

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2



FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAY 21 2010
SRC 08 195 52291

IN RE: Petitioner: [redacted]
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:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas 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.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel submits a brief and additional evidence, some of which was already part of the record. For the reasons discussed below, we uphold the director's ultimate conclusion that the petitioner has not established his eligibility for the exclusive classification sought.

Specifically, when we simply "count" the evidence submitted, the petitioner has submitted qualifying evidence under three of the regulatory criteria as required, judging the work of others, contributions of major significance and scholarly articles pursuant to 8 C.F.R. §§ 204.5(h)(3)(iv), (v) and (vi). As explained in our final merits determination,¹ however, much of the evidence that technically qualifies under two of these criteria reflects routine duties or accomplishments in the field that do not compare with the accomplishments of the most experienced and renowned members of the field. Thus, such evidence is not consistent with a finding that the petitioner, a postdoctoral researcher,² enjoys sustained national or international acclaim. As will be further discussed in our final merits determination, the accomplishments of the petitioner's references (thousands of citations, director of major institutions, election as a fellow of the American Physical Society, chair of major government working groups and recipients of several awards not limited to students) only reinforce our conclusion that the top of the petitioner's field is far higher than the level he has achieved. Ultimately, while the petitioner has authored one significant article that has garnered some attention in the field, he has not demonstrated a "career of acclaimed work in the field" as contemplated by Congress in the absence of a one-time achievement such as a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Finally, at the outset it is worth noting that in response to the director's notice of intent to deny the petition, counsel stated: "Without recognizing the extraordinary ability of researchers, like [the

¹ The legal authority for this two-step analysis will be discussed at length below.

² The petitioner's references list their own postdoctoral experience as part of their earliest employment experience in the field.

petitioner], and by relying on individuals hired through the labor certification process, [Los Alamos National Laboratory] would be forced to put the national security of the [United States] in the hands of individuals who are only minimally qualified for the job – a result no one would like to see." Other references affirm that the petitioner would be an asset to the United States. As will be discussed below, however, the petitioner has sought benefits under an exclusive classification expressly reserved for those who have achieved sustained national or international acclaim. Our decision for the classification sought in this matter is without prejudice to eligibility under a lesser classification and, thus, policy-based assertions on the importance of retaining scientists like the petitioner in the United States need not be considered.

I. Law

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

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

(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* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, internationally recognized award) or through the submission of qualifying evidence under at least three of the following ten categories of evidence.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (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;
- (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;
- (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 specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 2010 WL 725317 (9th Cir. March 4, 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.³ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

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

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at *6 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at *3.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under three criteria, considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria⁴

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

The director concluded that the petitioner's scholarships and best student poster award were academic awards rather than awards in the petitioner's field of endeavor under 8 C.F.R. § 204.5(h)(3)(i). Counsel does not challenge this conclusion on appeal. While the petitioner's student poster award is arguably an award in the petitioner's field of endeavor, the petitioner submitted no evidence that this award, which by its name appears to exclude the most experienced and renowned members of the field from consideration, is nationally or internationally *recognized*. For example, the record contains no evidence that the awardees receive notable coverage in the general or trade media. Thus, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(i).

⁴ The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

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 director concluded that the petitioner had not demonstrated that the associations of which he is a member, Phi Kappa Phi and Sigma Pi Sigma, require outstanding achievements of their general members. Counsel does not challenge this conclusion on appeal. Nevertheless, we will review the evidence.

Initially, counsel asserted that Phi Kappa Phi admits the top 10 percent of graduate students and that Sigma Phi Sigma admits the top third of undergraduate students who have completed three semester courses in physics that could lead to a physics major. 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). The Internet materials do not support these assertions. Moreover, they reveal that Phi Kappa Phi is not an association in the petitioner's field as required under 8 C.F.R. § 204.5(h)(3)(ii). Regardless, academic standing is not an outstanding achievement.

Moreover, the membership certificates reflect that the petitioner is a member of the Clemson University chapters of these associations. The record does not reflect that national or international experts in physics judge membership candidates for chapter membership as required under 8 C.F.R. § 204.5(h)(3)(ii). In light of the above, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(ii).

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

The petitioner has never claimed to have submitted evidence that qualifies under 8 C.F.R. § 204.5(h)(3)(iii). Nevertheless, the record contains press releases posted on websites, including the website of the institute sponsoring the petitioner's research, and an identically worded article posted at www.spacedaily.com and credited to "staff writers." While these press releases are about the petitioner's work, they are not about the petitioner relating to his work as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Compare 8 C.F.R. § 204.5(i)(3)(i)(C) (requiring evidence of published material about the alien's work). Moreover, the petitioner did not submit any evidence that these websites constitute professional or major trade publications or other major media as required under 8 C.F.R. § 204.5(h)(3)(iii). Thus, the petitioner has not submitted qualifying evidence under this regulation.

