U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 23 2007

SRC 02 041 56993

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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, Texas Service Center. On further review of the record, the Director, California Service Center determined that the petitioner was not eligible for the benefit sought. Accordingly, the director served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and ultimately revoked the approval of the petition on August 7, 2006. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. 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 states: "[A]s the revocation in the instant case was arbitrary and capricious and '*good and sufficient cause*' for revocation under *Ho* and *Estime* **was not established by the CSC**, this revocation is wrong as a matter of law and should be reversed and Respondent's approved immigrant visa petition **MUST BE REINSTATED**." [emphases in original].

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. at 590.

The Form I-140, Immigrant Petition for Alien Worker, was filed on November 19, 2001 seeking to classify the petitioner as alien of extraordinary ability as a researcher. The petition was approved in error by the Texas Service Center on March 20, 2002.

On April 19, 2005, the petitioner appeared at the Phoenix, Arizona District Office for an interview pertaining to his eligibility for adjustment of status to permanent resident. At that time, the interviewing officer noted that the petitioner had not satisfied at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) required

for classification as an alien of extraordinary ability. The petition was then forwarded to the California Service Center for issuance of a notice of intent to revoke the approval of the petition.

On May 10, 2006, the director of the California Service Center issued a notice of intent to revoke the approval of the petition. The director's notice included a discussion indicating that the petitioner's evidence did not satisfy any of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The notice of intent to revoke also informed the petitioner that the evidence of record did not show that the petitioner "is one of that small percentage who have risen to the very top of the field of endeavor." The director's notice concluded by stating that "the evidence is not found sufficient to establish that the petitioner has distinguished himself to such an extent that he has achieved sustained national or international acclaim and recognition." We concur with these findings.

On June 9, 2006, the California Service Center received the petitioner's response to the notice of intent to revoke and this documentation was incorporated into the record of proceeding. Aside from wage data for medical scientists, postdoctoral scholars, and microbiologists, the petitioner's response included no evidence pertaining to the regulatory criteria at 8 C.F.R. § 204.5(h)(3).[1] In his June 8, 2006 response letter, counsel argues that that the initial evidence accompanying the petition satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(i) – (vi), (viii). Counsel further states:

> It must be noted that [the petitioner's] approval was not based upon documentation that he commanded high salary or other significantly high remuneration for services, although the NOIR [notice of intent to revoke] specifically takes issue with the lack of documentation for this criterion. As a matter of fact, most research and academic positions do not offer a high salary, regardless of the extraordinary qualifications and abilities of the researcher or academic.

The director's notice of intent to revoke, however, was not based solely upon the petitioner's failure to meet the salary criterion at 8 C.F.R. § 204.5(h)(3)(ix). The director's notice also addressed the deficiencies in the evidence submitted by the petitioner for the other criteria at 8 C.F.R. § 204.5(h)(3). In support of his statement that "most research and academic positions do not offer a high salary," counsel points to the wage data submitted by the petitioner for medical scientists, postdoctoral scholars, and microbiologists. In this documentation, counsel highlighted (with a yellow marker) entry-level wages for Medical Scientists and Microbiologists as compiled by the U.S. Department of Labor. Counsel also highlighted entry-level salaries for postdoctoral scholars at Stanford University and postdoctoral research fellows at Drexel University. However, none of this wage information highlighted by counsel, which consists of salary information for recent doctoral graduates, establishes that most researchers or academic scholars are unlikely to be offered a high salary. This wage data only shows that the salary offered to the petitioner at the University of Arizona falls below the compensation earned by entry-level postdoctoral researchers in the preceding job positions. Even if we were to accept counsel's unsupported generalization that "most research and academic positions do not offer a high salary," such a conclusion is irrelevant to a determination as to whether an individual meets the salary criterion at 8 C.F.R. § 204.5(h)(3)(ix). The plain language of this criterion allows for evidence of high salary "in relation to others in the field." Therefore, if the petitioner had submitted evidence

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[1] The petitioner's response included "evidence of medical residency training" received by the petitioner in Arkansas, Pennsylvania, and Arizona and a June 22, 2004 job offer letter for a "Research Technician" position at the University of Arizona paying an annual salary of $32,300.

showing that his salary was significantly high in relation to other researchers in his field, such documentation would satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ix). In this instance, however, the wage data submitted by the petitioner reflects a Level 4 Wage for a Medical Scientist in Tucson, Arizona amounting to "$81,224 year." We note that this amount is significantly above the salary level commanded by the petitioner at the University of Arizona.

