

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 (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B₂

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JAN 21 2011

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 \$630. 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,

unreadnick

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on July 30, 2009, 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 as a research scientist. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate “sustained national or international acclaim” and present “extensive documentation” of his or her 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, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific 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, the petitioner claims to meet at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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

(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.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate his or her 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, international 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*, 596 F.3d 1115 (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.¹ 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.*

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 1122 (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 1119 - 1120.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then 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 Spencer Enterprises, Inc. v.*

¹ 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).

United States, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria

This petition, filed on March 16, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).²

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

The petitioner's curriculum vitae states that the petitioner received the following awards and honors:

1. Postdoctoral fellow travel award from the postdoctoral travel grant program at [REDACTED] present at the [REDACTED]
2. Postdoctoral fellow travel award from the [REDACTED] to give a talk at its 27th annual meeting, [REDACTED]
3. Third place winner of the 7th annual basic medical sciences graduate student research forum, [REDACTED]
4. Second place winner of the 11th annual biochemistry and molecular biology graduate student research forum, [REDACTED]
5. First place winner of the 10th annual biochemistry and molecular biology graduate student research forum, [REDACTED] and [REDACTED]
6. [REDACTED] scholarship, [REDACTED]

The director did not find the petitioner eligible for this criterion, and we note that the petitioner did not address or contest the decision of the director for this criterion on appeal.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.” In this case, the petitioner failed to establish that her postdoctoral fellowship travel awards, graduate student research awards, and scholarship equate to lesser nationally or internationally recognized *prizes or awards* for excellence. Furthermore, academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships, postdoctoral fellowships, student awards, and financial aid awards cannot be

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

considered nationally or internationally recognized prizes or awards in the petitioner's field of endeavor. Finally, the petitioner did not submit evidence of her receipt of the awards listed in her curriculum vitae. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Accordingly, the petitioner failed to establish that she 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.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The record contains evidence that the petitioner is a member of the [REDACTED] for [REDACTED] and the [REDACTED]. The petitioner has been a member in good standing of [REDACTED] and of [REDACTED].

The record contains a letter on [REDACTED] letterhead dated [REDACTED] and signed by [REDACTED] secretary-treasurer stating:

Pursuant to the [REDACTED] By-Laws, to be qualified for full membership, an individual should be at least three years past his/her professional degree (Ph.D., M.D., D.V.M., or equivalent). To be nominated for election to [REDACTED], one must submit an application form, a curriculum vitae and bibliography, a letter of nomination from a current full member of [REDACTED], and payment of the annual membership dues. [The petitioner] has met all these requirements.

The record contains a letter on [REDACTED] letterhead dated [REDACTED] and signed by [REDACTED] executive director stating:

Regular membership is available to individuals who hold a doctorate, and have published at least one paper in a refereed journal devoted to biochemistry and molecular biology since the receipt of their doctorate. The applicant must also be

sponsored by one regular member of the society. Applications for regular membership are reviewed by the executive officer and presented to the council twice a year.

We cannot conclude that obtaining a doctorate, three years of work experience after receiving a doctorate, a curriculum vitae and bibliography, and publishing "at least one paper" equates to outstanding achievements. In this instance, the submitted documentation does not establish that require outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field or an allied one.

In addition, although the petitioner lists additional memberships in scientific societies and associations in her curriculum vitae, the record contains no evidence of the membership requirements (such as bylaws or rules of admission) for the for the Advancement of Science, the and the showing that they require outstanding achievements of its members, as judged by recognized national or international experts in the beneficiary's field or an allied one. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, at 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, at 190 (Reg. Comm. 1972)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

In his decision, the director determined that the petitioner failed to establish that she meets this criterion. The petitioner does not address the director's concerns on appeal.

Accordingly, the petitioner failed to establish that she meets this criterion.