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 record reflects that the petitioner has refereed a single article for *Astronomy and Astrophysics* and, thus, as noted by counsel on appeal, meets the plain language requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(iv).

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

The petitioner's field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work.

The petitioner submitted eight articles and evidence of conference presentations. 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 that 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. The petitioner also initially submitted citations of his 2007 article on the thermal structure in the crust of a superbursting neutron star, some of which are from independent research teams.

██████████ at the Nicolaus Copernicus Astronomical Center in Poland, authored an article reconsidering his previous paper by "taking into account suppression of neutrino losses" as demonstrated by the petitioner. This information is provided upfront in the abstract of the paper. ██████████ also issued a second article using his previous 1990 model "updated by switching-off neutrino losses in the crust" pursuant to the petitioner's work. In a letter submitted with the petition, ██████████ explains that he knows of the petitioner's work from his publications. ██████████ continues that he uses the petitioner's research and cites his articles. ██████████ asserts that the petitioner's 2007 article is "impressive," "widely known and appreciated," "very important for the understanding of the nature of thermonuclear explosions" on neutron stars and "is and will remain 'influential' in the domain of nuclear astrophysics."

In response to the director's notice of intent to deny the petition, the petitioner submitted evidence that, as of the date of filing, his articles had been moderately cited. While the evidence reflects additional citations that postdate the date of filing, such evidence cannot be considered. More specifically, we cannot "consider facts that come into being only subsequent to the filing of a petition." *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Comm'r. 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981)). Rather, the petitioner must establish his acclaim as of the date of filing the petition. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

Counsel previously asserted that the citations provided do not constitute the "actual number of citations" because they do not include "citations in lectures and/or invited talks" and do not take into account multiple citations in a single article. Counsel concluded that the petitioner's "actual citation count" is in the "hundreds." 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). Moreover, counsel does not explain why the same factors would not apply to the other references who claim thousands of citations.

As stated above, the petitioner submitted press releases about the petitioner's 2007 article. The petitioner has not established the significance of an institution issuing a press release about recent developments at the institution. The petitioner also failed to submit evidence of the significance of the website carrying the press releases. For example, it is undocumented whether these sites post any science press release forwarded to them from a reputable institution or post only those determined to be contributions of major significance. While these press releases are not particularly persuasive on their own, we acknowledge the submission of this evidence as part of the support for this criterion.

Finally, the petitioner submitted several letters from colleagues at Clemson University where he received his Ph.D., the Joint Institute for Nuclear Astrophysics at Michigan State University where he worked, Los Alamos National Laboratory where he currently works and more independent members of the field. On appeal, counsel asserts that the director took sentences from these letters out of context. The letter purportedly from [REDACTED], a professor at Clemson University, is unsigned and, thus, has no evidentiary value. We will consider the remaining letters in depth below.

[REDACTED] the petitioner's Ph.D. advisor at Clemson State University, characterizes the petitioner as a "rising star with great promise for future achievements." The record contains no evidence that Congress intended this exclusive classification for a "rising star" rather than an individual with "sustained national or international acclaim" and a "career of acclaimed work in the field." Section 203(b)(1)(A)(i) of the Act; H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). More specifically, [REDACTED] discusses the petitioner's work with long-lived isomeric states. Specifically, [REDACTED] explains that gamma-ray telescopes observe gamma rays emitted by aluminum-26 (^{26}Al) isotopes following beta decay, providing insights into massive star activity in our galaxy. The same isotopes also provide chronometric information about the early solar system through isotopic excesses of a daughter isotope, ^{26}Mg , in primitive meteorites. [REDACTED] further explains that there is no direct transition from the lengthy ground state to the extremely short lowest-lying excited meta-stable state for ^{26}Al . Rather, because of the large spin difference, the transition takes place through other, higher-lying levels. According to [REDACTED], the petitioner "developed a novel technique for computing the effective transition rate between these levels," leading to the idea of "two ensembles of states in the nucleus – one tied to the ground state and one tied to the meta-stable state." Once he had developed this technique, explains [REDACTED], he was able to "split the nucleus into two separate species, which can now be treated appropriately in a nuclear reaction network." [REDACTED] concludes that this work "elegantly solved a problem that plagued nuclear reaction network calculations for years."