On August 7, 2006, the director of the California Service Center revoked the approval of the petition based on the petitioner's failure to satisfy at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). For reasons to be addressed below, we concur with the director's findings that "the petition was approved in error" and that the petitioner's evidence is not sufficient to demonstrate that he qualifies for classification as an alien of extraordinary ability.

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 into 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.

At the time of filing, the petitioner was working as a "research associate" in the Scott Department of Urology at the Baylor College of Medicine in Houston, Texas. 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, internationally recognized award). Barring the alien's receipt of such an award, the

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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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 petitioner has submitted evidence pertaining to the following criteria.

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

A document submitted with the petition entitled "DOCUMENTATION FOR E11 ALIEN WITH EXTRAORDINARY ABILITY" identifies the petitioner's "Curriculum Vitae" and Biographical Sketch as evidence for this criterion. The petitioner's Curriculum Vitae listed the following items under the heading "AWARDS, HONORS AND SCHOLARSHIPS."

1982:	H. Narasimiah Medal in Chemistry
1982 – 1987:	National Merit Scholarship – Academic Excellence (Government of India)
1987:	Departmental Honors – Community Medicine (Bangalore Medical College)
1994 – 1995:	Pre-doctoral Fellowship (University of Texas Medical Branch)
1994	Student award for outstanding poster presentation (South Dakota State University)
1998	Finalist: Outstanding poster presentation (Sixteenth Annual Neurotrauma Symposium)

The record includes no documentary evidence establishing the petitioner's receipt of the preceding awards. A mere listing of awards prepared by the petitioner fails to satisfy the "extensive documentation" requirement set forth in section 203(b)(1)(A)(i) of the Act. The self-serving information contained in the petitioner's Curriculum Vitae and Biographical Sketch is not authenticated by the awarding entities and thus has no evidentiary value. 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)). Thus, we cannot accept the preceding self-serving list as evidence for this criterion.

The director correctly concluded that the petitioner had not established that these accomplishments constituted receipt of lesser nationally or internationally recognized prizes or awards. The director's August 7, 2006 notice of revocation stated: "In respect to the awards from the universities and other learning institutions, [CIS] views evidence of various academic awards presented to a student or scholar as honors and are not [sic] nationally or internationally recognized prizes, but are limited to the individual school or institution making the awards."

Regarding the H. Narasimiah Medal in Chemistry,[2] the National Merit Scholarship for Academic Excellence from the Government of India, the Departmental Honors from Bangalore Medical College, the Pre-doctoral Fellowship at the University of Texas Medical Branch,[3] and the student award for outstanding poster presentation (South Dakota State University),[4] notwithstanding the petitioner's failure to submit primary evidence of his receipt of these awards, we note that such awards were limited by their terms to students who had yet to begin their research careers and thus they excluded experienced professionals from consideration. University or high school study is not a field of endeavor, but rather preparation and training for future employment in a field of endeavor. The petitioner cannot artificially restrict his field to exclude all those scientists and physicians who have long since completed their academic studies and training and therefore do not compete for student honors, scholarships, and fellowships. There is no evidence showing that the petitioner faced competition from throughout his field, rather than his approximate age group within that field. We find that the petitioner's receipt of awards limited to students is not consistent with sustained national or international acclaim as one who has reached the "very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). These awards do not constitute nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

In regard to the petitioner being declared a "finalist" for an outstanding poster presentation award at the Sixteenth Annual Neurotrauma Symposium, there is no evidence that he ultimately won a prize or award at this symposium. While it is certainly recognition of one's talents to be selected as a finalist, the plain language of this criterion clearly requires the receipt of nationally or internationally recognized prizes or awards. Nor is there evidence showing that outstanding poster presentation awards at this symposium were nationally or internationally recognized.

The petitioner also argues that his submission of an "Editorial Comment" appearing on page 967 of the April 2000 issue of *Stroke* meets this criterion. The editorial comment, which appears at the conclusion of an article coauthored by the petitioner in the April 2000 issue, does not constitute receipt of a "prize or award" for excellence in the medical research field. Further, while the Editorial Comment identifies the first author of the article, [redacted], the petitioner's name is not specifically mentioned. Nevertheless, we find that the editorial comment in *Stroke* is far more relevant to the "published material about the alien" criterion at 8 C.F.R. § 204.5(h)(3)(iii) and will be further addressed there.