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

On appeal, counsel argues that the director failed to adequately review the content of the recommendation letters. The petitioner has submitted letters from various research scientists discussing the impact of her research. We cite representative examples below.

states:

[The petitioner] was a crucial member of team which made seminal discoveries regarding the human polymerase delta. This work resulted in the following achievements:

1. Development of methods for the production of recombinant forms of DNA polymerase delta, which consists of four subunit proteins (1, 2). These studies represented a major advance in this area of research, as the ability to produce the recombinant proteins made it possible for more detailed molecular studies.
2. The characterization of the architectural role of the p12 subunit in the assembly of the DNA polymerase delta complex (3). This work showed that the p12 subunit plays a crucial role in the assembly of the DNA polymerase complex, and also that it is involved in the interaction of polymerase delta with a second replication protein, PCNA.
3. The relative contributions of DNA polymerases delta and epsilon in human DNA replication (4). [The petitioner] participated in an international collaborative study to determine the relative contributions of the two DNA polymerases, delta and epsilon, that are both required for DNA replication. This was a major work which was the first to define the contributions of these two enzymes using a multi-disciplinary experimental attack, and involved collaborations with research groups at the [REDACTED]
4. The discovery that p21 associates with DNA polymerase delta. In this study, p21, a tumor growth suppressor protein, was shown to interact with polymerase delta (5). This discovery provided evidence for a potential mechanism for the operation of the p21 as a tumor suppressor gene. P21 functions as a negative growth regulator, and its interaction with DNA polymerase delta points to a mechanism whereby it could function to slow down DNA replication and thereby cell division.
5. Studies of the role of protein phosphorylation in the regulation of DNA polymerase delta. In this study the phosphorylation and dephosphorylation of the p68 subunit was discovered (6). This discovery opens a new door to understanding how DNA replication can be controlled by cell signaling that acts via protein phosphorylation.

As a member of her thesis committee I was able to discern that [the petitioner's] contributions to these studies were substantial, not just in experimental terms, but also because of her intellectual input into the studies. The research that she performed led to publication of several outstanding publications in the top biochemical journals. Her studies represent significant contributions to a research project that was funded, and continues to be funded, by the [REDACTED]

In the first achievement noted in his letter, [REDACTED] states that "the ability to produce the recombinant proteins made it possible for more detailed molecular studies." Although [REDACTED] states that more detailed studies are possible, he does not state that such studies have taken place or are in progress. In the second achievement, [REDACTED] stated that the "work showed that the p12 subunit plays a crucial role in the assembly of the DNA polymerase complex, and also that it is involved in the interaction of polymerase delta with a second replication protein, PCNA." [REDACTED] describes this as "crucial" but does not explain why this is important or significant to the field. In

the third achievement noted by [REDACTED], he states that the petitioner participated in an international collaborative study that was “the first to define the contributions of [] two enzymes using a multi-disciplinary” approach. Again, [REDACTED] does not explain how defining the contributions of the enzymes is important or significant to the field. It is not sufficient to note that the petitioner’s finding or research was original, the plain language of the criterion requires that the contribution is of major significance in the petitioner’s field. In the fourth and fifth achievements, [REDACTED] states that a discovery “provided evidence for a potential mechanism for the operation of the p21 as tumor suppressor gene” and that it “opens a new door to understanding how DNA replication can be controlled by cell signaling that acts via protein phosphorylation.” As in the first achievement, [REDACTED] speaks about a possibility and does not provide concrete evidence that such achievements have present impact on the field.

In her [REDACTED] letter, [REDACTED] states:

During her stay in [REDACTED] lab, [the petitioner] made significant contributions to our understanding of the molecular details of cellular mechanisms that induce Status Epilepticus in the brain. [The petitioner] used rat models to study the activation of specific receptors in the brain and define the downstream cellular pathways which result in Hippocampal cell death, one of the main consequences of Epilepsy. The implications of her work are critical in drug development and management of Epileptic seizures. Her work is published in major international multidisciplinary journals devoted to fundamental research in the brain sciences. In addition to these publications, [the petitioner] was among a few privileged international experts in the field of childhood Epilepsy who contributed chapters in the textbook [REDACTED] which summarized the state-of-the-art knowledge in the field. I was one of the three editors in chief for this book. Together with [REDACTED] [the petitioner] co-authored a chapter in the book which recapitulated a comprehensive knowledge of the effect of focal lesions, Epilepsy and anti-epileptic drugs on memory functions. This book is considered as one of the most up to date references for experimental and cognitive neuropsychologists and medical specialists involved in the care of children with Epilepsy.

