U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUN 07 2013

Office: TEXAS SERVICE CENTER

FILE:

IN RE: Petitioner:
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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined that the petitioner had not met the requisite criteria for classification as an alien 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. The director determined that the petitioner's evidence had met the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iv) and (vi).

On appeal, counsel asserts that the petitioner meets the regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3)(v) and (viii). For the reasons discussed below, the AAO will uphold the director's decision.

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, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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*, 580 F.3d 1030 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 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.* at 1121-22.

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)).

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 this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Evidentiary Criteria

This petition, filed on April 11, 2011, seeks to classify the petitioner as an alien with extraordinary ability as an internal medicine physician and research scientist. At the time of filing, the petitioner was working as a resident physician on the Osler Housestaff in the Department of Internal Medicine

[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).

at The petitioner has submitted documentation pertaining to the following categories of evidence 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 director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims found to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not established that he meets this regulatory 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 director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not established that he meets this regulatory criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The petitioner submitted an "Invited Review" article that he coauthored with two others in The regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). Regardless, compiling and summarizing recent articles in a specific area such as the potential pathogenic role of xanthine oxidoreductase in respiratory and cardiovascular disorders is not "judging" the work in those articles.

The petitioner submitted a self-prepared statement indicating that he has served "in the capacity of a judge of the work of others" by teaching and evaluating medical students, supervising and evaluating the housestaff, evaluating faculty members, interviewing candidates for housestaff and assistant research positions, serving on the Graduate Medical Education Committee, serving on the Quality Improvement and Quality Assurance Committee, serving on the Life Support Committee, and reviewing "journal club" articles. The petitioner, however, failed to submit documentary evidence of his participation. 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,

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[2] On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision. Therefore, the AAO has not considered whether the petitioner meets the remaining categories of evidence.

165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 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). Regardless, the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence that the petitioner has served as "a judge of the work of others." The petitioner has not established that serving as an educator, a supervisor, a job interviewer, a member of the aforementioned committees, and an informal "journal club" reviewer equates to participation as a judge of the work of others in the field. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). The regulation cannot be read to include every informal instance of performing one's job functions or providing feedback to one's colleagues.

The petitioner submitted a May 4, 2010 e-mail from the Associate Editor of inviting the petitioner to review "Manuscript ID entitled for the journal. The e-mail states: "I invite you to review this manuscript." The petitioner also submitted an e-mail from his supervisor, Dr. asking the petitioner if he felt like reviewing a manuscript submitted to Invitations to serve as a peer reviewer are not tantamount to evidence of one's participation as a judge of others' work. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) specifically requires "[e]vidence of the alien's *participation* . . . as a judge of the work of others." [Emphaisis added.] There is no documentary evidence from the editorial staff of the preceding journals indicating that the petitioner actually completed the preceding manuscript reviews.

The petitioner submitted a January 25, 2010 e-mail from the Production Editor of (an academic journal publishing company) inviting the petitioner to review a paper entitled The petitioner also submitted a February 20, 2010 e-mail from the Production Editor thanking the petitioner for completing the review.

The petitioner submitted a July 7, 2008 e-mail from Dr. Editor-in-Chief of thanking the petitioner for reviewing manuscript entitled for the journal.

The petitioner's participation as a peer reviewer of two manuscripts for meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Accordingly, the AAO affirms the director's finding that the petitioner's evidence meets this regulatory criterion.

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

The director's decision determined that the petitioner failed to establish eligibility for this regulatory criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major*

significance in the field." [Emphasis added.] Here, the evidence must be reviewed to see whether it rises to the level of original scientific or scholarly-related contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). The petitioner submitted various letters of support discussing his work.

Dr. Professor of states:

> [The petitioner's] basic research project entitled ' ' can be described as innovative and of very high quality. Pulmonary hypertension (PH) affects thousands of Americans each year. . . . In his study, [the petitioner] has demonstrated that the enhanced signaling of the receptor for the natural anticoagulant Activated protein C (APC), which is currently used in the treatment of sepsis, protects against the development of hypoxia-induced PH. The results of this groundbreaking research may ultimately improve physicians' ability to properly and effectively treat this devastating condition.
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> * * *
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> In the study ' ' [the petitioner] and his team analyzed Apolipoprotein E Epsilon 4 Allele (ApoE4), which is involved in cholesterol metabolism, as an important genetic risk factor for Alzheimer's disease. He discovered that while ApoE4 status is a sex neutral risk factor for dementia, its association with cognitive decline and impairment in verbal memory and learning is stronger among women. This work will, without any doubt, open the floor for future mechanistic studies to investigate the lack of sex neutrality in the associations between ApoE4+ and cognitive decline or impairment in specific domains of cognition.
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> [The petitioner's] work resulted in a number of manuscripts published in highly respected peer-reviewed journals like the He also presented the results of his research projects in prestigious national and international meetings.