[REDACTED], the petitioner's supervisor at Michigan State University, briefly discusses the petitioner's work in [REDACTED] group with the Joint Institute for Nuclear Astrophysics (JINA).

Specifically, [REDACTED] concludes that the petitioner's "publication on heating in the crust of accreting neutron stars is a seminal paper that will provide a baseline for crustal heating calculations for many years." [REDACTED] notes that it was cited six times in less than one year, including by "leaders in the field" such as [REDACTED] and [REDACTED], who met the petitioner while visiting Michigan State University.

[REDACTED], a technical staff member at Los Alamos National Laboratory, explains that he has collaborated with [REDACTED] since 1995 and after visiting Michigan State University and viewing the petitioner's progress on calculating nuclear properties on neutron star behavior there, he recommended the petitioner for a postdoctoral fellowship at Los Alamos. [REDACTED] explains that previous junior staff and students under [REDACTED] supervision had made minimal progress. [REDACTED] praises the petitioner's depth and breadth of knowledge and concludes that the petitioner is among the top four of the "young" scientists with whom he has worked. [REDACTED] concludes that the petitioner focuses on challenging problems and does not publish until he has solved all relevant issues. While [REDACTED], one of the petitioner's coauthors, does not compare his work with the petitioner to the work reported in [REDACTED] 10 articles cited between 200 and 1,229 times, other letters explain the reliance of independent astrophysicists on the petitioner's work.

[REDACTED] of the Nuclear Science Laboratory at the University of Notre Dame and JINA, explains that he became aware of the petitioner's work when he came to work for [REDACTED] at Michigan State University. [REDACTED] states:

[The petitioner] has distinguished himself by making original contributions to the field of Nuclear Astrophysics. I want to draw attention to [the petitioner's] work on neutron star crust heating that has created much excitement and stimulated further research activity in the field by helping to unravel the complexities of X-ray superbursts which are ignited deep in the crusts of neutron stars – these are among the most recently discovered astrophysical explosions. [The petitioner's] model of neutron star crust heating [citation omitted] has been extensively cited in publications by world-renowned research groups such as those of [REDACTED]

[REDACTED] and [REDACTED]. [The petitioner's] work is of great significance to X-ray astronomers who use his heating models to probe the interiors of neutron stars.

As stated above, the record contains the article by [REDACTED] noting the use of the petitioner's discoveries in the abstract and a letter from [REDACTED] describing his reliance on the petitioner's work. The petitioner also submitted a letter from [REDACTED], who acknowledges meeting the petitioner during a visit to Michigan State University. [REDACTED] confirms that the petitioner's 2007 article in the *Astrophysical Journal* "drastically changed our understanding of the physics of nuclear transformations in the crust of accreting neutron stars." The record also contains articles by [REDACTED] favorably citing the petitioner's work. One of those articles is coauthored with [REDACTED] and not only cites the petitioner's work but utilizes [REDACTED]'s model of deep crust heating "updated by switching-off neutrino losses in the crust" as reported by the petitioner. Similarly, [REDACTED] cites

the petitioner in his abstract, acknowledging that the petitioner's work "helps bring the superburst ignition depth into better agreement with values inferred from observations."

Given the detailed letters explaining how the petitioner's work is impacting the field, supported by articles from independent researchers relying heavily on the petitioner's work, we are satisfied that the petitioner has submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(v).

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

The petitioner has authored scholarly articles and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi).

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

Counsel asserts that the petitioner has performed a leading or critical role for Los Alamos National Laboratory where he works as a postdoctoral researcher. ██████████ asserts that the petitioner is "a key scientist in projects that have made significant contributions to neutron star crust physics," an active research area supported by the Department of Energy and the National Science Foundation. ██████████ further states that the petitioner established "an inter-disciplinary collaboration with diverse scientific groups (plasma physics, nuclear theory, applied nuclear physics, astrophysical hydrodynamics, computational sciences)." ██████████ concludes that cross-fertilizing these fields has given nuclear astrophysics at Los Alamos National Laboratory "an impetus that would not be possible without his energy and expertise."

██████████, a technical staff member at Los Alamos National Laboratory, also affirms that the petitioner organized a "new group" and that his "strong leadership made this kind of collaboration possible." ██████████ speculates that "this interdisciplinary project will be very important for scientific discovery in the United States." ██████████ the Nuclear Physics Group Leader at Los Alamos National Laboratory, however, notes that the principal investigator of this group is Sanjay Reddy. Both ██████████ and ██████████ state that the petitioner officially occupies a postdoctoral position.