In her [REDACTED] states:

[The petitioner] discovered a previously unknown cellular pathway, the ceramide pathway, that is activated during epilepsy and is altered by various anti-epileptic drugs. Identifying such new pathways is at the very base of designing and improving the potency of antiepileptic drugs. In addition, [the petitioner’s] studies of the cognitive effects of different anti-epileptic drug regimens are of crucial importance for improving the clinical management of childhood epilepsy.

Although [REDACTED] states that the implications of the petitioner’s work are “critical in drug development and management of epileptic seizures” and that petitioner’s work on “the cognitive

effect of different anti-epileptic drug regiments are of crucial importance for improving the clinical management of childhood epilepsy, [REDACTED] does not state that the work is currently being used for the actual development of drugs or the management of epileptic seizures. There is no evidence that the petitioner's work is actually applied in the field.

In his [REDACTED] letter [REDACTED]

School states:

The general goal of [the petitioner's] work has been the development of new anti-viral drugs and vaccines against negative stranded RNA viruses...

* * *

This undertaking is of exceptional challenge since this is an area where very little work has been done...[the petitioner] has made critical contributions to our understanding of both cellular and viral polymerases. Her research will very likely continue to provide further insights that will assist in the development of new anti-viral drugs and improve the prospects of conquering infectious viral disease and improving public health and the agricultural industry, not only in the United States but globally as well.

In his [REDACTED] states:

[The petitioner's] research has become of pivotal importance to the design of a new generation of antiviral inhibitors directed against negative sense RNA viruses. The negative sense viruses include numerous medically important pathogens (for example influenza, rabies, ebola) with considerable impact on human health. Through these landmark contributions, I and others in the RNA virology community have become familiar with [the petitioner's] research. Her work has fundamental implications for understanding how the viral polymerases process messenger RNA, greatly enhancing our approaches [sic] for designing anti-viral drugs.

* * *

[The petitioner] discovered the region in the viral polymerase protein that has an essential role in the process of replication of this class of viruses. Identifying this region enable the design of anti-viral drugs that specifically and efficiently target the virus because the biochemical properties of this region are essentially distinct from those of the human enzymes that have a similar function. Before [the petitioner's] discovery, this had been one of the fundamental questions that were unanswered in this field.

Although [REDACTED] finds the petitioner's work promising and states that the petitioner "has made critical contributions to our understanding of both cellular and viral polymerases" and that that the petitioner's work will "enable the design of anti-viral drugs," [REDACTED] does not state that her work has been used for the creation of anti-viral drugs. [REDACTED] states that it "very likely" that the petitioner's research will "continue to provide further insights" but that her work is being researched further.

I first met [the petitioner] in 2007 when she was making a breakthrough discovery in negative strand RNA virus biology by identifying which region of the viral polymerase is responsible for modifying viral mRNAs to allow them to be translated into proteins. [The petitioner's] discovery was a landmark in the field and has proven to be key to scientists' understanding of the virus polymerase complex. Furthermore, this was a very exciting discovery because [the petitioner's] research also showed that this part of the virus polymerase is unique and bears no similarity to human proteins, which means that it is an ideal target for intervention with antiviral drugs. Thus, this research has direct implications for human health.

*

*

*

The research that [the petitioner] has performed in the field of negative strand RNA viruses are particularly demanding and there are only a very small number of researchers worldwide (approximately 5 – 10) who are able to perform these types of studies.

In her letter, [REDACTED] states that the research that the petitioner has performed is "particularly demanding" and that there are only 5 to 10 researchers worldwide "who are able to perform these types of studies." Based upon [REDACTED] statement, the fact that the petitioner can perform this study means that her work is original. However, this criterion requires that original scientific contributions be of major significance in the field. Although [REDACTED] states that the research "has direct implications for human health," [REDACTED] does not state that the petitioner's research is being used in the field. The petitioner may have made an important discovery but [REDACTED] fails to explain its current use or impact.

[The petitioner] has discovered a crucial drug target by identifying amino acid residues in a conserved region of the polymerase (CRV) that are essential for mRNA modification by capping. Capping is of particular importance for RNA stability and consequently for viral replication. What makes [the petitioner's] discovery groundbreaking is the fact that the signature motif that she identified is distinct from

that in the human capping enzyme which makes it ideal for specifically targeting viral replication while avoiding negative effects on human cells. These breakthrough findings are published in two articles in the [REDACTED] one of the foremost journals in the field.