Dr. asserts that the petitioner's research results "may ultimately improve physicians' ability to properly and effectively treat" PH and that the petitioner's work "will, without any doubt, open the floor for future mechanistic studies to investigate the lack of sex neutrality in the associations between ApoE4+ and cognitive decline or impairment." While the AAO does not dispute the originality of the petitioner's research and findings, as well as the fact that the field has taken some notice of his work, there is no evidence demonstrating that the petitioner's work was of major significance in the field at the time of filing the petition. Rather, Dr. appears to speculate about how the petitioner's findings may affect the field at some point in the future. Eligibility must be established at the time of filing the petition. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA

1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

Dr. Director, states:

> [The petitioner's] studies in the fields of acute lung injury and pulmonary hypertension have been selected for publication in some of the most prestigious journals, including his work: published in the published in the journal, published in the journal, and published in the to name a few.

With regard to Dr. and Dr. comments regarding the petitioner's published and presented work, the regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). The AAO will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. The regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. 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. Publications and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *Kazarian v. USCIS,* 580 F.3d at 1036. In 2010, the *Kazarian* court reaffirmed its holding that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122. Thus, there is no presumption that every published article or conference presentation is a contribution of major significance; rather, the petitioner must document the actual impact of his article or presentation.

The petitioner submitted citation evidence from Google Scholar reflecting an aggregate of 121 cites to thirteen of his published articles. In addition, the petitioner submitted copies of multiple articles that cited to his work. The AAO notes that the number of citations per article is minimal to moderate. For instance, the submitted documentation reflects that none of the petitioner's articles was independently cited to more than thirty times. Specifically:

1. was cited to 29 times;
2. was cited to 17 times;
3. was cited to 17 times;

4. was cited to 14 times;
5. was cited to 14 times;
6. was cited to 12 times;
7. was cited to seven times;
8. was cited to three times;
9. was cited to twice;
10. was cited to twice;
11. was cited to twice;
12. was cited to once; and
13. was cited to once.

Merely submitting documentation reflecting that the petitioner's work has been cited by others in their published work is insufficient to establish eligibility for this criterion without documentary evidence reflecting that the petitioner's work has been of "major significance in the field." Generally, the number of citations is reflective of the petitioner's original findings and that the field has taken some interest in the petitioner's work. It is not, however, an automatic indicator that the petitioner's work has been of major significance in the field. The petitioner has not established that the minimal to moderate number of independent cites per article for his published work is indicative of original scientific contributions of major significance in the field.

Dr. Professor of Medicine, Department of Medicine, states:

> I served as the Dr. Professor and Director of the Division of Pulmonary and Critical Care Medicine in the Department of Medicine at
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> * * *
>
> At the nation's leading medical institution, [the petitioner] worked in the laboratory of the famed Dr. . . .
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> * * *

> Acute lung injury (ALI) is a clinically devastating pulmonary complication of infection and systematic inflammation, characterized by noncardiogenic pulmonary edema leading to extreme hypoxemia. . . . Given its high rate of death, [the petitioner] focused his research on discovering new therapeutic treatments for this disease. For instance, in his study published in the [the petitioner] explored the role of anticoagulant activated protein C in ventilator-induced lung injury. Compiling the results of this study with those of a previous study, which revealed that activated protein C enhances pulmonary endothelial barrier function, he concluded that the protein C system is a crucial participant in vascular barrier homeostasis. This fundamental discovery of endothelial protein C receptor in injury development and treatment will lead to the discovery of novel therapies for
>
> Another vital study that has improved the medical community's understanding of ventilator-induced lung injury was [the petitioner's] study This study showed that high-tidal volume mechanical ventilation rapidly activates caspases within the lung, resulting in increased alveolar cell apoptosis. First published in the these findings have gone a long way in helping physicians and scientists use caspases and regulators of their activity as novel therapeutic targets.

