

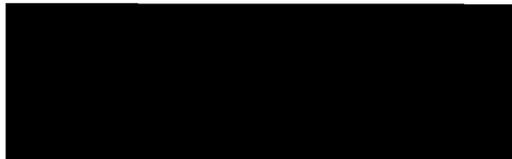
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



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



B3

Date: Office: NEBRASKA SERVICE CENTER

FILE: 

MAR 29 2012

IN RE: Petitioner: 

Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 non-profit medical research organization. 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 medical researcher in the field of traditional Chinese medicine. The director determined that the petitioner had not established that the beneficiary had attained the level of achievement required for classification as an outstanding researcher.

In addition, the director determined that the petitioner did not establish that the beneficiary has at least three years of experience in teaching and/or research in the academic field, as required by the regulation at 8 C.F.R. § 204.5(i)(3). Further, the director concluded that the record lacks evidence that the petitioner has achieved documented accomplishments in the beneficiary's academic field. 8 C.F.R. § 204.5(i)(3)(iii)(C).

On appeal, counsel submits a brief. The petitioner has not submitted any additional evidence on appeal. For the reasons discussed below, the AAO concurs with the director that the record fails to establish that the beneficiary enjoys international recognition. Specifically, the petitioner has submitted qualifying evidence under only one of the required regulatory criteria, scholarly articles pursuant to 8 C.F.R. §§ 204.5(i)(3)(i)(F). Therefore, the evidence submitted by the petitioner has failed to establish that the beneficiary satisfies the antecedent regulatory requirement of two types of evidence. 8 C.F.R. § 204.5(i)(3)(i).

Beyond the decision of the director, the AAO finds that, regarding the field in which the beneficiary claims international recognition in this petition, the field of traditional Chinese medicine, the petitioner has not submitted evidence establishing that this field meets the definition of "academic field" set forth in the regulation as "a body of specialized knowledge offered for study at an accredited United States university or institution of higher education." 8 C. F. R. 204.5(i)(2). In addition, the record lacks the actual job offer issued by the petitioner to the beneficiary, pursuant to 8 C.F.R. § 204.5(i)(3)(iii). Further, the petitioner has not established that it employs the requisite three full-time researchers in addition to the beneficiary as required by section 203(b)(1)(B)(iii)(III) of the Act; 8 C.F.R. § 204.5(i)(3)(iii)(C). An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a de novo basis).

I. Law

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

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

* * *

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

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

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

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

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

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

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

II. Qualifying Employer

The regulation at 8 C.F.R. § 204.5(i)(3)(iii) provides that a petition must be accompanied by:

An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or

(C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

Firstly, the petitioner has not submitted its job offer to the beneficiary. Instead, counsel states on appeal, [REDACTED] has been offered the position of Medical Researcher by the petitioner in this petition for an indefinite term in which she has a reasonable expectation of permanent employment. The petitioner has signed its I-140 petition form confirming its permanent job offer to [REDACTED]. *Black's Law Dictionary* 1189 (9th ed. 2009) defines "offer" as "the act or an instance of presenting something for acceptance" or "a display of willingness to enter into a contract on specified terms, made in a way that would lead a reasonable person to understand that an acceptance, having been sought, will result in a binding contract" and defines "offeree" as "[o]ne to whom an offer is made." In addition, *Black's Law Dictionary* defines "offeror" as "[o]ne who makes an offer." *Id.* at 1190.

In light of the above, the ordinary meaning of an "offer" requires that it be made to the offeree, not a third party. As such, regulatory language requiring that the offer be made "to the beneficiary" would simply be redundant. Thus, the counsel's statement on appeal addressed to USCIS affirming the petitioner's job offer to the beneficiary is not an offer of employment within the ordinary meaning of that phrase. The record does not contain an offer of employment from the petitioner addressed to the beneficiary, which is required initial evidence pursuant to 8 C.F.R. § 204.5(i)(3)(iii).

