towards solving those user experience problems that still frequently happen in the state-of-the-art _____," he did not offer specific examples of how the Beneficiary's findings have been widely utilized in the online industry or have otherwise influenced the Beneficiary's field at a level commensurate with being internationally recognized as outstanding.

With regard to the Beneficiary's research relating to _____, _____ a postdoctoral researcher at _____ University in Finland,[11] stated the Beneficiary "rigorously studied two ways of _____ to address the two issues, i.e., _____ _____ The overall problem to address and the proposed approaches are significant and

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[9] For example, the record does not include documentation that sets the Beneficiary apart from others in the field, such as evidence that he has completed reviews for a substantial number of distinguished journals or conferences relative to others in his field, served in editorial positions for highly regarded journals or publications, or chaired prominent evaluation committees for reputable conferences.

[10] _____ noted that he met the Beneficiary at the 2018 ACM _____ Conference in _____

[11] _____ was a visiting scholar at the University of _____ in 2017 and coauthored a paper with the Beneficiary, entitled _____ (2018).

interesting broadly to the user-centric research community of[ ] [ ] further indicated that the Beneficiary "developed algorithms to optimize for a user's coming back into the system with the input of[ ][ ] also expressed his belief that the Beneficiary's "work can have a significant impact on the research field of[ ] in the long run," but he did not sufficiently detail in what ways the Beneficiary's findings have already advanced the state of research in the academic field or explain how his work has already influenced the wider field beyond the teams of researchers who have directly cited to his articles. We recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, but not every research finding that broadens knowledge in a particular field renders an individual's work as outstanding or internationally recognized in his academic area.

In addition,[ ] a researcher at the[ ] indicated that he met the Beneficiary "when we were interning at[ ]"[12] Regarding the Beneficiary's work for[ ][ ] stated that the Beneficiary "designed, developed and studied a prototype system: [ ]
[ ]"[13] While[ ] asserted that the idea of this "system was novel and impactful, potentially improving the productivity of a huge number of users [ ] the record does not show that the Beneficiary's[ ]prototype has been widely utilized by[ ], has had a meaningful impact in the academic field, has been extensively cited by independent researchers, or has otherwise risen to the level of a contribution that is recognized internationally as outstanding.

The record includes evidence that the Beneficiary has been listed as a co-inventor on a "United States Patent Application Publication" (2019) filed by[ ] entitled [ ]
[ ]"[14] While a published patent application may eventually result in a patent, it does not constitute a granted patent. Furthermore, a patent recognizes the originality of the idea, but it does not by itself demonstrate that the inventor has made a research contribution to the academic field that signifies international recognition or outstanding achievement. Rather, the significance of the innovation must be determined on a case-by-case basis. Here, the Petitioner has not submitted evidence showing that this invention has had an impact that is internationally recognized as outstanding in the Beneficiary's field. Nor has the Petitioner established the level or scope of individual recognition the Beneficiary has received as a result of this innovation, and the evidence does not support a determination that participating in the development of this invention is sufficient to set the Beneficiary apart as outstanding from others in the field.

Regarding the Beneficiary's internship at[ ] involving improving the performance of [ ][ ] a research engineer at[ ][15]

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[12] The Petitioner provided[ ]'s curriculum vitae which indicates that he is a Ph.D. student at[ ]
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[13] According to October 2019 information the Petitioner submitted from Google Scholar, the Beneficiary's article reporting this work, entitled [ ] had received only three citations since its publication in 2018.

[14] This U.S. Patent Application Publication listed seven other co-inventors.

[15] [ ]noted that she met the Beneficiary during her Ph.D. studies at the University of[ ]and that their internships at[ ]in 2017 overlapped.

indicated that the Beneficiary "proposed the approach of utilizing _____ in the output of _____ models either through _____ or _____ techniques. The algorithm that [the Beneficiary] proposed achieved 21.8% improvement in a critical _____ metric in a large-scale industrial data set."[16] _____ further explained that this "algorithm efficiently utilizes the _____ readily available in most application domains to overcome the data sparsity problem," but she did not provide specific examples indicating that the Beneficiary's work has affected the field of _____ in a substantial way that signifies international recognition or outstanding achievement in the academic field.

The Petitioner argues that the Director "failed to properly consider" the four aforementioned letters of support from "experts in the field." The expert testimonials offered by the Petitioner, however, do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Beneficiary's work is viewed by the overall academic field, rather than by a solicited few, as substantially influential or otherwise indicative of international recognition.

The Petitioner also contends that the Beneficiary's "scholarly articles have been published in some of the most distinguished international conferences and journals in his field."[17] The record contains information from the CORE Conference Portal for three of the conference proceedings in which the Beneficiary has published his work, including ACM International Conference on Research and Development and Information Retrieval, International World Wide Web Conference, and ACM Conference on Computer Supported Cooperative Work. For instance, the CORE Conference Portal assigns the ACM International Conference on Research and Development and Information Retrieval a ranking of "A*."
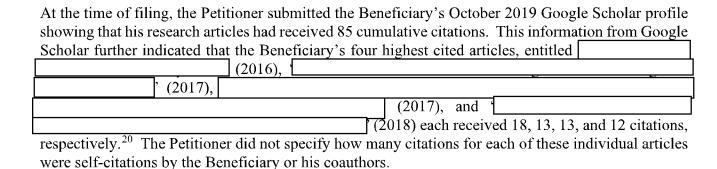
CORE Conference Portal rankings are determined by multiple "indicators, including citation rates, paper submission and acceptance rates, and the visibility and research track record of the key people hosting the conference and managing its technical program."[18] A high CORE ranking does not, however, show the influence of any particular author or demonstrate how an individual's research has had an impact within the field. Further, the evidence in the record does not establish that publication in a conference proceeding with a high ranking alone is sufficient to demonstrate that a beneficiary is recognized internationally as outstanding in the academic field. As authoring scholarly articles is often inherent to the work of professors and researchers, the citation history or other evidence of the influence of the Beneficiary's articles can be an indicator to determine the impact and recognition that his work has had on the field and whether his articles demonstrate that he is internationally recognized as outstanding in the academic field.[19]

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[16] According to October 2019 citation information the Petitioner submitted from Google Scholar, the Beneficiary's article reporting this work, entitled _____ ' had received only four citations since its publication in 2018.