In response to the director's request for additional evidence, ██████████ for the Theoretical Division at Los Alamos National Laboratory, summarizes his own career at the institution, which began with a postdoctoral fellowship in 1970. ██████████ asserts that the petitioner "participated" in writing a multi-disciplinary grant proposal and that his initiation of "laboratory-wide collaborations" between diverse researchers was instrumental to the successful implementation of the proposal. ██████████ further asserts that external reviewers "made special mention of [the petitioner's] work as critical to the success of the [Laboratory Directed Research and Development (LDRD)] proposal. ██████████ concludes: "By distinguishing himself with his leadership and original scientific contributions to the LDRD program, [the petitioner] has rendered an invaluable service that only someone with his specific talents and accomplishments could provide."

We have already considered the petitioner's contributions above pursuant to 8 C.F.R. § 204.5(h)(3)(v). At issue for this unrelated separate criterion set forth at 8 C.F.R. § 204.5(h)(3)(viii) is the nature of the role the petitioner was hired to fill and the reputation that hired him. This interpretation follows logically from the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

While the petitioner may have initiated the creation of an interdisciplinary collaboration, he is not the group leader or principal investigator of this collaboration. He remains in a postdoctoral position, a position some of his references list as their entry-level position with Los Alamos National Laboratory. The record does not contain an organizational chart or other similar evidence demonstrating that a postdoctoral position is leading or critical to Los Alamos National Laboratory or even any division within Los Alamos National Laboratory beyond the institution's need to hire talented researchers at any level.

In light of the above, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(viii).

For the reasons discussed above, the petitioner has submitted the requisite evidence under at least three of the evidentiary categories for which evidence must be submitted to meet the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. A final merits determination that considers all of the evidence follows.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 2010 WL 725317 at *3.

As stated above, the record reflects that the petitioner has refereed a single article for *Astronomy and Astrophysics*. The nature of the petitioner's judging experience is a relevant consideration as to whether the evidence is indicative of the petitioner's national or international acclaim pursuant to a final merits determination. *See Kazarian*, 2010 WL 725317 at *5. Counsel asserts that the petitioner was selected to review this article because it was a response to his own work. One of the petitioner's references, [REDACTED], at Los Alamos National Laboratory, asserts that the invitation "to judge a paper submitted by the world's leading experts was a great honor in itself, and a recognition of the significance of [the petitioner's] original contribution to the field." Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.⁵ The record contains no evidence that *Astronomy and Astrophysics* uses a small,

⁵ *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

elite group of credited reviewers or other comparable evidence of the significance of the journal's request.

We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. 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's judging experience is indicative of or consistent with national or international acclaim.

As stated above, the petitioner has authored scholarly articles. Pursuant to the reasoning in *Kazarian*, 2010 WL 725317 at *5, however, the field's response to these articles may be and will be considered in our final merits determination. As of the date of filing, the petitioner had only been moderately cited although we acknowledge that the citations themselves are notable. The petitioner's articles, the citing articles that incorporate the petitioner's models and the letters all support a conclusion that the petitioner is a highly successful researcher that is producing significant results.

Ultimately, however, the evidence in the aggregate 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, a postdoctoral researcher, relies on his participation in the widespread review process, his publication record (including one article that has garnered some notable attention in the field), his initiation of an interdisciplinary collaboration for which someone else serves as principal investigator and the praise of his peers. While these accomplishments likely distinguish him from other postdoctoral researchers, we will not narrow his field to others with his level of training and experience. ██████ boasts 3,000 citations in the aggregate, with more than 200 citations each for three of his articles. ██████ boasts 1,229 citations for one of his articles, with nine other articles having garnered more than 200 citations. ██████ is Director of the JINL and lists several awards that do not appear to be limited to students. ██████ and ██████ are fellows of the American Physical Society.⁶ Thus, it appears that the very top of the petitioner's field of endeavor is far above the level he has attained. The evidence is far more consistent with ██████'s conclusion that the petitioner is a "rising star" than a conclusion that he is already within the small percentage at the very top of his field.

III. Conclusion

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 astrophysicist to such an extent that he may be said to have achieved sustained national or international

⁶ While we do not reach the question of whether this level of membership requires outstanding achievements, it is a professional membership in the petitioner's field rather than an academic honor society and the fellowship level appears to be a higher level of membership than general membership.

acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a postdoctoral researcher who has performed research that is beginning to garner attention in the field, 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.