U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: OCT 06 2009
WAC 07 271 51264

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:

SELF-REPRESENTED

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).

MDeadrick
for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner 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, the petitioner submits a statement and additional evidence. For the reasons discussed below, we uphold the director's ultimate conclusion that the petitioner has not demonstrated his eligibility for the exclusive classification sought. We reach this conclusion by evaluating the evidence under the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and in the aggregate.

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.

U.S. Citizenship and Immigration Services (USCIS) 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 (Nov. 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 beneficiary 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 chemist. 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 under 8 C.F.R. § 204.5(h)(3).[1]

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

After receiving his baccalaureate degree in pesticide chemistry, the petitioner worked as a research chemist/senior research chemist for the Chinese Institute for the Control of Agrochemicals, Ministry of Agriculture (ICAMA) from 1984 through December 1993 before pursuing his Master of Environmental Science. The petitioner submitted evidence purporting to document three awards issued to him in 1987, 1989 and 1990. In 1987, the Agricultural Bureau of the Ministry of Agriculture in China certified that the petitioner was a collaborator on a project awarded the third place Science and Technology Progress Prize by the Ministry. In 1991, the ICAMA certified that the petitioner contributed to the studies and establishments of the National Criteria of Guidelines for Safety Application of Pesticides, Volumes 1 and 2, which received the first place Science and Technology Progress Prize from the National Technological Supervision Bureau in 1989. Also in 1991, the ICAMA certified that the petitioner contributed to the same guidelines, which also received the second place National Science and Technology Development Prize in 1990. [redacted] of ICAMA asserts that the petitioner "was awarded" the above prizes in 1987, 1989 and 1990 and that the 1990 prize was issued by the Science and Technology Commission of China, which is not indicated on the certificate. The certificates themselves, however, especially those issued in 1991, appear to merely certify after the fact that the petitioner collaborated on award winning projects. The petitioner did not submit the actual award certificates from 1989 and 1990.

In response to the director's request for additional evidence, the petitioner submitted the Procedure for Evaluation of Science and Technology Achievements as established by the Science and Technology Commission of China and materials about the Ministry of Science and Technology and the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ). The Procedure for Evaluation of Science and Technology Achievements explain the format of review to be used in evaluating national science and technology projects, science and technology achievements applying for Science and Technology Awards and other science and technology achievements that should be evaluated according to local regulations. This document does not discuss the specific criteria for Science and Technology Progress or Development Awards or provide the number of awards issued in each class (first, second or third). The materials about the Ministry of Science and Technology and

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

AQSIQ do not address awards and, regardless, the petitioner's projects were not recognized by this Ministry or AQSIQ. Rather, the prizes referenced in the record were awarded by the Ministry of Agriculture, the National Technological Supervision Bureau and, according to the Science and Technology Commission.

The director concluded that the petitioner had not demonstrated that his awards were nationally or internationally recognized, noting that awards limited to employees of a single agency cannot serve to meet this criterion. On appeal, the petitioner asserts that the awards were not limited to employees of specific government ministries. The petitioner submits a new letter from affirming that the competitions for the above awards were open to all scientists nationwide and that the criteria used to select the recipients were based on the Procedure for Evaluation of Science and Technology Achievements.

The regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of the "alien's receipt" of qualifying awards or prizes. For the 1989 and 1990 awards, the petitioner did not submit the awards themselves, issued by the award granting entity. Rather, the petitioner submitted non-contemporaneous certification from his employer, ICAMA, that merely certifies his participation on a project recognized with awards from different government entities. The 1987 certificate is contemporaneous with the award and is from the entity that issued the third place award, the Ministry of Agriculture. The award, however, predates the filing of the petition by 20 years and, thus, is not indicative of *sustained* acclaim. Moreover, the record lacks evidence establishing the significance of this specific award, such as the number of first, second and third place awards are issued so as to establish that it is a nationally or internationally recognized award.

