U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: APR 13 2009

LIN 07 025 52523

IN RE: Petitioner:
Beneficiary: [redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office 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 that the petitioner had not established the sustained national or international acclaim required for classification as an alien of extraordinary ability.

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

> (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.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. 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).

In this case, the petitioner seeks classification as an alien with extraordinary ability in the sciences, specifically as a postdoctoral fellow in genetics research. The petitioner initially submitted articles authored by the petitioner, his diplomas, an invitation to submit an article and evidence of the petitioner's acceptance, articles citing the petitioner's articles, and six letters of recommendation. In response to a Request for Evidence ("RFE") dated November 15, 2007, the petitioner submitted a citation list for his publications, information about the publications in which his articles appeared, and two letters of recommendation. On appeal, the petitioner submitted a list of works citing his publications, an article he co-authored, an article discussing his research, information about the laboratory in which he works, and one letter of recommendation.

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

Although counsel claims for the first time on appeal that the petitioner is eligible under this criterion, he provides no reasoning or documentation to support his claim. Upon review of the record, we find no evidence to document the petitioner's receipt of any prizes or awards. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). As such, the petitioner has failed to demonstrate his eligibility under this criterion.

(ii) 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.

Again, counsel, for the first time on appeal, claims that the petitioner is eligible under this criterion. However, he fails to provide any reasoning to support his claim and no evidence of the petitioner's membership in any associations. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. at 188-89 n.6; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503. Accordingly, the petitioner has failed to establish that he meets this criterion.

(iii) 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 regulation, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.[1]

Again, counsel claims that the petitioner is eligible under this criterion, but submits no supporting information about his claims. Without documentary evidence to support the claim, 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).

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[1] Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

The only references to the petitioner in published material that we find in the record are the materials authored by the petitioner and other articles that cite the petitioner's work. The articles authored by the petitioner are more relevant to the criteria under 8 C.F.R. § 204.5(h)(3)(v) and will be further addressed later in this decision.

Articles citing the petitioner's work are primarily about the authors' work. Even where the petitioner's work was specifically discussed instead of merely footnoted such as in the article entitled "SILencing misbehaving proteins" that appeared in *Nature Genetics*, the petitioner's work was mentioned only in one sentence and footnoted. With regard to this criterion, a brief reference to the alien's work does not meet the requirement that the material be about the alien. Further, we note that this article referenced ten other articles and their corresponding authors. The submitted citations to the petitioner's work do not discuss the merits of his work, his standing in the field, or any other aspects of his work to make the overall article about the petitioner as opposed to being about other scientific findings. As previously indicated, the citations of the petitioner's work are more relevant to the criteria at 8 C.F.R. § 204.5(h)(3)(v) and (vi) and will be further addressed later in this decision.

Accordingly, the petitioner has not demonstrated eligibility under this criterion.

> *(iv) 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.*

Again, counsel on appeal claims that the petitioner is eligible under this criterion, but provides no reasoning to support his claim. The only evidence in the record relating to this criterion is an invitation from *Current Opinion in Cell Biology* to contribute an article focusing "on, at most, 30 interesting and relevant articles published recently in the field." We cannot ignore that this sort of invitation is routinely issued by scientific journals. Thus, peer review is routine in the field and 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 through a single invitation to contribute an article discussing other articles. Lastly, we note that a petitioner must establish eligibility at the time of filing. The record does not demonstrate that petitioner actually submitted any article written pursuant to this request. A petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Accordingly, the petitioner has not demonstrated eligibility under this criterion.

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

While letters of recommendation provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of

major contributions that one would expect of an alien who has achieved sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

An August 25, 2006 letter from [redacted], instructor in neurology at the Harvard Medical School, states that the petitioner's "discoveries in [the field of neurodegenerative diseases] have had, and could continue to have monumental significance for our understanding of the basic biological processes of neurodegeneration, and may eventually result in the development of new therapies for neurodegenerative diseases." [redacted] continued: "[the petitioner] has skills and abilities that in combination are virtually unique, which enable him to perform research that others cannot do." A July 27, 2006 letter from [redacted], professor of anatomy and neurobiology at the University of Tennessee Health Science Center, states that the petitioner's research may lead to the development of new therapies to treat neurodegenerative diseases. [redacted] chairman of the department of biochemistry at the Medical College of Wisconsin, wrote in a May 11, 2006 letter that the petitioner's work in his laboratory as a graduate student provided insight into "the primary genetic defects leading to diseases [which] is essential for the use of gene therapy, or for the application of drug screens." Dr. [redacted] predicts that "[the petitioner] will become a leading scientist in the field of neurodegenerative diseases." The August 11, 2006 letter from [redacted] head of the laboratory at which the petitioner is currently employed, states that the petitioner "has showed creativity and a strong passion for science, demonstrating his great potential as a research scientist" and that the petitioner "is currently trying to solve a long-standing problem in neurodegenerative diseases research, the cell type specificity in neurodegeneration." These letters discuss what may, might, or could one day result from the petitioner's work, rather than how his past research already qualifies as a contribution of major significance in the field. As a petitioner must establish eligibility at the time of filing, a petitioner cannot file a petition under this classification based on the expectation of future eligibility. 8 C.F.R. §§ 103.2(b)(1),(12); *Matter of Katigbak*, 14 I. & N. Dec. at 49.