Secondly, the petitioner has not established that it employs the required three full-time researchers, in addition to the beneficiary. Counsel asserts that the petitioner employs a nine-person "research team." However, other than [REDACTED] it does not appear that the petitioner employs any members of the team. Three of the members are listed as working in China [REDACTED]. Four of the members are listed as being either self-employed or employed by others: [REDACTED] is listed as serving "as an examiner for acupuncture in California"; [REDACTED] is listed as working as a [REDACTED] at the University of Southern California, [REDACTED] is listed working at Children's Hospital in Los Angeles; and, [REDACTED] is listed as being self-employed at her own clinic. No employment information is provided for the remaining member, [REDACTED] however a Google search identifies her as a self-employed acupuncturist in San Francisco. Finally, regarding the job duties of [REDACTED] he is stated as having "specialized in the treatments of all kinds of cancer and other common illness". [REDACTED] duties do not suggest that he engages in full-time research activities. We reiterate that the regulation at 8 C.F.R. § 204.5(i)(3)(iii)(C) states that the petitioner must "demonstrate" that it employs at least three full-time researchers. Thus, it is the

petitioner's burden to establish this element of eligibility. Since the petitioner has not submitted evidence that it employs any full-time researchers, the petitioner has not established that it is a qualifying petitioner pursuant to 8 C.F.R. § 204.5(i)(3)(iii).

Thirdly, the director concluded that the record lacks evidence that the petitioner has achieved documented accomplishments in the beneficiary's academic field. On appeal, counsel asserts that the petitioner has demonstrated its achievement of documented accomplishments, but submits no new evidence. The petitioner had previously submitted its own promotional literature, including a listing of its areas of study, a list of its courses and speakers, and a statement that the organization "got great achievement on the science study and using integrative medicine treating difficult diseases, especially on cancer." As quoted above, the regulation at 8 C.F.R. § 204.5(i)(3)(iii)(C) states that the petitioner must "demonstrate" its achievement of documented accomplishments. Thus, the petitioner has not overcome the director's concerns.

III. Experience

This petition was filed on March 25, 2010 to classify the beneficiary as an outstanding medical researcher in the field of traditional Chinese medicine. 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. The director concluded that the record lacked evidence of the beneficiary's three years of qualifying research experience. On appeal, counsel asserts that the petitioner previously submitted the beneficiary's curriculum vitae and other evidence verifying her three years of research experience.

The regulation at 8 C.F.R. § 204.5(g)(1) provides that evidence of qualifying experience "shall" be in the form of letters from current or former employers. The petitioner submitted a letter from a representative of China Medical University, where the beneficiary attended from October 1986 to June 1987 to obtain her Master's Degree, stating the beneficiary's "research article" has been well-received in academic circles. The petitioner also submitted a letter from [REDACTED] Hospital, stating the beneficiary was employed there from May 2004 to November 2007 as a colitis specialist in the outpatient department of the hospital, and further stating: "In the meantime, [REDACTED] participated in the hospital clinical TCM [traditional Chinese medicine] research and treatment of colitis. . ." However, the beneficiary's curriculum vitae lists research duties at [REDACTED] Hospital from March 1984 to March 1984, and the curriculum vitae lists research duties for a total of less than three years. The petitioner also submitted several certificates issued by the petitioner to the beneficiary, appointing her as a guest researcher from May 4, 2008 until February 12, 2009. However, the beneficiary's curriculum vitae does not list any experience as a guest researcher with the petitioner. In fact, the beneficiary's curriculum vitae does not list any research experience after 1993.

The AAO agrees with the director that the evidence submitted by the petitioner in this matter fails to establish that the beneficiary has obtained three years of research experience.

IV. International Recognition

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."¹ The regulation lists the following six criteria, of which the beneficiary must submit evidence qualifying under at least two.

- (A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;
- (B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;
- (C) Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;
- (D) Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field;
- (E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or
- (F) Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under a similar classification set forth at section 203(b)(1)(A) of the Act. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion. With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

¹ The regulation at 8 C. F. R. 204.5(i)(2) defines "academic field" as "a body of specialized knowledge offered for study at an accredited United States university or institution of higher education." The AAO additionally finds, regarding the field of traditional Chinese medicine in which the beneficiary claims international recognition in this petition, the petitioner has not submitted evidence establishing that this field meets the definition of "academic field" set forth in the regulation.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations.² Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination.³ While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court's reasoning persuasive to the classification sought in this matter. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least two criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of two types of evidence. *Id.*

V. Analysis

Evidentiary Criteria

This petition, filed on March 25, 2010, seeks to classify the beneficiary as an outstanding researcher. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(i)(3)(i).

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

The petitioner submitted a March 3, 1995 "Certificate of Honor" from [REDACTED] stating: "In the year 1994, due to your outstanding achievements in the medical treatment and healthcare field, you are selected and certified to be the best doctor in this area. This certificate is hereby issued to recognize your achievements." The petitioner submitted a January 15, 1998 "Certificate of Honor", also from the [REDACTED] stating: "In the year 1997, you are selected and certified to be the best doctor in this area." The Petitioner also submitted a January 20, 1998 "Certificate of Honor" from the "Healthcare Department" of Industrial and Commercial Bank of China, Liaoning Branch stating: "In the year 1997, you are selected and certified to be an outstanding medicine doctor and also an outstanding manager in Industrial and Commercial Bank of China, Liaoning Branch Healthcare Department." These certificates reflect regional honors for service to the government and a bank in Liaoning Province.

² Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) (comparable to 8 C.F.R. § 204.5(i)(3)(i)(D)) and 8 C.F.R. § 204.5(h)(3)(vi) (comparable to 8 C.F.R. § 204.5(i)(3)(i)(F)).

³ The classification at issue in *Kazarian*, section 203(b)(1)(A) of the Act, requires qualifying evidence under three criteria whereas the classification at issue in this matter, section 203(b)(1)(B) of the Act, requires qualifying evidence under only two criteria.

In addition, the petitioner submitted a 2002 "Certificate of World Chinese Expert" from the "World Chinese Interchange Association World Chinese Press", stating: "By reason of your extrude (sic) achievement to society, your biography has been issued through internet, and included in the large international exchange series annals, the Dictionary of World Chinese Experts." The petitioner has also submitted a March 3, 2003 certificate from the "Editorial office of Chinese famous people (contemporary volume) collection", stating: "According to your great achievement and effort to the Chinese people, your achievements have been selected into Chinese famous people (contemporary volume) collection." However, there is no evidence that such inclusion was based upon outstanding achievement in the beneficiary's academic field

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. *Cf.* 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).

We are not persuaded that regional honors for service to the government and a bank in LiaoNing Province, and certificates of inclusion in a collection of "Chinese famous people" and a "Dictionary of World Chinese Experts" without evidence that such inclusion was based upon outstanding achievement in the academic field, are indicative of international recognition in the field. We therefore find that these awards do not constitute major awards.

In addition, the petitioner has submitted a 2001 "New Century China National First Huatuo 'Medical Sage – Medicine King Cup' Gold Medal Certificate from the "Expert Committee of Beijing Huatuo Medical Care School", for participation in an "Experience Exchange Conference" stating: "[REDACTED] has the honor to win the Gold Medal of China National First Huatuo 'Medical Sage – Medicine King Cup'". According to the index of exhibits provided by counsel this award given to the beneficiary for her "research thesis". Also, the petitioner submitted a "Certificate of Academic Award" from the International Conference on Culture and Medicine, stating that the beneficiary won "Third Prize" for an article submitted to the "[REDACTED]". According to the beneficiary's curriculum vitae, this certificate was awarded in 2001 for her "thesis". Further, the petitioner submitted a "Presidential Award" dated "Jnly (sic) 18, 2001", from the "World Traditional Health Organization", stating that the beneficiary is a member of "Outstanding Scholrs (sic)", based upon her "unique accomplishments and contributions to the society." These awards are for *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." 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, awards in recognition of academic achievement, such as conference awards for a research thesis, are insufficient. Academic awards are simply not evidence of international recognition in the field. Rather, they represent high academic achievements in comparison with one's fellow students. Further, regarding the "Certificate of Academic Award" from the International Conference on Culture and Medicine, the AAO cannot conclude that being the third-place winner of a provincial contest equates to "outstanding achievements."

In light of the above, the petitioner has not submitted evidence of major prizes or awards pursuant to 8 C.F.R. § 204.5(i)(3)(i)(A).

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

The petitioner submitted certificates documenting the beneficiary's membership in the following associations: China Association of Acupuncture – Moxibustion; the 5th National (International) Committee of Traditional Medical Institute, China Association for Culture Studies, Beijing, China; and, International Society of Licensed Chinese Doctors.

The petitioner did not submit evidence that any of the above associations require anything other than the beneficiary having attained certain educational requirements, such as a degree, or the payment of dues for membership. Thus, the petitioner has not established that she is a member of associations which require outstanding achievements of its members.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(i)(3)(i)(B).

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 asserts that the beneficiary satisfies a criterion counsel characterizes as follows: ". . . [REDACTED] has produced many pioneering results that often attract wide attention from other researchers during her presentation of her works at various international conferences. We believe these international forums serves (sic) as major media where [REDACTED] research achievements are widely discussed and shared." The petitioner has submitted a copy of two certificates for international conferences attended by the beneficiary, and an article written by the beneficiary while working at the [REDACTED] Medical Clinic. Counsel states the evidence ". . . indirectly served as some sort of evidence of published material about the beneficiary." The regulation at 8 C.F.R. § 204.5(i)(3)(i) does not contain any criterion with counsel's wording. Instead, the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) requires evidence of published material about

the beneficiary's work. The petitioner has not submitted evidence of published material about the beneficiary's work. (We will consider the beneficiary's authorship of articles under 8 C.F.R. § 204.5(i)(3)(i)(F)).⁴

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(i)(3)(i)(C).

