U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

B2

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: APR 2 6 2007

LIN 03 231 54512

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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.

Laura Deadrick

Robert P. Wiemann, 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 on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel submits a brief and one new exhibit relating to the petitioner's influence after the date of filing. For the reasons discussed below, we concur with the director's analysis.

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):
>
> (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
>
> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. The petitioner's research focuses on malaria. The petitioner received his Ph.D. in 1993 from Rockefeller University in New York. He then worked as a postdoctoral fellow and, ultimately, a research associate at the Harvard School of Public Health and Stanford University Medical School and finally at Northwestern Medical School, where he worked as of the date of filing. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, he claims, meets the following criteria.[1]

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

In 1994, the petitioner received a research fellowship from Cooley's Anemia Foundation, which was renewed in 1995. The director concluded that the petitioner had not demonstrated that this fellowship distinguished him from other successful researchers. Counsel does not challenge this conclusion on appeal.

Research grants are not awards recognizing past excellence in the field. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement.

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

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner submitted an article posted at www.gettingwell.com about riboflavin that includes a paragraph about research showing that riboflavin has antimalarial activity. The article does not contain footnotes or endnotes but the "literature" referenced at the end of the article included three articles regarding riboflavin and malaria: a 1985 article in *Lancet*, a 1995 article in *Nutrition Today* and the 2000 article authored by the petitioner. The petitioner also submitted the table of contents for the September 19, 2003 issue of *Science* summarizing the petitioner's article in that issue. The director concluded that these exhibits were not published materials *about the petitioner*.

[1] The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

On appeal, counsel states that citations serve to fulfill this criterion as the emphasis in the regulation at 8 C.F.R. § 204.5(h)(3)(iii) is on the alien's work not the alien himself. Counsel concludes that as long as the alien is named as the author of the work being discussed this criterion is met.

Counsel is not persuasive. We do not contest the value of citation evidence. Frequent citation is certainly evidence of the influence of the cited material and relates to the criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi), but it cannot serve to meet the plain language of this criterion. The regulation explicitly requires that the published material be "about the alien." Review articles cover a large topic, and typically are not "about" any particular work referenced. The article submitted is a general article on riboflavin that is followed by a list of 21 articles including the one by the petitioner and two others relating to riboflavin and malaria. The list of "literature" following the article appears to be suggestions for additional reading on related topics. We are not persuaded that the inclusion of the petitioner's article in this list establishes that the riboflavin article is primarily about the petitioner or his work.

Finally, the fact that *Science* includes brief two-sentence summaries of the articles appearing in the issue cannot serve to meet this criterion. Regardless, both the summary and the article to which it relates postdate the filing of the petition. As such, this evidence is not relevant to the petitioner's eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In light of the above, the petitioner has not established that he meets this criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

Several of the petitioner's references assert that the petitioner's notoriety in the field is apparent from the invitations he receives to review manuscripts. The petitioner initially submitted requests for manuscript reviews from two journals. In response to the director's request for additional evidence, the petitioner submitted an acknowledgement of a review from the National Institute for Medical Research in London. The acknowledgement, however, indicates that the institute initially asked the petitioner's supervisor, [redacted], for the review but that [redacted] passed it on to the petitioner.

The director concluded that the type of peer review in which the petitioner has participated is common in the field and does not distinguish the petitioner from other researchers. On appeal, counsel asserts that this office "has long recognized peer reviews as satisfying this requirement." Counsel concludes that the regulation does not "distinguish between peer reviews" and, thus, "the director's attempt to distinguish this petitioner's peer reviews from others in the field is baseless and without merit and must be rejected."

First, counsel cites no binding legal authority, and we known of none, for the proposition that peer review of manuscripts is sufficient to meet this criterion. Second, counsel misunderstands the director's concern. The director did not attempt to compare the manuscript reviews conducted by the

petitioner with manuscript reviews by others. Rather, the director concluded that the entire process of peer review is so commonplace in the field that participation in that process does not separate the reviewer from other researchers in the field. We concur with the director.

First, being requested to review an article by one's own advisor is not indicative of or consistent with national or international acclaim. Regardless, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys sustained national or international acclaim. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Several of the petitioner's references discuss the national importance of malaria research. These assertions are uncontested. At issue, however, are the petitioner's contributions to this area of research. The petitioner submitted published articles and letters discussing his innovations in the field. The petitioner's field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work.

The director concluded that the letters submitted did not establish the major significance of the petitioner's work or his prominence in the field. On appeal, counsel asserts that the references attest to the petitioner's accomplishments in malaria research. Significantly, the initial letters reference the petitioner's exceptional ability and the national interest of his area of research. In response to the director's request for additional evidence, the references do use the phrase "extraordinary ability." They all state, however, that their understanding of the phrase is that it means a level of expertise above that normally encountered in the field. The statutory standard for the classification sought, however, is much higher: national or international acclaim. In addition, the relevant regulation provides that the petitioner must demonstrate that he is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). Counsel further asserts that the petitioner's published articles "should have been considered as primary sources in arriving at the determination of the significance of the petitioner's work." Counsel continues:

> The objective standard by which the significance of the alien's work must be determined is by assessing the impact of the alien's work as a breakthrough in malaria research and by assessing the impact of the alien's work as a breakthrough in malaria research and assessing the benefit of that breakthrough as a boost to the eventual manufacture of more efficacious and cheaper malaria drugs. A careful reading of the petitioner's publications leaves no doubt about the originality of the petitioner's discovery as well as the significance of his work. The quality and not the volume of the work is what the regulations contained in 8 C.F.R. § 204.5(h) envisage.