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

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

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[2] The petitioner was age sixteen when he received this student award.

[3] The petitioner pursued a Master of Science degree in Microbiology at the University of Texas Medical Branch from 1994 to 1995.

[4] According to his curriculum vitae, the petitioner was employed as a "Laboratory Assistant" at South Dakota State University in 1994. An award bestowed by one's immediate employer is evidence of internal recognition rather than national or international recognition.

The petitioner submitted photocopies of his membership cards for the Society of Critical Care Medicine (SCCM) and the National Neurotrauma Society (NNS). While the record includes documentation printed from the internet websites of the SCCM and the NNS containing general information about these societies, there is no evidence of their membership bylaws or official admission requirements showing that they require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field. The director's May 10, 2006 notice of intent to revoke stated:

> [T]he record contains no supportive evidence indicating that there are set rules for membership including rigid standards to join. There is no documentation provided to show that inclusion in the membership of these associations, or organizations is limited to individuals who have extraordinary achievement in their field of endeavor.

On appeal, counsel argues that "the associations themselves indicate by name the basic membership requirements (*i.e.* – National Neurotrauma Society, the Society of Critical Care Medicine, the Society for Neuroscience, American Society for Neurochemistry, the Indian Medical Association)." Contrary to counsel's claim, we cannot infer from the names of these societies that their "basic membership requirements" call for outstanding achievement. We note that the petitioner bears the burden of establishing that his evidence meets this criterion. *See* Section 291 of the Act. Further, the petitioner has not submitted his membership credentials for American Society for Neurochemistry (ASN) or the Indian Medical Association. Without documentary evidence to support the petitioner's claim of membership in the latter two organizations, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In regard to counsel's assertion that the petitioner was a member of the ASN, we find that this claim is contradicted by a registration form submitted by the petitioner for the Society's 30th Annual Meeting (March 13 –17, 1999) in which the petitioner registered for the meeting as a "non-member" of the Society, paying a higher fee than that assessed to members of the ASN.

In this case, there is no evidence showing that membership in the preceding associations required outstanding achievements, as judged by recognized national or international experts in the petitioner's field.

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

> *Published material 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.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media.

The petitioner submitted an "Editorial Comment" that appeared at the conclusion of an article authored by the petitioner and three others in the April 2000 issue of *Stroke* entitled "Regional Cerebral Blood Flow After Cortical Impact Injury Complicated by a Secondary Insult in Rats." The 12-sentence Editorial Comment names only [redacted] the first author of the preceding article. The petitioner's evidence also included material

(marked "Exhibit I" of the initial submission) described by counsel as publications "evidencing the importance of [the petitioner's] work in the field and in the United States." The preceding Editorial Comment in *Stroke* and the "Exhibit I" publications, however, do not mention the petitioner's name, nor are they about him. The plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(iii) requires "published material about the alien." If the petitioner is not the primary subject of the material or his name is not specifically identified in the material, then the petitioner will not meet this criterion.

The petitioner also submitted four pages printed from an internet citation database (Web of Science) indicating that throughout his research career his published work has been referenced an aggregate of 12 times.[5] As discussed previously, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be about the petitioner. Without copies of the actual research articles, the petitioner cannot establish that the articles identified in the citation indices were primarily about him or favorable in nature. With regard to this criterion, a footnoted reference to the alien's work without evaluation is of minimal probative value. We note here that research articles citing the petitioner's work are primarily about the author's work, not the footnoted material identifying the petitioner. In the petitioner's field, it is the nature of research work to build upon work that has gone before. In some instances, prior work is expanded upon or supported. In other instances, prior work is superseded by the findings in current research work. In either case, the current researcher normally cites the work of the prior researchers. Citations of this type do not discuss the merits of an individual's work, the individual's standing in the field, any significant impact that his or her work has had on work in the field, or other aspects of the individual's work consistent with his or her sustained national or international acclaim. Citations of the petitioner's work are more relevant to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi) and will be further addressed later in this decision.