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

On appeal, counsel asserts that the beneficiary has been serving as judge or reviewer of an ancient Chinese medicine textbook ' [REDACTED] '. The petitioner submits a copy of a translation of two pages of the book, listing the beneficiary as a Vice Chief Editor, one of three. The petitioner submitted a statement from [REDACTED] the textbook's chief editor, that the beneficiary contributed "70,000 words for the essential part of this book". The regulation at 8 C.F.R. § 204.5(i)(3)(i)(D) requires evidence of the beneficiary's participation as the judge of the work of others in the same or an allied academic field. The evidence submitted by the petitioner does not establish that the beneficiary's job as assistant editor of an ancient medical textbook involves beneficiary's participation as the judge of the work of others in the same or an allied academic field.⁵ (We will consider the beneficiary's authorship of portions of the textbook under 8 C.F.R. § 204.5(i)(3)(i)(F)).

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(i)(3)(i)(D).

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

As evidence relating to the beneficiary's original scientific or scholarly research contributions to the academic field, the petitioner submitted eight reference letters (four from the beneficiary's immediate circle of collaborators). The plain language of the regulation at 8 C.F.R.

⁴ Counsel also states, "In addition, all the awards and prizes [REDACTED] has received become another form of media or publication of international recognition of her contributions in the field . . ." With regard to the beneficiary's receipt of major prizes or awards, the regulations include a separate criterion for major prizes or awards at 8 C.F.R. § 204.5(i)(3)(i)(A). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views major prizes or awards as a separate evidentiary requirement from published material about the beneficiary's work.

⁵ As evidence of the beneficiary's participation as the judge of the work of others, counsel also states, "[REDACTED] was accepted as a member of the National (International) Committee for the 6th conference of Traditional Medicine Institute of China Association for Culture Studies." The petitioner has already submitted this evidence in support of the beneficiary's membership in associations in the academic field which require outstanding achievements of their members . The regulations include a separate criterion for membership in associations in the academic field . 8 C.F.R. § 204.5(i)(3)(i)(B). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views membership in associations as a separate evidentiary requirement from judging the work of others.

§ 204.5(i)(3)(i)(E) does not require that the beneficiary's contributions themselves be internationally recognized as outstanding. That being said, the plain language of the regulation does not simply require original research, but an original "research contribution." Had the regulation contemplated merely the submission of original research, it would have said so, and not have included the extra word "contribution." Moreover, the plain language of the regulation requires that the contribution be "to the academic field" rather than an individual laboratory or institution.

In a February 5, 2009 reference letter, [REDACTED] petitioner's employee, states that he met the beneficiary in 1993 at a conference on traditional medicine. He states "I (was) (sic) impressed about her speech about Chinese medicine and colon problems." He states that when he met the beneficiary again in 2008, "I noticed that she has accumulated plenty of knowledge of both clinical and research by using Chinese medicine to help those patients suffering from colon problems including colon cancer." [REDACTED] also submitted two letters he sent to the beneficiary, on behalf of the petitioner, inviting the beneficiary for an "academic visit" to share her knowledge of Chinese medicine and the treatment of cancer, and to "do a co-research on the project of colon cancer and Chinese medicine." [REDACTED] does not state that the beneficiary has made original scientific or scholarly research contributions to the academic field, nor does he explain how the beneficiary's work has impacted the field.

[REDACTED] states that he became acquainted with the beneficiary's scientific writing in 1998. He states that the beneficiary was "among a very small group of visionary scientists" that illustrated "the feasibility and significance in traditional Chinese medicine, in particular, acupuncture and moxibustion . . ." He states that the beneficiary invented a method in traditional Chinese medicine to help patients with coronary artery disease, improving the probability that the patients will be cured, and he states that the beneficiary successfully cured hundreds of people. [REDACTED] does not describe the novel method of treatment which he credits to the beneficiary, nor does he provide any examples of how the beneficiary's innovations are already being applied in the field.