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.*

The petitioner submitted evidence of his membership in the American Chemical Society (ACS) and the American Society for Mass Spectrometry (ASMS). The petitioner also submitted promotional materials from ACS describing it as "the Most Prestigious Chemical Society in the World." In response to the director's request for the actual membership requirements for these societies, the petitioner submitted the bylaws for ACS specifying that members must meet education and experience requirements as minimal as a baccalaureate in a chemical science from an approved department or even an associate's degree plus five years of experience in a relevant field. The director concluded that the petitioner had not demonstrated that his memberships were qualifying. On appeal, the petitioner no longer claims to meet this criterion.

We are not persuaded that an undergraduate degree and/or experience are outstanding achievements in the petitioner's field. Thus, we uphold the director's finding that 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.*

The petitioner initially submitted evidence that his articles have been cited. In the request for additional evidence, the director advised that citations cannot serve to meet this criterion. In response, the petitioner noted that he had been cited in review articles, one of which postdates the filing of the petition. The director did not specifically address this criterion in the final decision other than to note that the petitioner had only been moderately cited. On appeal, the petitioner discusses the citations of his work but does not specifically assert that it serves to meet this criterion.

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published material "about the alien" relating to his work. The articles citing the petitioner's work are about the authors' own work or, in the case of review articles, about the latest research in the field generally. As stated above, one of the review articles submitted in response to the director's request for additional evidence postdates the filing of the petition and, thus, cannot establish his eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). The other article, by [redacted], cites the petitioner's 2006 article for the proposition that atmospheric pressure photoionization (APPI) is more sensitive and efficient than atmospheric pressure chemical ionization (APCI) and electrospray ionization (ESI). The petitioner's work is discussed in a single paragraph of this eight-page article. It cannot be credibly asserted that this article is about the petitioner relating to his work or even primarily about his work.

In light of the above, the citations cannot serve to meet the plain language of the criterion set forth at 8 C.F.R. § 204.5(h)(3)(iii). Thus, 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.*

Initially, the petitioner submitted a letter addressed to the petitioner as "Dr." certifying that he has served as a reviewer for *Analytical Chemistry*. The petitioner also submitted an electronic mail request to review a specific manuscript for this journal and a request to review a manuscript for *Rapid Communications in Mass Spectrometry*. Both requests are addressed to the petitioner as "Dr." The record does resolve why these journals appear to believe that the petitioner has a doctorate, which he has not documented. Rather, the highest academic credential in the record is a Master of Environmental Science. Finally, both requests ask that if the petitioner is unable to perform the reviews, he provide the names of one or two alternate reviewers with expertise in the area.

In response to the director's request for additional evidence, the petitioner submitted a letter from , an associate editor for *Analytical Chemistry* addressed to the petitioner as "Dr." advising that the journal assigns manuscripts to an associate editor, who requests comments from two reviewers who have expertise in the topic. continues that the journal has "developed an extensive database of potential reviewers who are chosen from the leading scientists in the world, and the associate editor uses that database in assigning reviewers for the manuscript." concludes that the journal's reviewers "are the top scientists in the field." The petitioner also submitted a letter from for *Rapid Communications in Mass Spectrometry.* asserts that he looks for "scientists with a high level of expertise and experience in mass spectrometry and in the application of mass spectrometry to solving problems in chemistry, biology, pharmacy and related sciences" in selecting reviewers who are ultimately "working at the highest level of the science of mass spectrometry." Finally, the petitioner submitted a 2008 invitation to "apply for" the Editor-in-Chief position with a new peer-reviewed journal, *Lipids Insights."*

The director concluded that peer review was routine in the field and that the petitioner had not demonstrated that his participation in the process set him apart from others in the field. On appeal, the petitioner notes the high impact of the journals for which he has served as a reviewer. The petitioner further asserts that it should be the "qualification and ability of reviewers" rather than the number of manuscripts reviewed. The petitioner concludes that while he receives a "dozen requests" to review manuscripts annually, he passed half of these on to his "staff or colleagues, or recommended reviewers to the editors."

The evidence submitted under this criterion, or any criterion, must be indicative of or consistent with sustained national or international acclaim.[2] While we do not question the sincerity of the petitioner's references, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Significantly, the references provide no specifics to justify their broad assertions, such as the number of reviewers utilized by the journal annually. The petitioner's assertion that time limits the number of reviews he can perform and, thus, that the number of reviews is not a useful measure of acclaim does not relieve the petitioner from providing some type of evidence that sets him apart from others in the field. The fact that the petitioner can "pass on" reviews to his staff and colleagues is consistent with our conclusion that participation in the peer review process is routine and does not set the petitioner apart from his staff and colleagues such that it is indicative of or consistent with national or international acclaim. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed manuscripts for a journal that credits a small, elite group of referees, 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.