The director correctly concluded that the published material in which petitioner's name did not appear and the 12 citations of his work were not adequate to satisfy this criterion. The director's notice of revocation stated that the petitioner was unable to establish eligibility for this criterion simply by establishing that his work has been "cited in print."

On appeal and in response to director's notice of intent to revoke, counsel cites a July 30, 1992 correspondence memorandum from [redacted], Acting Assistant Commissioner, to the then Director of the Nebraska Service Center, [redacted] discussing what constitutes "solid evidence" for aliens seeking extraordinary ability classification. [redacted] issued his correspondence memorandum in response to an inquiry from Mr. [redacted] and makes clear that he is discussing his personal inclinations. Moreover, correspondence memoranda issued to a single individual do not constitute official CIS policy and will not be considered as such in the adjudication of petitions or applications. Although the correspondence may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer's analysis of an issue. *See* Memorandum from [redacted] Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).[6]

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[5] Four pages of citation results were submitted, but the first and fourth pages submitted by the petitioner provided duplicate information.

[6] Although this memorandum principally addresses letters from the Office of Adjudications to the public, the memorandum specifies that letters written by any CIS employee do not constitute official CIS policy. We further note that in his inquiry to [redacted] questioned whether citations were published material

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.*

The document submitted with the petition entitled "DOCUMENTATION FOR E11 ALIEN WITH EXTRAORDINARY ABILITY" identifies the petitioner's "Curriculum Vitae and Education Documents" as evidence for this criterion. Nothing in these documents indicates that the petitioner has participated, either individually or on a panel, as a judge of the work of others in his field.[7] Further, the self-serving information contained in the petitioner's curriculum vitae has no evidentiary value. As stated previously, 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. at 158, 165 (citing *Matter of Treasure Craft of California,* 14 I&N Dec. at 190).

On appeal, counsel states: "The fourth criterion requested evidence of [the petitioner's] participation as the judge of others work, for which he submitted evidence of his participation as such at various symposia." We accept that the petitioner attended and presented his work at various symposia, but there is no evidence in the record that he participated, either individually or on a panel, as a judge of the work of others at these symposia. As stated previously, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

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about the cited author. In his response, [redacted] unequivocally states that "a footnoted reference to the alien's work without evaluation . . . would be of little or no value." [redacted] goes on to state that "entries (particularly a goodly number) in a citation index which cite the alien's work as authoritative in the field . . . would more than likely be solid pieces of evidence." [redacted] does not, however, identify the criterion to which this evidence would relate. We concur with [redacted] that a "goodly number" of citations is solid evidence worth consideration. We find, however, that this evidence is of significance to one of the other criteria for which Mr. [redacted] pressed concern; namely, authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). Nothing in Mr. [redacted] response indicates that citations of an individual's work are relevant to the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

[7] Regarding the section of the petitioner's Curriculum Vitae entitled "SUPERVISING RESPONSIBILITIES," we do not find that "supervising" one's subordinates is tantamount to "judging" the work of others in one's field for purposes of this criterion. Duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself, or in a substantial proportion of positions within that occupation. The petitioner submitted no evidence that he has judged the work of other researchers in a manner significantly outside the general duties of his position and reflective of national or international acclaim. For example, there is no evidence to demonstrate that the petitioner has formally judged the work of established researchers (such as tenured professors) who have long since completed their graduate studies and postdoctoral training. The petitioner's involvement in supervising others in his workplace is not indicative of national or international acclaim and does not fulfill this criterion.

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

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

The document submitted with the petition entitled "DOCUMENTATION FOR E11 ALIEN WITH EXTRAORDINARY ABILITY" asserts that the petitioner meets this criterion through his curriculum vitae, educational credentials, attendance and presentations at various symposia, requests for reprints of his research articles, citations of his work, and an October 25, 2001 letter of recommendation from [redacted] Assistant Professor of Urology, Baylor College of Medicine. In regard to the petitioner's educational credentials and curriculum vitae, we find that these documents bear no relevance to this criterion. As will be discussed below, the director reasonably concluded that the petitioner's evidence for this criterion did not demonstrate that his contributions were of major significance to his field and consistent with sustained national or international acclaim.