Dr. asserts that the petitioner's "fundamental discovery of endothelial protein C receptor in injury development and treatment will lead to the discovery of novel therapies for" but there is no documentary evidence showing that the petitioner's finding had already been implemented as a treatment method or that his work otherwise equated to a scientific contribution of major significance in the field at the time of filing the petition. As previously discussed, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. at 175.

Dr. states that the petitioner's findings in "have gone a long way in helping physicians and scientists use caspases and regulators of their activity as novel therapeutic targets," but Dr. fails to provide specific examples indicating that the petitioner's work has substantially impacted treatment methods in the medical field or was otherwise of major significance in the field. According to the citation evidence submitted by the petitioner, his article entitled ' has been cited to a dozen times since its publication in 2009 and his article entitled ' has been cited to 17 times since its publication in 2008. The petitioner has not established that this moderate level of citation is indicative of original scientific contributions of major significance in the field.

Dr. further states:

> [The petitioner] has presented his research findings . . . at medical conferences for the following prestigious associations:

and the among others.

The AAO notes that many professional fields regularly hold meetings and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not necessarily involve original contributions of major significance in the field. There is no documentary evidence showing that any of the petitioner's specific conference presentations are frequently cited by other medical researchers, have significantly impacted the field, or otherwise rise to the level of contributions of major significance in the field. While presentation of the petitioner's work demonstrates that his findings were shared with others and may be acknowledged as original contributions based on their selection for presentation, the AAO is not persuaded that presentations of the petitioner's work at various medical conferences are sufficient evidence that his work is of "major significance" in the field as a whole and not limited to the engagements in which his work was presented. The petitioner has failed to establish, for example, the impact or influence of his presentations beyond those in attendance so as to establish that his work was of major significance in the field.

Dr. Associate Professor of Medicine, states:

> At [the petitioner] mastered several basic and advanced scientific research methods in investigating molecular markers that contribute to the etiology and outcome of lung injury and pulmonary hypertension. . . . In studying several potential therapeutic targets for these devastating diseases, [the petitioner] was able to demonstrate, in two separate basic research projects, that the over-expression of Endothelial Protein C Receptor protects from both ventilator-induced lung injury and hypoxia-induced pulmonary hypertension. These breakthrough findings constitute the start of a whole new avenue of research that will hopefully find a cure for these serious medical conditions.

Dr. asserts that the petitioner's findings regarding the over-expression of Endothelial Protein C Receptor "constitute the start of a whole new avenue of research that will hopefully find a cure for these serious medical conditions," but he fails to provide specific examples of how the petitioner's work has already been applied in the medical field at a level indicative of contributions of major significance. As previously discussed, eligibility must be established at the time of filing the petition. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. at 175. While the petitioner's medical research studies are no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information. It does not follow that every physician who performs original research that adds to the general pool of knowledge has inherently made a contribution of "major significance" in the field.

Dr. Associate Professor of Medicine, states:

> [The petitioner's] work . . . showed, for the first time, that a potential mechanism of lung injury is the activation of the signaling pathway. Furthermore, by using specific pharmacologic inhibitors of this pathway, he was able to significantly attenuate ventilator-induced lung injury. In another study, [the petitioner] and his colleagues demonstrated that the activation of the endothelial protein C receptor (EPCR) by its ligand, activated protein C (APC), the proven therapy in severe infections, has remarkable protective effects against lung injury. Obviously, taken together, these findings represent major breakthroughs that will ultimately help to streamline new modalities to better treat and hopefully cure this devastating condition.

Dr. comments that the petitioner's "findings represent major breakthroughs that will ultimately help to streamline new modalities to better treat and hopefully cure" acute lung injury, but he does not provide specific examples of how the petitioner's original work had already significantly impacted the field or otherwise qualified as a scientific contribution of major significance in the field at the time of filing the petition. As previously discussed, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. at 175.