[REDACTED] states:

[T]he fact that [the petitioner's] published works have appeared in leading journals in varying areas of biomedical research including neuroscience, cancer biology, immunology and virology is what makes her extraordinary and sets her apart from her peers. [The petitioner's] distinguishing ability to transcend specialties puts her in a unique position as an unrivalled biochemist and microbiologist. Such a distinction is held by very few in our field and is testament to her extraordinary ability.

*

*

*

[The petitioner] has already gained an international reputation in this field through her breakthrough discoveries of the role of distinct regions of the viral polymerase in the modification of the viral RNA, which is necessary for the stability of the virus genetic material. [The petitioner] has demonstrated important differences in the biochemical details and regulation of these functions of the viral polymerase as compared to the human enzymes. The discovery of these differences by [the petitioner] opened the door to an entirely new approach in drug design strategies to inhibit the viral polymerase. The virology community awaits with much anticipation such big leaps in the field. These achievements would not have been possible without [the petitioner's] vast multidisciplinary background in biomedical research and her mastery of cutting-edge technologies which only extraordinarily[-]gifted and hard working[-]scientists are able to master.

In their letters, [REDACTED] state that the petitioner has "discovered a crucial drug target" and "an entirely new approach in drug design," however, there is no evidence in the record of proceeding that the petitioner's discovery has been or is being implemented. As stated previously, there is no evidence that her work has been used for the creation of anti-viral drugs.

[REDACTED] states:

I first became familiar with [the petitioner's] work upon reading her article entitled "Regulation of cytokine and cytokine receptor expression by glucocorticoids." This paper was published in the [REDACTED] and has to date been cited 146 times. This article is of particular relevance to my work given my active involvement in the pioneering field of composite tissue allotransplantation, of which hand transplants are a subset.... [The petitioner's] paper on the mechanism

of action of glucocorticoids has, as evidenced by its extensive citations, served as a basis for researchers and clinician such as myself to understand how the immune system may at crucial junctures be suppressed... We have in fact implemented this steroid-sparing protocol in our current hand transplant program, a measure which has profound effects on the quality of life of our patients.

In her letter, [REDACTED] states that the [REDACTED] article is "of particular relevance to [her] work" and that the [REDACTED] has "implemented this steroid-sparing protocol in [its] current hand transplant program." Although [REDACTED] has indicated that this single program is aware of and uses the petitioner's research, the record does not establish that this research is widely used or considered of major significance. As discussed further below, this article was written in [REDACTED] while the petitioner was in graduate school. The AAO notes that according to the petitioner's curriculum vitae, since performing this research the petitioner's research has focused on other things. The [REDACTED] states that the petitioner will perform "biomedical research involving biochemical and genetic characterization of viral proteins in order to design anti-viral therapies that specifically target viral replication." The petitioner has not established that the research on the regulation of cytokine and cytokine receptor expression by glucocorticoids published in [REDACTED] is relevant to the research that she is currently doing on viral proteins or otherwise establish the present impact of any of her work on 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. While the evidence indicates that the petitioner performed admirably on the research projects to which she was assigned at [REDACTED] and that she is a talented researcher with potential, the submitted documentation does not establish that she has already made original scientific contributions of major significance in her field. For example, the petitioner's evidence does not establish her field has significantly changed as a result of her work.

In this case, the letters of recommendation are not sufficient to meet this regulatory criterion. 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 (Commr. 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 795-796. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance. Without evidence showing that the petitioner's work has been unusually influential in her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she meets this criterion.

Further, a review of the petitioner's citation history supports our finding that the petitioner's work has yet to have a significant impact on her field. The record of proceeding reflects that the petitioner's [REDACTED] article entitled [REDACTED] [REDACTED] was cited 156 times by others; however her other seven other articles were cited 10 or less times by others at the time of the filing of the petition.