The letter of recommendation from [redacted] states:

> I have had ample opportunity to observe [the petitioner's] work in the 18 months he has been with our research lab. . . . I am responsible for the supervision and daily functioning of the Prostate Cancer Research Labs of [redacted].
>
> * * *
>
> [The petitioner] received his M.D. degree in 1991 from Bangalore Medical College, a premier medical institution India [sic]. He graduated with High Honors and ranked among the top in his class. He then entered the graduate education program in Microbiology and Immunology at University of Texas Medical Branch in Galveston, TX. A year later he transferred to Baylor College of Medicine and has gained substantial clinical research experience studying the effects of secondary ischemia following traumatic brain injury. His work in this area has been published in several peer reviewed national journals.

[redacted] credits the petitioner with publishing his work in peer reviewed national journals. The petitioner's published work, however, relates to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi), a criterion that we find the evidence in this case minimally satisfies. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, CIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. We will fully address the research articles coauthored by the petitioner under the next criterion.

[redacted] further states:

> [The petitioner] is a research associate in the lab where he has been studying animal models for prostate cancer. He is also responsible for coordinating the use of animals in the numerous research

> projects we have ongoing. We maintain a daily census of over 2000 mice and it his responsibility to interact with the veterinary medical unit staff and maintain the health and well being of the animals. He has a major responsibility for animal husbandry and ensuring that the various strains of mice that we use maintain their genetic integrity. He ensures that the transgenic strains of mice which are identical in appearance are the appropriate genotype. [The petitioner] has also significantly refined an animal model for prostate cancer that has been used by [redacted] for the past thirteen years. This model, the mouse prostate reconstitution model, had previously required the use of urogenital sinus tissue from multiple embryos, however, because of [the petitioner's] highly proficient skill and insight this model has now been enhanced to the stage where only one urogenital sinus is required. This was a major advancement because it makes possible the screening of many different type [sic] of genetic alterations for their impact on prostate cancer. These studies were proposed by us over five years ago as part of an NIH grant application but it was not until [the petitioner] arrived and worked out the details that we achieved success. This achievement played a major part in our ability to renew this NIH grant last November.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or published research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge, improves procedures within his laboratory, or assists his superiors in obtaining a research grant has inherently made a contribution of major significance to the field as a whole. 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. While [redacted] letter credits the petitioner with enhancing the mouse prostate reconstitution model used by [redacted] laboratory, there is no supporting evidence that this refinement constitutes a contribution of major significance in his field consistent with sustained national or international acclaim.

[redacted] concludes by stating:

> I am confident [the petitioner] will publish an important paper detailing these studies upon completion of the molecular analysis of the tumors and cell lines which arose from these studies. The studies should provide additional insight into the role of transforming growth factor beta and p53 in prostate cancer and perhaps provide a linkage between these and the role of androgens in the progression of prostate cancer. Each of these factors plays an important role in human prostate cancer and [the petitioner's] work could help determine which patients with prostate cancers will benefit the most from androgen ablation therapy.

Regarding [redacted] expectation that the petitioner "will publish an important paper" detailing his studies at some unspecified future time and [redacted] observations regarding the possible future implications of the petitioner's work, we note that the petitioner must demonstrate his eligibility at the time of filing. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Individuals seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. There is no

evidence, for example, of clinical trials or health data showing that the petitioner's work has been successfully introduced to the general public or other evidence showing that it has had a substantial impact in the field to such an extent that it qualifies as an original contribution of major significance.

With regard to the personal recommendation of the petitioner's former research supervisor, the source of this recommendation is a highly relevant consideration. This letter is not first-hand evidence that the petitioner has sustained acclaim outside of his workplace. While such a letter is useful in detailing the nature of the petitioner's work, letters from independent experts who have been influenced by the petitioner's work are more persuasive evidence of the significance of his work to the greater field. The statutory requirement that an alien have "sustained national or international acclaim" necessitates evidence of recognition beyond one's immediate superiors. *See* section 203(b)(1)(A)(i) of the Act. The opinion of [redacted] 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 795-96. Thus, the content of the Dr. [redacted]-statements and how he became aware of the petitioner's work are important considerations. In view of the foregoing, the letter from [redacted]e is not adequate to establish that the petitioner's research findings rise to the level of a contribution of major significance in his field.