Dr. Associate Professor of Medicine, states:

> [The petitioner] masters all the cellular, biologic and molecular laboratory techniques that allowed him to explore the role of the enzyme xanthine oxidoreductase (XOR) in the cytoskeletal remodeling and capillary permeability associated with the pathogenesis of ventilator-induced lung injury. In addition, he studied the role of endothelial protein C receptor (EPCR) in vascular remodeling using a murine model of hypoxia-induced pulmonary hypertension. Moreover, he was involved in another project assessing the role of simvastatin, a lipid-lowering drug, in a rat model of monocrotaline-induced pulmonary hypertension. His cornerstone findings opened the door to a whole new era of research that will now target those pathways for finding drugs that can hopefully cure these common and devastating diseases, a task that is currently impossible. Due to its scientific importance, his research has led to the publication of several outstanding papers in frontline peer-reviewed scientific journals, including the and ' among others. In addition, his work has been cited by many other researchers in professional journals, as many as ten times in less than two years.

Dr. states that the petitioner has mastered "all the cellular, biologic and molecular laboratory techniques that allowed him to explore the role of the enzyme xanthine oxidoreductase (XOR) in the cytoskeletal remodeling and capillary permeability associated with the pathogenesis of ventilator-induced lung injury," but assuming the petitioner's research skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. *See Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Comm'r 1998). In addition, Dr. asserts that the petitioner's "findings opened the door to a whole new era of research that will now target those pathways for finding

drugs that can hopefully cure these common and devastating diseases, a task that is currently impossible." Dr. comments on the future promise of the petitioner's research and the impact that may result from his work, rather than how the petitioner's past research already qualifies as a contribution of major significance in the field. The assertion that the petitioner's research results have "opened the door" to possibly finding a cure is not adequate to establish that his findings are already recognized as major contributions in the field. Once again, eligibility must be established at the time of filing the petition. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. There is no documentary evidence showing that the petitioner's original work has been extensively applied in the medical field, that his published findings were heavily cited by independent researchers, or that his work otherwise equated to original scientific contributions of major significance in the field. According to the citation evidence submitted by the petitioner, none of his articles in were cited to more than 17 times per article. The petitioner has not established that this moderate level of citation rises to the level of original scientific contributions of major significance in the field. The petitioner's field, like most science, is research-driven, and there would be little point in presenting or publishing findings that did not add to the general pool of knowledge in the field. As previously discussed, the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's contributions not only be original but of "major significance" in the field.

Dr. Associate Professor of Medicine, and Associate Editor for states:

> [The petitioner] is an accomplished scientist who has made major contributions in our understanding of the pathophysiology of acute lung injury. He was actively involved in an important study on the "Protective role of signaling in mechanical stress through inhibition of p38 mitogen-activated protein kinase in mouse lung" that was recently published in Because of the importance of his findings, I have cited his study in my own publication, an editorial that was published in 2010 in

Dr. asserts that the petitioner "has made major contributions in our understanding of the pathophysiology of acute lung injury," but merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, No. 95 civ 10729, 1997 WL 188942 at *1, *5 (S.D.N.Y.). The petitioner has not established that the level of citation of his articles in is indicative of scientific contributions of major significance in the field. In addition, while Dr. states that she cited to the petitioner's study in her own publication, there is no documentary evidence showing that the petitioner's work was of major significance in the medical field as a whole.

Dr. Department of Physiology, states:

> This letter is written in reference to [the petitioner] and his original research. I have cited his work [redacted] in my own publication, [redacted] His work has definitely contributed to the better understanding of the role of oxidative damage in various disease processes.
>
> I know of [the petitioner] through his original research - I have not worked or collaborated with him in research and have become aware of him through his research, which aided me with my own.

Dr. [redacted] asserts that he cited to the petitioner's research article and that the petitioner's work "has definitely contributed to the better understanding of the role of oxidative damage in various disease processes," but Dr. [redacted] does not provide specific examples of how the petitioner's findings have been implemented throughout the medical field or were otherwise of major significance in the field.

Dr. [redacted], Associate Professor of Medicine, [redacted] states:

> My focus of research lies within the realms of ventilator-associated lung injury animal models. In my own publication, [redacted] I have cited [the petitioner's] work "Activated protein C protects against ventilator-induced pulmonary capillary leak." I would like to note that I know of [the petitioner] through his original research and I have not worked or collaborated with him neither clinically nor through research. His work has clearly advanced the understanding of the protein C system, showing that it is a crucial participant in vascular barrier homeostasis. This original concept has aided me in advancing my own research work.