While the number of total citations is a factor, it is not the only factor to be considered in determining the petitioner's eligibility for this criterion. Generally, the number of citations is reflective of the petitioner's original findings and that the field has taken some interest to the petitioner's work. However, it is not an automatic indicator that the petitioner's work has been *of major significance in the field*. Although the petitioner's work has been minimally cited, more than 200 times as whole, 156 of those citations are for one paper, published in [REDACTED] when the petitioner was a graduate student. Since that time, the petitioner's most recent publications have been cited between 1 to 10 times each and fail to reflect that the petitioner's work has been unusually influential. In this case, we are not persuaded that the total number of citations is reflective that the petitioner's work has been of major significance to the field.

Accordingly, the petitioner failed to establish that she meets this criterion.

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

The director concluded that the petitioner's submission of 13 co-authored scholarly articles and 1 book chapter failed to establish eligibility under this criterion because "publication of one's findings is inherent to all researchers." However, as the petitioner established that she has authored scholarly articles, we find that she meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi). Therefore, we withdraw the findings of the director for this criterion.

Accordingly, the petitioner established that she meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

Although the petitioner has presented her work at scientific conferences, the petitioner's field, however, is not in the arts. The plain language of this regulatory criterion indicates that it is intended for the arts (such as sculptors and painters) rather than for biomedical researchers such as the petitioner. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner's conference presentations are more relevant to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi), a criterion that has already been addressed. In his decision, the director determined that the petitioner failed to establish that she meets this criterion. The petitioner does not address this criterion on appeal.

Accordingly, the petitioner failed to establish that she meets this criterion.

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

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him.

On appeal, counsel states:

In his decision, the director stated that "the petitioner's teaching assistantship and research and [sic] [REDACTED] do not meet this criterion. As an initial matter, the petitioner concedes that a teaching assistantship does not meet this criterion. Nevertheless, the director appears to have completely failed to consider the importance of her role at [REDACTED] and has completely ignored the evidence regarding the petitioner's work at [REDACTED]

In his brief on appeal, counsel discusses two letters submitted in response to the director's request for evidence [REDACTED] We discuss those letters below.

[REDACTED] states:

[The petitioner] plays a critical leadership role in my group at [REDACTED] School. She is the senior postdoctoral fellow in my laboratory and is the lead scientist in three major research projects whose overarching objective is to understand the polymerases of negative sense RNA viruses. [The petitioner's] experiments have already uncovered one novel target for anti-viral drug therapy in this important class of medically relevant pathogens. Her leadership skills are exemplified by her initiation of a series of collaborations among laboratories at [REDACTED] as well as with the [REDACTED] [REDACTED] These collaborations are channeling the effort of some of the most distinguished investigators at [REDACTED] towards resolving the structure of a polymerase of a negative sense RNA viruses and designing a new generation of anti-viral drugs against this class of viruses. [The petitioner] also plays a vital role in mentoring and training doctoral candidates in my laboratory. This high profile leadership role makes [the petitioner] exceptional among her peers. [The petitioner's] expertise and achievement make her one of the few scientists who have risen to the very top of the fields of biochemistry and microbiology.

[REDACTED] states:

[The petitioner] has been playing the leading and critical role in the collaborative effort between [redacted] and the department of [redacted] School. [The petitioner] spearheaded the expansion of our [redacted] into large[-]scale expression and purification of viral polymerases using state-of-the-art techniques.

*

*

*

[The petitioner] took on the challenging task of planning and designing the experimental protocols for cell culture and polymerase expression and purification based on her previous accomplishments, as well as training personnel in these techniques. [The petitioner's] strategies were remarkably successful resulting in the production of large amounts of polymerase proteins of vesicular stomatitis virus, lymphocytic choriomeningitis virus and Ebola virus. These viruses feature prominently on the list of the [redacted] priority pathogens, and the list of the [redacted] select agents and toxins. These polymerases provide an invaluable tool in the design of effective anti-viral therapies and vaccines. [The petitioner's] outstanding success was a crucial factor in the [redacted] receiving [redacted] funding to support work on highly pathogenic viruses – a major focus of [redacted] research. This production system that was established, thanks to [the petitioner's] rare expertise, is currently offered by [redacted] for the common use of other pioneering investigators at [redacted] who are engaged in research on anti-viral drug therapies. The successful collaboration of [redacted] with [the petitioner] has ensured [redacted] success in fostering cutting edge research by several leading laboratories at [redacted]

The petitioner submitted letters of recommendation discussing her work at the [redacted] and the department of microbiology and molecular genetics at [redacted] School. The record also contains a printout from the [redacted] providing information about the [redacted]. The AAO notes that the [redacted] is nerce.med.harvard.edu/about.html indicating that the [redacted] is a part of the [redacted] School. This indicates that the collaboration between the [redacted] and the department of microbiology and molecular genetics at the [redacted] School involved a collaboration between two groups that were already a part of the [redacted] School. In her letter, [redacted] does not discuss how petitioner's role in creating such a collaboration was leading or critical for the [redacted] School.