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[2] *Accord Yasar v. DHS,* 2006 WL 778623 *9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.,* 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005). While we acknowledge that a district court's decision is not binding precedent, the decision underscores the fact that USCIS's interpretation is reasonable.

The invitation to apply for an editorial position postdates the filing of the petition and cannot be considered evidence of the petitioner's eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49. Moreover, the record contains no evidence regarding how many individuals received a similar invitation from this new journal with no established reputation. Finally, an invitation to apply for such a position does not carry the weight of actually serving in an editorial position or even an actual job offer for the position.

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 petitioner initially submitted several reference letters, scholarly articles and citations. In response to the director's request for additional evidence, the petitioner noted his invitation to apply for an Editor-in-Chief position with a new journal and to present his work at a 2008 conference that postdates the filing of the petition. The director concluded that the petitioner had not demonstrated that his work in the field constituted contributions of major significance. On appeal, the petitioner asserts that he is one of the most highly published scientists in APPI mass spectrometry, a "growing and influential field," that all of his articles have appeared in prestigious journals, that he has a 100 percent acceptance rate with the journals, that his reference letters are from the very top of the field and that other scientists have published their research results based on APPI PhotoMate technology.

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 Department of Labor's Occupational Outlook Handbook (OOH), available at http://www.bls.gov/oco/ocos049.htm#nature and accessed August 27, 2009 and incorporated into the record of proceedings, analytical chemists develop analytical techniques and identify the presence and concentration of pollutants in air, water and soil. 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 analytical chemistry, 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.

Significantly, the regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). We will not presume, however, that submitting evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria.

While we will consider the letters below, we note at the outset 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. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

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.

As stated above, the petitioner received this baccalaureate in pesticide chemistry in 1984. He then worked as research chemist/senior research chemist for ICAMA through 1993. The petitioner then attended Washington State University where he obtained his Master of Environmental Science in 1996. Subsequently, the petitioner worked as a senior application chemist for MultiChem Analytical Services in Washington through 1999. In 2000, the petitioner began working as a quality assurance/quality control chemist at AXYS Analytical Services in British Columbia. In 2001, the petitioner moved to a research analytical chemist at the Canadian Institute of Ocean Sciences, Fisheries and Oceans. As of the date of filing, the petitioner was working as an applications chemist/applications scientist for Syagen Technology.

asserts that at ICAMA, the petitioner developed and validated pesticide residue analytical methods and studies of fate, transport and degradation of new pesticides. does not explain how the petitioner's methods represent an improvement over previous methods. According to , the petitioner's results "were used to establish Maximum Residue Limits (MRLs) for many new pesticides in crops, cereals, fruits, vegetables, solid and water based on acute and chronic toxicity and fate and degradation rates of these chemicals in the environment." explains that the MRLs were used to evaluate and register new pesticides and for the Guidelines for Safety Applications of Pesticides in China. While the petitioner's results may have been "original" in that he assisted with the analysis of

new pesticides and the development of first-time guidelines, the record lacks evidence that the petitioner impacted evaluation methods for pesticides as opposed to merely producing original data from old or moderately updated methods.

, the petitioner's advisor at Washington State University, discusses the petitioner's work at that university. asserts that the petitioner "undertook an extremely difficult project involving the tracing of the movement of pesticides in the atmosphere." Specifically, according to Dr. , the petitioner discovered a tracer that lasted longer than previously used tracers and did not degrade in the environment, thus solving "one of the major problems associated with the study of atmospheric movement with tracers." explains that the petitioner then used his method to determine the risk that the application of pesticides posed to non-target organisms due to atmospheric drift. All research must be original and present some benefit if it is to receive funding or qualify the researcher for graduation or publication. does not explain how this work has impacted the study of atmospheric drift as a whole. For example, **does not identify any independent** researchers utilizing the petitioner's methodology.