The July 17, 2006 letter from [redacted], associate professor of neurology at the Harvard Medical School, stated that the petitioner "is an outstanding researcher whose work, which is recognized nationally and internationally, has contributed significantly to our understanding of brain disease." The December 3, 2007 letter from [redacted] states that she does not know the petitioner personally, but instead learned of the petitioner through "his outstanding work in neurodegeneration . . . in 2005" and that the petitioner "currently is working on an extremely important and ambitious project . . . [which i]f he succeeds, . . . could dramatically change the direction of research on neurodegeneration." The December 12, 2007 letter from [redacted] states that the petitioner's work "highlights a crucial progress on the understanding of the mechanisms of neurodegeneration." A December 30, 2007 letter from Heather Harding, assistant professor at the New York University School of Medicine, states that "[the petitioner] is one of the most promising and accomplished young scientists in the field of neurodegenerative diseases" whose previous paper "pointed out crucial and previously unknown connections between endoplasmic reticulum functions and neurodegeneration." That paper "opened a new avenue for studying the mechanisms of neurodegenerative diseases."

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 postdoctoral 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 has inherently made a contribution of major significance to the field as a whole. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While these letters discuss the value of his work, there is no evidence that it constitutes an original contribution of major significance in his field consistent with sustained national or

international acclaim. Without evidence showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of contributions of major significance, we cannot conclude that he meets this criterion. The letters from the petitioner's colleagues indicates that his research may lead to further breakthroughs as a building block for further research but that the research done thus far has not significantly impacted the field.

For all of the above stated reasons, the petitioner has not demonstrated eligibility under this criterion.

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

The petitioner provided evidence of four peer reviewed articles: "Erf4p and Erf2p Form an Endoplasmic Reticulum-associated Complex Involved in the Plasma Membrane Localization of Yeast Ras Proteins" which appeared in *The Journal of Biological Chemistry* in December 2002 and on which the petitioner was the lead author; "Palmitoylation and Plasma Membrane Localization of Ras2p by a Nonclassical Trafficking Patway in *Saccharomyces cerevisiae*" which the petitioner co-authored and which appeared in *Molecular and Cellular Biology* in September 2003; "Protein accumulation and neurodegeneration in the woozy mutant mouse is caused by disruption of SIL1, a cochaperone of BiP" on which the petitioner was the lead author and which appeared in the September 2005 edition of *Nature Genetics*; and "Endoplasmic reticulum stress in health and disease" which appeared in the 2006 *Current Opinion in Cell Biology* and on which the petitioner served as lead author.

We note that authoring scholarly articles is inherent to the research field.[2] For this reason, we will evaluate a citation history or other evidence of the impact of the petitioner's articles when determining their significance to the field. For example, 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 or no citations of an alien's work may indicate that his work has gone largely unnoticed by his field. The record contains evidence that the petitioner's articles have been cited in 104 publications. Although the petitioner's work does seem to have been widely cited, the petitioner's number of publications pales in comparison to the authors of his letters of recommendations who authored "more than 30 high quality peer-reviewed science papers, many of which have been published on the very top scientific journals" [redacted] "over 60 peer-reviewed scientific papers and reviews" [redacted], "more than 50 papers" [redacted], and "more than 50 high profile peer-reviewed research papers" [redacted]. From this evidence, it seems that the top of the profession is at least a step above the level of the petitioner.