It appears to be counsel's contention that this office should read the petitioner's articles and make our own determination of their significance based on that reading. The petitioner seeks a visa classification where the statutory standard is national or international acclaim. Acclaim, as it relates to this criterion, implies wide recognition in the field as to the significance of the petitioner's work. Thus, even if this office had the competence to evaluate technical scientific papers, our evaluation would be irrelevant. The petitioner must demonstrate that the significance of his contributions is widely recognized in the field. As such, while the petitioner's articles are clearly primary evidence that the petitioner has contributed *original* research to the field, they are not primary evidence of their own significance. Rather, we look to other evidence relevant to the significance of the results presented in these articles, including but not limited to letters from members of the field, evidence of wide and frequent citation and other comparable evidence.

While letters from members of the field are useful, we emphasize that the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. CIS 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. 1988). However, CIS 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; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An

individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

The petitioner provided a letter from his Ph.D. thesis advisor, [redacted] a professor at Rockefeller University. We acknowledge that [redacted] is a member of the National Academy of Sciences, has served as President of the International Society for Neuroendocrinology and serves on several editorial boards. While these achievements give his letter significant evidentiary weight, they also demonstrate that the highest level in the petitioner's field is far above the level he himself has achieved. [redacted] asserts that the petitioner's Ph.D. thesis focused on G-proteins and "contributed to the scientific understanding of how signals are transmitted within cells of the body." While [redacted] asserts that this work formed the basis of *the petitioner's* future research, [redacted] does not provide examples of other laboratories relying on this work.

The petitioner submitted a letter from [redacted] a professor at Washington University School of Medicine. [redacted]'s time as a research associate at Rockefeller University overlapped with the petitioner's time there as a Ph.D. student. According to the petitioner's curriculum vitae, [redacted] coauthored an article with the petitioner. [redacted] asserts that the petitioner's work on parasite metabolism has helped define new drug targets, that the petitioner showed that riboflavin is a "potent" antimalarial and that the petitioner holds an "important antimalarial patent." The patent is not in the record. Moreover, this office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* The record contains no evidence that any pharmaceutical company has expressed an interest in licensing the petitioner's patent.

[redacted] also discusses the petitioner's work at the Harvard School of Public Health. Specifically, the petitioner identified a protein that could serve as a target for medicines to treat Cooley's Anemia. Once again, the record lacks evidence that this work has formed the foundation for any other research on treatments for this disease.

[redacted] asserts that the petitioner "has quickly been successful in developing new targets and drugs against" malaria. [redacted] does not identify any drug or indicate that it is in clinical trials or that the petitioner's work has at least gained the interest of any pharmaceutical company. [redacted] further asserts that the petitioner's discovery regarding the antimalarial effects of riboflavin "attest to his exceptional abilities in the field of microbiology." As stated above, however, scientists have been reporting the antimalarial potential of riboflavin since at least 1985. While this earlier work does not preclude a finding that the petitioner's work is also of major significance, [redacted] does not explain how the petitioner's 2000 article improved upon, in a major way, the earlier work on this subject. The record lacks evidence that the World Health Organization (WHO) or other comparable entity has incorporated the petitioner's work on riboflavin into its recommendations for treating malaria. We acknowledge that the article posted at www.gettingwell.com references the petitioner's work, but the

record lacks evidence regarding the significance of this Internet site or the entity that operates it, PDR Health.

Finally, [redacted] asserts that another "scientist has written about" the petitioner's work.[2] While evidence of wide and frequent citation would bolster the petitioner's claims of influence, the record contains no such evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner submitted additional letters, including two letters from independent members of the field in California. These letters provide similar information to that discussed above. The independent references do not purport to have been personally influenced by the petitioner and provide no specific examples of other research or malaria treatment guidelines based on the petitioner's work.

As will be discussed in more detail below, the petitioner has published several articles. He also coauthored a book chapter with [redacted] a professor at the University of California, San Francisco, asserts that the book is "the leading book on the subject of antimalarial chemotherapy." The petitioner's chapter is a review of research in the field. Far more persuasive than the mere submission of published articles and book chapters is concrete evidence of their significance, such as evidence of wide and frequent citation. The record contains no such evidence.

While the record includes general attestations of the significance of the petitioner's work, none of the petitioner's references provide examples of how the petitioner's work is already influencing the field. While the evidence demonstrates that the petitioner is a talented researcher with potential, it falls short of establishing that the petitioner had already made contributions of major significance. Thus, the petitioner has not established that he meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner lists several articles on his curriculum vitae and has submitted five articles, including one in *Science* and a book chapter. The introduction to the book indicates that it is a survey of the latest understanding of antimalarial chemotherapy by "a panel of leading experts drawn from academia, the military, and international health organizations." The director concluded that the petitioner meets this criterion. While the petitioner's claim under this criterion would have been considerably bolstered had the petitioner submitted his entire citation record, we will not withdraw the director's conclusion.

---

[2] While the phrase "scientist has written" is actually preceded by the word "other," implying more than one scientist, both "scientist" and "has" are singular, implying only a single citation.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a research scientist to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a research scientist, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.