[REDACTED] states that he was the beneficiary's Master's dissertation committee member at [REDACTED] University, and collaborated with her on her research projects.⁶ [REDACTED] states that the beneficiary is the only scientist to develop several assays for the purpose of showing how to cure colon cancer with traditional Chinese Medicine. [REDACTED] states that the beneficiary's use of a combination of traditional Chinese medicine and Western medicine, using acupuncture and moxibustion, "greatly increased our understanding of colon cancer and resulted in the development of even better treatment method (sic)." [REDACTED] states that the beneficiary is "the only scientist in this country (China) with the ability to carry out the studies that she does." [REDACTED] does not describe the beneficiary's treatment method, nor provide examples of independent research institutions using the beneficiary's technique, nor assert that the beneficiary's technique is becoming one of the "widely accepted standard techniques" as would be expected of a contribution to the field

⁶ According to [REDACTED] the beneficiary trained with [REDACTED]. However, in his reference letter [REDACTED] does not state that he trained the beneficiary. In addition, [REDACTED] states that the beneficiary attended Liaoning Traditional Chinese Medicine University from 1997 to 2000. However, the petitioner has submitted the beneficiary's curriculum vitae, stating that the beneficiary attended Liaoning Traditional Chinese Medicine University from September 1995 to July 1997.

as a whole. [REDACTED] states the beneficiary's proposed research "may sow the seeds for a cure for colon cancer and other diseases." While [REDACTED] discusses the potential applications for the beneficiary's research, [REDACTED] does not suggest that the beneficiary's techniques are currently in use.

[REDACTED] states that the beneficiary is an expert in traditional Chinese medicine with many years of experience, although [REDACTED] does not state the basis of his knowledge of the beneficiary's experience. [REDACTED] does not state that the beneficiary has made any original scientific or scholarly research contributions to the academic field, nor does [REDACTED] explain how the beneficiary's work has impacted the field.

[REDACTED] states that the beneficiary is an expert in traditional Chinese medicine, although [REDACTED] does not state the basis of his knowledge of the beneficiary's experience. [REDACTED] does not state that the beneficiary has made any original scientific or scholarly research contributions to the academic field, nor does [REDACTED] explain how the beneficiary's work has impacted the field.

[REDACTED] states that he knows the beneficiary from "years of cooperation" working with her at [REDACTED] Hospital. [REDACTED] states that the beneficiary "has great interests in medicine field and also has the spirit of discovery." [REDACTED] does not state that the beneficiary has made any original scientific or scholarly research contributions to the academic field, nor does [REDACTED] explain how the beneficiary's work has impacted the field.

[REDACTED] who works with the beneficiary at [REDACTED] Hospital, states that the beneficiary has over 30 years of clinical experience. [REDACTED] states that the beneficiary merged together western medicine and traditional Chinese medicine and "invented her own skill and method to cure patient." [REDACTED] does not describe the beneficiary's treatment method, nor provide examples of independent research institutions using the beneficiary's technique, nor assert that the beneficiary's technique is becoming one of the "widely accepted standard techniques" as would be expected of a contribution to the field as a whole.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as the AAO has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not

purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain 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. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.⁷ Considering the letters (and other evidence, if applicable) in the aggregate, the record does not establish that the beneficiary's research, while original, can be considered a contribution to the field as a whole.

We are not persuaded, for the reasons stated above, that the record establishes that the beneficiary's research is original or can be considered a contribution to the field as a whole.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(i)(3)(i)(E).

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

As stated above, the petitioner submitted several articles authored by the beneficiary, as well as evidence that the beneficiary authored portions of a medical textbook. Thus, the petitioner has submitted evidence that qualifies under 8 C.F.R. § 204.5(i)(3)(i)(F).

In light of the above, the petitioner has failed to satisfy the antecedent regulatory requirement of two types of evidence. 8 C.F.R. § 204.5(i)(3)(i).

VI. CONCLUSION

The documentation submitted in support of a claim of outstanding ability must clearly establish that the alien has achieved international recognition.

Had the petitioner submitted the requisite evidence under at least two evidentiary categories, in accordance with the *Kazarian* opinion the next step would be a final merits determination that considers all of the evidence in the context of whether or not the evidence submitted by the petitioner has demonstrated that the beneficiary is recognized internationally as an outstanding professor or researcher in the academic field specified in the petition. 8 C.F.R. § 204.5(i)(3)(i); *see also Kazarian*, 596 F.3d at 1119-20. As the petitioner has not submitted the requisite evidence

⁷ *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

under at least two evidentiary categories, the appeal will be dismissed on this basis alone. The AAO will not conduct a final merits determination.⁸

For the above stated reasons, considered both in sum and as separate grounds for denial, the petitioner has not established eligibility pursuant to section 203(b)(1)(B) of the Act, and 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.

⁸ The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d at 145. In any future proceeding on motion or as a result of litigation, the AAO maintains the jurisdiction to conduct a final merits determination as the official who made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I. & N. Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).