Dr. [redacted] states that he cited to the petitioner's work and that the petitioner's concept aided him in advancing his own research, but Dr. [redacted] fails to provide specific examples of how the petitioner's original work impacted the medical field at a level indicative of a scientific contribution of major significance. According to the citation evidence submitted by the petitioner, his article entitled "Activated protein C protects against ventilator-induced pulmonary capillary leak" has been cited to a dozen times since its publication in 2009. The petitioner has not established that this moderate level of citation is indicative of a scientific contribution of major significance in the medical field.

The opinions of the petitioner's references are not without weight and have been considered by both the director and the AAO. 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). USCIS is, however, ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of reference letters 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; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the references' 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 that one would expect of physician researcher who has made original contributions of major significance in the field. Without additional, specific evidence showing that the petitioner's original work has been unusually influential, widely applied throughout his field, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that he meets this regulatory criterion.

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

The petitioner has documented his authorship of scholarly articles and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the AAO affirms the director's finding that the petitioner's evidence meets this regulatory criterion.

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

On appeal, counsel states:

> As a leading physician and researcher, [the petitioner] has played critical roles in each and every hospital in which he has worked, in his clinical practice, elite research and educating fellow doctors with his own elite skills.
>
> Specifically, we refer to initially submitted support letters from describing [the petitioner's] role as a Research Scientist since 2006 and also since 2009 as a House Staff Physician and the leading and critical roles he performed providing patient care and teaching, as well as his work furthering his original research.

Aside from counsel's appellate brief does not specifically point to the leading or critical roles performed by the petitioner at any other hospitals. A passing reference without substantive arguments is insufficient to raise that ground on appeal. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. 433, 435 (11th Cir. 2009).

In addition, counsel states:

> We respectfully submit that [the petitioner] also stands out from his peers through the variety of ways in which he regularly reviews the work of medical professionals within his field of Medical research. . . . [The petitioner] has been asked to judge the work of numerous other senior physicians who do not have his expertise. . . . Please see previously submitted copies of the invitations from journal editors for [the petitioner] to review articles submitted to their journals.

The regulations contain a separate criterion regarding the petitioner's participation as a judge of the work of others in his field. 8 C.F.R. § 204.5(h)(3)(iv). The documentation pertaining to the petitioner's participation as a judge has already been addressed earlier in this decision. Regardless, the petitioner has not established that his roles as a peer reviewer for journals, a teacher, and a staff supervisor at the institutions that employed or trained him were equivalent to performing in a leading or critical role for organizations or establishments that have a distinguished reputation. For example,

the petitioner has not established that his two instances of participation as a peer reviewer of manuscripts submitted to and constitute a leading or critical role for the preceding journals.

The record adequately demonstrates that have a distinguished reputation. The next issue to be determined is whether the petitioner has performed in a leading or critical role as a research scientist and in his "position on the at [3]

The petitioner submitted a letter from Dr. Assistant Professor of Medicine, stating:

> [The petitioner] was selected to work at in the division of Pulmonary and Critical Care Medicine, the largest program of its kind, and of similar programs, the one awarded the highest research funding each year. His recruitment here already speaks extremely highly of his outstanding skills. Indeed, in a very short period of time, he distinguished himself by his numerous publications in prestigious peer-reviewed journals and many other manuscripts under review.
>
> * * *
>
> Specifically, using sophisticated research techniques, [the petitioner] showed that the activation of the endothelial protein C receptor (EPCR) by its ligand, activated protein C (ASPC), the endogenous anticoagulant and proven sepsis therapy, has remarkable protective effects against hypoxia-induced pulmonary hypertension. This work is of utmost importance for the fight against this deadly disease.
>
> * * *
>
> I am delighted to closely collaborate with [the petitioner] in performing the challenging tasks of compiling and analyzing clinical data focusing on the "overuse of proton pump inhibitors among academic and non-academic hospitalists" and the "role of interdisciplinary communication in the treatment of narcotic-induced constipation in the Hospital Setting." The results of these projects will be presented at the meeting and the meeting . . . . Without [the petitioner's] insightful and original work these projects would not have succeeded. His critical thinking and analytic skills are exemplary, and his aptitude for designing and conducting complex research projects is profound. He is one of the few physician-scientists able to multitask and to bring high-quality research to fruition in such short periods of time.