r at MultiChem, asserts that the petitioner conducted analytical method research and development for the determination of environmental pollutants at that company. asserts that one of the petitioner's "more notable achievements was the development of an analytical technique for the determination of over eighty (80) toxic chemicals in marine sediment by gas chromatography/mass spectrometry (GC/MS) at ultra-trace concentrations." explains that the method was necessary to comply with Washington State sediment quality criteria programs. According to , the petitioner developed an accurate detection method whereas prior methods provided questionable data. Similarly, according to the petitioner developed a new method for analyzing PCBs in water at low limits, solving the limitations of prior methods. Finally, discusses the petitioner's ability to successfully complete a complex and challenging analysis involving PCB contamination that required the separate of over 200 PCB congeners. While the petitioner clearly fulfilled his job duties for MultiChem, does not provide examples of how this work has impacted the field beyond MultiChem.

Quality Assurance Manager for AXYS, asserts that the petitioner reviewed and validated the analytical results and data reports of colleague chemists and scientists for accuracy and soundness. does not explain how this work was "original" rather than reviewing the quality of work by others or how this work impacted the field beyond AXYS.

of the Regional Contaminants Laboratory at the Canadian Institute of Ocean Sciences, lists the petitioner's responsibilities at the institute but fails to provide examples of how the petitioner's work there has influenced the field such that it could be considered a contribution of major significance.

The remaining letters address the petitioner's work with at Syagen Technology. Dr. asserts that the petitioner has worked at Syagen for the past four years developing analytical

methods and applications using proprietary photoionization technology for analysis of a broad range of compounds including chemical warfare agents, pharmaceutical drugs, steroids, lipids and environmental pollutants. identifies four contributions by the petitioner. First, the petitioner developed analytical methods for high speed and high throughput screening of chemical weapons in drinking water using technology already developed by . further asserts that this work was published and that the instrument monitors water in Phoenix and Houston.

Second, according to the petitioner "became the first scientist in the world developing liquid chromatography/mass spectrometry (LC/MS) analytical methods for non-aqueous reversed-phase analysis of fatty acid esters and triglyceride lipids using patented technology," APPI. Dr. notes that he and the petitioner published the results of this work in four articles. does not assert that the petitioner developed original technology rather than demonstrate a use for technology developed and patented by

Third, according to , the petitioner "was also the first scientist to develop APPI based LC/MS methods for normal phase chiral analysis of pharmaceuticals." asserts that this work "reveals many advantages of APPI over the existing commonly used ionization techniques." concludes that this "pioneering work has opened up new applications and areas of research for other scientists, which is important in pharmacokinetics studies, lipidomics and biomedical research." While the petitioner's work was clearly useful for who patented APPI, does not explain how the petitioner's work validating technology developed by someone else is "original."

Finally, asserts that the petitioner is "a key scientist at developing field-portable high performance analytical instrument[s] for high-speed, real-time monitoring of chemical and biological warfare agents." notes that this work is funded by the U.S. Army and General Dynamics and was presented at conferences but does not explain how this work, at its current stage, constitutes a contribution of major significance.

The petitioner also submitted letters from collaborators and customers. Program Manager of project with the U.S. Army, asserts that the project's goal is to develop a high performance continuous monitoring system for chemical/biological detection. states that the petitioner is a key scientist on the project, greatly advancing the technology. notes that General Dynamics has signed a partnership agreement with and provided additional funding. concludes that outstanding achievements in the area of mass spectrometry are due in part to the petitioner's recent accomplishments.

a principal scientist at Waters Corporation, asserts that his company uses Syagen's patented APPI technology for liquid chromatography/mass spectrometry instruments. asserts that the petitioner "has conducted several crucial research projects using Waters Corporation LC/MS instrumentation that has greatly benefited the use based by providing important methods for analysis of pharmaceutical compounds and lipids." explains the importance of these instruments to the study of various disease conditions and asserts that the petitioner "was also the first

scientist to apply APPI technique for normal phase chiral analysis of pharmaceuticals." concludes that the petitioner's research has provided scientists with new techniques for analysis for sensitive and accurate analysis of certain compounds.