While the petitioner has performed admirably on the research projects to which she was assigned, there is no evidence showing that her temporary role as a postdoctoral fellow was leading or critical for the preceding institutions. We note that the petitioner's postdoctoral position was designed to provide specialized research experience and training in her field of

endeavor.³ For example, there is no organization chart or other evidence documenting how the petitioner's position fell within the general hierarchy of her research institutions. Further, the record does not provide evidence demonstrating how the petitioner's subordinate position is more critical than that of [REDACTED]. There is no indication that the petitioner has been responsible for a laboratory such as [REDACTED] or served as a principal investigator and initiated her own research projects, such as [REDACTED]. As such, the documentation submitted by the petitioner does not establish that she was responsible for the preceding institutions' success or standing to a degree consistent with the meaning of "leading or critical role."

Accordingly, the petitioner failed to establish that she meets this criterion.

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." See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). See also *Kazarian*, 2010 596 F.3d 1115 at 1119 - 1120. The petitioner established eligibility for one of the criteria, of which three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

As discussed, the plain language of this regulatory criterion specifically requires that the petitioner's award be nationally or internationally recognized in the field of endeavor, and it is her burden to establish every element of this criterion. In this case, there is no evidence demonstrating that the petitioner's awards are tantamount to nationally or internationally recognized prizes or awards for excellence in her field of endeavor.

We note that authoring scholarly articles is inherent to scientific research. 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 for an article authored by the petitioner would provide solid evidence that other researchers have been influenced by her work and are familiar with it. On the other hand, few or no citations of an article authored by the petitioner may indicate that her work has gone largely unnoticed by her field. As previously discussed, the petitioner submitted evidence showing that one of her articles has been cited 156 times, however, the remaining publications have been cited, at most, 10 times.

³ "Biological scientists with a Ph.D. often take temporary postdoctoral research positions that provide specialized research experience." See <http://data.bls.gov/cgi-bin/print.pl/oco/ocos047.htm>, accessed on October 19, 2010, copy incorporated into the record of proceeding.

The AAO notes that the article cited 156 times was published in [REDACTED] while she was a graduate student, over a decade prior to filing. The citations for the petitioner's most recent articles demonstrate a small degree of interest in her work and they are not sufficient to demonstrate that her articles have attracted a level of interest in her field consistent with national or international acclaim.

We cannot ignore that the statute requires the petitioner to submit "extensive documentation" of her sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). At the time of the original filing of the petition, the petitioner submitted documentation regarding the citations of her work by others. Although the petitioner has documented citations to her published work, which is reflective of the fact that the field has taken some notice of the petitioner's findings, we are not persuaded that the petitioner's articles, which, other than the 1996 article, have been cited 10 times or less, demonstrate national or international recognition by her peers and sustained national or international acclaim for this highly restrictive classification. The petitioner failed to submit evidence demonstrating that she "is one of that small percentage who have risen to the very top of the field." In addition, the petitioner has not demonstrated her "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Moreover, while the petitioner demonstrated that she meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi), the record reflects that the petitioner submitted evidence of having authored 13 scholarly articles and 1 book chapter. However, when compared to the authorship of those in her field, the record reflects that [REDACTED] has "over 100 publications in first rate peer[-]reviewed journals," [REDACTED] has published more "over 100 research articles in top neuropsychology journals, and [REDACTED] has published "29 papers."

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. While the record reflects that the petitioner possesses talent as a research scientist, the record falls far short in classifying the petitioner as an alien or extraordinary ability pursuant to the requirements of the statute and regulations. 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.

III. Conclusion

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of her field. The evidence is not persuasive that the