The information submitted about the publications in which the petitioner's articles appear consists solely of a self generated print-out entitled "Journal Impact Factors," which states that *The Journal of Biological Chemistry* is ranked 82 and has an impact factor of 7.385, *Molecular and Cellular Biology* is ranked 46 and has an impact

[2] The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition was the acknowledgement that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces USCIS's conclusion that publication of scholarly articles is not presumptive evidence of sustained national or international acclaim.

factor of 10.498, *Nature Genetics* has a rank of 9 and an impact factor of 28.543, and *Current Opinion in Cell Biology* has an impact factor of 15.246. The websites identified as the sources of this information are the Institut de Biologie Physico-Chimique, a journal entitled *Frontiers in Bioscience*, and *Sci-Bytes*. We note that the petitioner did not submit a print out of these websites or the names of the organizations that did the rankings, but instead provided only a link to the website. In addition, only the link for *Sci-Bytes* actually pulled up the information submitted; the other two provided links were not usable so that only the number 4 ranking for *Nature Genetics* could be verified. Even with proof that the first two websites actually did the rankings claimed, the petitioner submitted no evidence showing that any of these websites could be relied upon to accurately rank the publications.

The petitioner also submitted an article entitled "Introducing *Woozy*" which appeared in the Summer 2006 edition of *Marinesco Sjogren Syndrome News* and on which the petitioner was the lead author. The petitioner presented no evidence to show that this article is anything other than an internal publication for the laboratory at which the petitioner is employed. The petitioner submitted no evidence to show that this newsletter is a professional or major trade publication or other major media.

The petitioner also alleges eligibility under this criterion by virtue of his participation in the Cold Spring Harbor meeting. The petitioner, however, submitted no evidence as to the degree of his participation or what was presented, if anything. The July 17, 2006 letter from [redacted] states that the petitioner "presented his original research" at Cold Spring Harbor and other conferences and that Cold Spring Harbor is a conference "at which cutting edge scientific results are often first made known." However, no further information was submitted about the conference to establish its relevance to this criterion.

For all of the above reasons, the petitioner has not demonstrated eligibility under this criterion.

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

To meet this criterion, a petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization itself. Counsel claims that the petitioner is eligible under this criterion by virtue of his work with the Jackson Laboratory ("Laboratory"). On appeal, counsel submitted information about the Laboratory from the Laboratory's own website indicating that the Laboratory is "an independent, non-profit organization focusing on mammalian genetics research to advance human health." Information generated by the organization itself is insufficient to establish the organization's reputation even if the Laboratory's website had included any indication as to the reputation that it enjoys. The letter from Dr. [redacted] states that the Laboratory "is considered the top mouse genetics laboratory in the world." The letter from [redacted] states that the Laboratory is "one of the most renowned genetics research institutes in the world." No evidence was presented to support the assertions made in these letters of the petitioner's colleagues. As such, we are unable to conclude that the Laboratory enjoys a distinguished reputation

Even if the petitioner submitted evidence showing that the Laboratory enjoys a distinguished reputation, he failed to show that his role was leading or critical for the Laboratory. The subordinate role of postdoctoral researcher is designed to provide temporary research training for a future professional career in the field of endeavor. There is no evidence demonstrating how the petitioner's role differentiated him from the other

researchers in the departments where he worked, let alone more senior faculty. We note that the information submitted about the Laboratory lists faculty members according to specialty and that the petitioner's name is not included in this list. The August 11, 2006 letter from [redacted] states that the petitioner "has undertaken a few important research projects related to cerebellar neurodegeneration" and that he "is enormously valuable on his current research projects." [redacted] also stated that the Laboratory "received several requests from MSS researchers and other scientists for research collaborations based on this mouse model and [the petitioner's] work." [redacted] letters do not state that the petitioner plays a leading or critical role for the Laboratory, at which she is the senior staff scientist, and no documentation submitted by the petitioner establishes that he was responsible for the Laboratory's success or standing to a degree consistent with the meaning of "leading or critical role."

As such, the petitioner has not established that he meets this criterion.

On appeal, counsel claims that the petitioner was denied due process because of the quality of the decision issued by the Director. As with any claim of a violation of due process, a violation of an immigration regulation will not render a decision unlawful unless the violation prejudiced the interests of the alien protected by the regulation. *United States v. Rangel-Gonzales,* 617 F.2d 529, 530 (9th Cir. 1980). Furthermore, we note that in visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I. & N. Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I. & N. Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I. & N. Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I. & N. Dec. 151 (BIA 1965). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). Therefore, any due process violation would be remedied by *de novo* consideration on appeal. As we do not disagree with the Director's decision, no due process violation occurred at that level.

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). 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 a national or international level. 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 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.