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[3] The ' is a medical residency training program offered at "The goal of our residency training program is to train future leaders in medicine. To that end, the department provides three years of comprehensive training in general internal medicine. The program offers a wide variety of experience in acute and ambulatory medicine and many opportunities to develop scholarship in research, teaching and patient care." *See* accessed on May 22, 2013, copy incorporated into the record of proceeding.

> In summary, [the petitioner] truly played a leading role that was critical to the success of our research projects, as well as to the advancing of our medical center's goals.

Dr. concludes his letter by asserting that the petitioner "played a leading role that was critical to the success of our research projects," but merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, No. 95 civ 10729, 1997 WL 188942 at *1, *5 (S.D.N.Y.).

The petitioner also submitted a letter of support from Dr. stating: "As an Internal Medicine physician-scientist, [the petitioner] plays an integral role in treating and saving the lives of countless patients, as well as advancing modern science. . . . I am certain that his practice will continue to benefit patients throughout the U.S. . . ." Dr. letter then provides two examples of serious patient medical conditions diagnosed by the petitioner and goes on to discuss the petitioner's research activities at

In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien is responsible for the success or standing of the organization. While the petitioner performed admirably on the research projects and medical tasks to which he was assigned, there is no evidence demonstrating that his roles as a researcher and resident physician on the were leading or critical for the For example, there is no organizational chart or other evidence documenting where the petitioner's position fell within the general hierarchy of the physicians, faculty, and researchers employed by Johns Hopkins. The AAO notes that the petitioner's role on the involved "three years of comprehensive training in general internal medicine." The petitioner's evidence does not demonstrate how his temporary medical residency training appointment differentiated him from the numerous other physicians and researchers working at let alone the Hospital and School of Medicine's professors and department heads. The documentation submitted by the petitioner does not differentiate him from other researchers and physicians so as to demonstrate his leading role, and fails to establish that he was responsible for the Hospital and School of Medicine's success or standing to a degree consistent with the meaning of "critical role."

The petitioner asserts that he performed in a leading and critical role for the The petitioner submitted a letter of support from Dr. Staff Scientist, Intramural Research Program, stating:

> The in the NIA provides a stimulating academic setting for a comprehensive effort to understand aging through multidisciplinary investigator-initiated research. In addition, an effort is made to encourage synergistic interactions and collaborations. Over the past two years, we were delighted to closely collaborate with [the petitioner] in the design and conduct of couple of research projects in the areas of genetic and environmental risk factors for dementia and metabolic syndrome.

* * *

> Our recent research projects which focused on the and the are ones of the most challenging areas of expertise nowadays, particularly in nutrition and epidemiology. [The petitioner] played an instrumental role in the success of these projects by bringing to the table the clinical skills of an excellent medical doctor and the scientist's thoughtful expertise in scientific methodology and critical appraisal of published literature. [The petitioner] has an in-depth knowledge of all the different aspects of the scientific problems to which the group was confronted, and a complete dedication to seeking solutions to those problems and sharing them with the other members of the group.

The record adequately demonstrates that the has a distinguished reputation. While the petitioner collaborated on research with the there is no evidence demonstrating that his role within the was leading or critical to the The documentation submitted by the petitioner does not differentiate him from the other researchers and staff scientists so as to demonstrate his leading role, and fails to establish that he was responsible for the success or standing to a degree consistent with the meaning of "critical role."

The petitioner also asserts that he has performed in a leading or critical role for the While the record adequately demonstrates that the has a distinguished reputation, there is no evidence showing that the Faculty of Medical Sciences has a distinguished reputation. In addition, the petitioner failed to submit evidence (such as letters of support from the faculty) explaining how his role was leading or critical to the preceding institutions as a whole. The regulation at 8 C.F.R. § 204.5(g)(1) requires that evidence of experience "shall" consist of letters from employers. Moreover, there is no organizational chart or other evidence documenting where the petitioner's medical residency positions fell within the general hierarchy of the of Medical Sciences and the The petitioner failed to submit evidence differentiating him from the institutions' other physicians and faculty so as to demonstrate his leading role, and fails to establish that he was responsible for the institutions' success or standing to a degree consistent with the meaning of "critical role."

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

B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence.

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.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be 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" 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." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian,* 596 F.3d at 1119-20. While the AAO concludes that the evidence submitted is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.[4] Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The AAO may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. 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 145 (3d Cir. 2004)(noting that the AAO conducts appellate review on a *de novo* basis).

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.

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[4] The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).