The petitioner also submitted evidence showing that he authored abstracts for presentation at scientific conferences such as those sponsored by the American Urological Association and the American Society for Neurochemistry. The petitioner's conference presentations, however, appear more relevant to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi), a criterion that we find the evidence in this case minimally satisfies. For example, the petitioner submitted a March 2, 2001 e-mail message discussing the 2001 Annual Meeting of the American Urological Association that twice refers to those giving poster presentations as "authors." Nevertheless, in the fields of science and medicine, we find that acclaim is generally not established by the mere act of presenting one's work at a symposium along with scores of other participants. The record includes no documentation demonstrating that the presentation of one's work is unusual in the petitioner's field or that the invitation to present at conferences where the petitioner gave poster presentations was a privilege extended to only a few top scientists or researchers. In addressing the petitioner's evidence, the director's notice of intent to revoke correctly noted that "many professional fields regularly hold conferences and symposiums to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies." Participation in such events, however, does not elevate the petitioner above almost all others in his field at the national or international level. The record includes no evidence showing, for example, that the petitioner's presentations had significantly higher rates of attendance when compared to those of the other conference participants or that the petitioner has served as a keynote speaker at a national science or medical conference.

The petitioner also submitted correspondence reflecting an aggregate of fourteen reprint requests for his articles. Requests for reprints do not indicate that the person requesting the reprint has already read and

evaluated the article. Therefore, such requests are not adequate to establish that the petitioner's research findings rise to the level of a contribution of major significance in his field.

As previously discussed, the petitioner submitted Web of Science search results showing that throughout his research career his body of work has been referenced an aggregate of only 12 times. When evaluating the impact of the petitioner's research articles, we find that a citation history is a reliable gauge for determining the significance of his published work to the greater field. Numerous independent citations would provide solid evidence that other researchers have been influenced by the petitioner's work and are familiar with it. On the other hand, few citations of an alien's work may indicate that his work has gone largely unnoticed by the greater field and has not been recognized as a contribution of major significance. In this case, the limited number of cites to the petitioner's body of work is not adequate to demonstrate that his research has risen to the level of a contribution of major significance in his field.

Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed throughout his field, we cannot conclude that his work rises to the level of contributions of major significance. As such, 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 submitted evidence of his coauthorship of symposia abstracts and articles appearing in publications such as *Journal of Neurotrauma*, *Journal of Neurochemistry*, and *Stroke*. As previously discussed, the petitioner also submitted information printed from an internet citation database (Web of Science) indicating that throughout his research career his published work has been referenced an aggregate of 12 times. While these citations demonstrate a small measure of interest in the petitioner's published research, it has not been shown that his publication record and citation history elevate him to the very top of his field or that his published research findings have earned him sustained national or international acclaim. Although we find that the petitioner minimally satisfies this criterion and therefore withdraw the director's findings for this criterion, we note that the weight of the petitioner's evidence is diminished by the fact that publication is an inherent duty of scientific researchers and by the limited number of cites to his body of work.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment. We concur with the director's finding that the record lacks evidence "that the petitioner has played an especially significant role" in his research positions.

We find that the petitioner submitted sufficient documentation to establish that Baylor College of Medicine has a distinguished reputation. At issue is the nature of the position the petitioner was hired to fill and its importance to the success of Baylor College of Medicine. The October 21, 2001 letter from [redacted] states: "I am responsible for the supervision and daily functioning of the Prostate Cancer Research Labs of Dr.

[redacted] The labs consist of three faculty, six senior level researchers, eight post-doctoral fellow[s], four technicians and a secretary." [redacted] letter does not indicate which of the preceding categories the petitioner's "research associate" position falls under, nor does it state that the petitioner performed in a "leading or critical role" for the college beyond the immediate research projects to which he was assigned. In this instance, we cannot conclude that the petitioner's subordinate research position at Baylor College of Medicine was tantamount to a leading or critical role for the college as a whole. There is no evidence showing that the petitioner's role was of significantly greater importance than that of the other researchers employed by Baylor Medical College (including tenured professors such as [redacted] and [redacted]

The petitioner failed to submit confirmation of his "leading or critical role" from any officials from the other organizations who employed him prior to the petition's filing date. The record lacks evidence demonstrating how the petitioner's role differentiated him from other workers holding similar appointments, let alone more senior employees in those organizations. Thus, we find that the petitioner has not established that he was responsible for his past employers' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

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

In this case, the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability. The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor or as a researcher who has earned sustained national or international acclaim. As such, the director noted both in the May 10, 2006 notice of intent to revoke and the August 7, 2006 notice of revocation that the petitioner "is not qualified for the immigrant classification sought and that the petition was approved in error." We regret that more than four years had elapsed between the erroneous approval and the revocation (the record offers no explanation for this delay). Nevertheless, section 205 of the Act specifically allows for revocation "at any time," and the pertinent regulations are silent as to the issue of elapsed time.