[17] While the record includes documentation showing that the Beneficiary's work has been published in multiple conference proceedings, the Petitioner has not identified the "journals" that have published his work. Nor has the Petitioner provided evidence to support its claim that the Beneficiary's articles have been published in "journals in his field."

[18] See "CORE Rankings Portal" at https://www.core.edu.au/conference-portal (visited September 22, 2021, copy attached to this notice and incorporated into the record of proceedings).

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

At the time of filing, the Petitioner submitted the Beneficiary's October 2019 Google Scholar profile showing that his research articles had received 85 cumulative citations. This information from Google Scholar further indicated that the Beneficiary's four highest cited articles, entitled [   ] (2016), [   ] [   ] (2017), [   ] [   ] (2017), and [   ] (2018) each received 18, 13, 13, and 12 citations, respectively.[20] The Petitioner did not specify how many citations for each of these individual articles were self-citations by the Beneficiary or his coauthors.

In response to the Director's notice of intent to deny (NOID) and on appeal, the Petitioner provided the Beneficiary's May 2020 Google Scholar profile reflecting a nominal increase of citations to the Beneficiary's individual articles, but the Petitioner did not indicate how many of these additional citations occurred in papers published prior to or at the time of initial filing. *See* 8 C.F.R. § 103.2(b)(1), (12). The Petitioner's NOID response and appellate submission also included Google Scholar lists of citing articles for four of the Beneficiary's papers.[21] These lists of citing articles show that others in the United States and abroad were able to build upon the Beneficiary's research and apply it to their work, but they are not sufficient to demonstrate that his research findings have garnered a level of attention commensurate with being recognized internationally in field of artificial intelligence. Without comparative statistical evidence indicating how often others in the Beneficiary's field are cited, the Petitioner has not demonstrated that the number of citations received by his research articles represents interest at a level consistent with being internationally recognized as outstanding in the academic field.

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

In addition, the Petitioner provided a November 2019 employment letter and the Beneficiary's pay statements (dated October and November 2019) indicating that he receives an annual salary of $221,000. The Petitioner also offered salary information from the *Occupational Outlook Handbook* stating that "[t]he median annual wage for computer and information research scientists was $118,370 in May 2018" and that "the highest 10 percent earned more than $183,820."[22] The Director acknowledged that "the Beneficiary is paid a high salary," but concluded that this evidence did not show that he "is internationally recognized as an outstanding researcher in the academic field outside of his institution."

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[20] The Beneficiary's remaining articles were each cited eight times or less. The majority of his articles were coauthored with his Ph.D. advisor at the University of [   ] [   ].

[21] These lists included self-citations by the Beneficiary and his coauthors.

[22] Furthermore, the Petitioner submitted prevailing wage data from the Foreign Labor Certification Data Center showing earnings levels for "computer and information research scientists" in [   ] area. This information indicates that the Beneficiary's salary is well above the "Level 4 Wage" and "Mean Wage" for the aforementioned occupational category.

In the appeal brief, the Petitioner argues that "USCIS is required to review all relevant evidence. More specifically, USCIS must essentially accept the evidence of extraordinary ability under the ten criteria set forth in 8 C.F.R. § 204.5(h)(3)(i)-(x). Of the ten criteria evidence of high remuneration is listed as 8 C.F.R. § 204.5(h)(3)(x)." The Petitioner, however, is not seeking to classify the Beneficiary as an individual of "extraordinary ability." *See* section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A). Here, the Petitioner is seeking classification for the Beneficiary as an outstanding professor or researcher pursuant to section 203(b)(1)(B) of the Act, 8 U.S.C. § 1153(b)(1)(B). These two classifications are adjudicated based on different standards as set forth in the statute and regulations.

While the Petitioner has presented documentation showing that the Beneficiary commands a high salary relative to "computer and information research scientists," this evidence does demonstrate that he is internationally recognized as outstanding in the field of ⬚ For instance, the Petitioner has not established that the Beneficiary's salary is recognized beyond his employer or that he has received attention based on his earnings separating himself from others in the field. Nor has the Petitioner shown that the Beneficiary's salary otherwise signifies eminence and distinction based on international recognition in the artificial intelligence field.

Although the evidence indicates that the Beneficiary is a skilled ⬚ researcher, the Petitioner has not established that he stands apart in the academic community through eminence and distinction based on international recognition. After consideration of the totality of the evidence of the Beneficiary's work in the areas of ⬚ including his U.S. patent application publication, research articles, citations to those articles by others in the field, his participation as a peer reviewer, his high salary, and the opinions of experts in the field, we conclude that this documentation does not sufficiently establish that he has been internationally recognized as an outstanding researcher in the field.

III. CONCLUSION

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

ORDER: The appeal is dismissed.