, an assocate research fellow at Pfizer Global, asserts that Pfizer commonly uses mass spectrometry technology. affirms that the petitioner's research work has helped Syagen maintain its leading position in developing APPI-LC/MS based analytical methods using the company proprietary technology.

an associate professor at the University of Alberta, Canada, asserts that he has known the petitioner for over two years and is familiar with Dr. credits with inventing APPI technology for liquid chromatography/mass spectrometry. asserts that the petitioner has been strongly involved at in developing technology that offers a new approach for the analysis of lipids, which speculates "is likely to be very important in the emerging field of lipodomics." also notes that the petitioner is working on a project with national defense implications. The petitioner provides a similar letter from Group Leader of the Department of Drug Metabolism and Pharmacokinetics at the Schering-Plough Research Institute.

On August 18, 2008, after the petition was filed, Chair of the Department of Chemistry at the University of Wuppertal, asserts that the petitioner was invited to give an oral presentation at the ASMS conference in Denver. We note that, according to their curriculum vitae, Dr. was previously a professor at the University of California during the time that served as a visiting lecturer at that institution. Regardless, the ASMS conference was in 2008, after the petition was filed. Thus, the presentation is not evidence of the petitioner's contributions of major significance as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49.

While the petitioner's research is no doubt of value with practical applications, 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. While the petitioner has benefited his employer through developing applications for technology invented by someone else, resulting in satisfied customers, the record contains little in the way of specific evidence to show what major improvements the petitioner has wrought in his field of endeavor. Thus, we are not persuaded that the petitioner 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.

As stated above, the evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim. The petitioner submitted several published articles. While publication alone may demonstrate national or international exposure, other evidence, such as citations, can demonstrate recognition of the alien's published work. The petitioner did submit evidence that his

articles, primarily those coauthored with who indicates on his curriculum vitae that he is listed as one of the most cited chemists of the last two decades, have been moderately cited. The director concluded that the record lacked evidence that the petitioner had been extensively cited.

On appeal, the petitioner relies on citations between August 2007 and August 2008, which postdate the filing of the petition. This evidence cannot be considered evidence of the petitioner's eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49. Even if we concluded that the petitioner's articles and moderate citation as of the date of filing serve to meet the plain language of this criterion, which we do not, the petitioner falls far short of meeting any other criterion.

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

The petitioner submitted letters from former employers attesting to the significance of the work the petitioner performed for his various employers. The director concluded that the petitioner was not listed as a primary investigator or key personnel on the grant applications and that the petitioner had not established that the job "applications chemist/applications scientist" was sufficiently critical or leading for

On appeal, the petitioner asserts that his absence from the research grants is due to his lack of permanent resident status and the fact that some of the applications predate his employment at The petitioner submits a new letter from asserting that is a small, elite company that would be "crippled" without the petitioner. further asserts that the petitioner is the top application scientist at and reports directly to

We have already considered the petitioner's contributions while working for above. At issue under this criterion is the nature of the role the petitioner was hired to fill. In other words, the nature of the role must be such that the very selection to fill that role is indicative of or consistent with national or international acclaim. does not provide an organizational chart or other evidence regarding the number of applications chemists at and how they fit within the company's hierarchy. Thus, we are not persuaded that the petitioner meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner initially submitted evidence of his current salary but no evidence as to how this wage compares with high level remuneration in the field. In response to the director's request for additional evidence, the petitioner stated that this criterion was not applicable. The petitioner does not address this criterion on appeal. We find that the record lacks evidence that the petitioner's salary is significantly high in relation to others in the field.

Finally, 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. The petitioner, an analytical chemist, relies on his work on award-winning projects that predate the completion of the petitioner's education and the filing of the petition by almost 20 years, moderate citation record as of the date of filing, participation in the peer review process, publications and the praise of his immediate circle of peers. is listed as one of the most highly cited chemists of the last two decades, served on the editorial advisory board of the *Journal of Physical Chemistry*, patented the APPI device that is in use in over 2000 instruments worldwide and has chaired conferences. is an editor of *MS – The Practical Art.* serves on several editorial boards and has served as an external reviewer for Ph.D. dissertations. Thus, the top of the petitioner's field is higher than the level he has attained.

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 an analytical chemist 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 an analytical chemist, 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 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.