On appeal, counsel states:

> The NOIR [notice of intent to revoke] and the subsequent revocation failed to establish "good and sufficient cause" under *Estime* and *Ho*. Unlike in *Ho* and *Estime*, there was nothing in the record indicating any derogatory information that would cause the Director of the CSC [California Service Center] to view the evidence previously found to be satisfactory in a different light. There was no investigatory report or other information that would have provided good or sufficient cause to reevaluate

[8] Information appearing atop the "Biographical Sketch" document submitted by the petitioner identifies Dr. [redacted] as a "Principal Investigator" and "Program Director." We note that the achievements of Dr. [redacted] and [redacted] indicate that the top of the petitioner's field is a level above his own level of achievement.

> whether the evidence previously deemed satisfactory should be readjudicated. Furthermore, in *Ho*, which involved an adoption, and *Estime*, which was marriage based, the visa petitions were revoked after questions arose regarding whether objective evidence of eligibility has been established. Here, the second adjudicator at the CSC readjudicated a discretionary determination of eligibility previously made by the adjudicator at the TSC [Texas Service Center] simply by subjectively providing different weight to the exact documentary evidence that is part of the record. . . . While it is clear that *Ho* allows for a District Director's realization that a visa petition was erroneously approved, *Ho* makes equally clear that an explanation and logical nexus as to why a previously approved visa petition was readjudicated must be provided.

In the present case, we find that the decision to revoke the approval was based on a lack of objective evidence establishing eligibility for the classification sought. As previously discussed in this decision and in the director's notices, the petitioner failed to submit objective evidence establishing his eligibility under at least three of the regulatory criteria set forth in the regulation at 8 C.F.R. § 204.5(h)(3). Contrary to counsel's observations, the director's notices did provide ample explanation for revocation of the approval of the petition. The director's notice of intent to revoke and notice of revocation both stated that the "USCIS District Office in Phoenix, Arizona conducted an interview with the self-petitioner, in order to verify information submitted in support of the immigrant classification sought. At the time of interview it was determined by the interviewing officer that the [petitioner] is not qualified for the immigrant classification sought and that the petition was approved in error." The director's notices then discussed the petitioner's failure to satisfy the regulatory criteria required for classification as an alien of extraordinary ability. By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *See Matter of Ho*, 19 I&N Dec. at 590. Upon finding that the petitioner had not met at least three of the regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3), the director had essentially no choice but to revoke the erroneous approval of the petition. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 589.

Counsel further argues that the "remedial and ameliorative intent of AC21 should be applied to the instant case." As a result of the American Competitiveness in the Twenty-First Century Act of 2000 (AC21), Public Law 106-313, the Immigration and Nationality Act was amended to include the following section:

Section 204(j) of the Act states:

> Job Flexibility for Long Delayed Applicants for Adjustment of Status to Permanent Residence – A petition under subsection (a)(1)(D) [since redesignated section 204(a)(1)(F) of the Act] for an individual whose application for adjustment of status pursuant to section 245 has been filed and remained unadjudicated for 180 days or more shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed.

Section 204(a)(1)(F) of the Act states: "Any employer desiring and intending to employ within the United States an alien entitled to classification under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) may file a petition . . . for such classification."

In the present case, the petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Act, therefore, pursuant to section 204(a)(1)(F) of the Act, the provisions of AC21 do not apply to the petitioner. Further, the petitioner's failure to satisfy the regulatory criteria at 8 C.F.R. § 204.5(h)(3), rather than a change of jobs or employment, served as the basis for revocation.

Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A)(i) of the Act and the petition may not be approved.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The burden remains with the petitioner in revocation proceedings to establish eligibility for the benefit sought under the immigration laws. *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); *Matter of Estime*, 19 I&N Dec. at 452 n.1; *Matter of Ho*, 19 I&N Dec. at 589. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.