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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: NOV 28 2014 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an "alien of extraordinary ability" in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A). According to the Form I-140, the petitioner, who obtained her Ph.D. in proposes to work in a postdoctoral fellow position. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

The petitioner's priority date established by the petition filing date is December 12, 2013. On December 19, 2013, the director issued the petitioner a request for evidence (RFE). After receiving the petitioner's response to the RFE, the director issued his decision on March 19, 2014. On appeal, the petitioner submits a brief. For the reasons discussed below, we uphold the director's ultimate determination that the petitioner has not established her eligibility for the classification sought.

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*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the decision to deny the petition, the court took issue with the 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 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 we did)," and if the petitioner did not submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as we 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, we 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 not satisfied the regulatory requirement of three types of evidence. *Id.*

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[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).

II. ANALYSIS

A. Evidentiary Criteria[2]

The director determined the petitioner met the requirements of the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) and the authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). The petitioner has submitted sufficient evidence, to include a letter from a journal editor and emails reflecting that she has performed peer review services, to establish that she meets the judging criterion, and several published articles, to establish that she meets the scholarly articles criterion.

The director discussed the evidence submitted for the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii) and the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii) and found that the petitioner did not satisfy the requirements for either criterion. On appeal, the petitioner does not contest the director's findings for these criteria or offer additional arguments. Therefore, the petitioner has abandoned her claims under both criteria. *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) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not submitted qualifying evidence under this criterion. On appeal, the petitioner contests the director's finding that she did not satisfy the contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v).

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

On appeal, the petitioner asserts that the director evaluated the evidence in the context of the regulatory definition of extraordinary ability rather than under the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v). While the petitioner is correct that the analysis under this criterion must be limited to the plain language of the criterion, the record supports the director's ultimate conclusion that the evidence does not establish that the petitioner meets the plain language requirements set forth in this criterion.

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the petitioner's contributions (in the plural) in her field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that her contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. Contributions of major significance connotes that the petitioner's work has significantly impacted the field. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia*

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

v. Beers, 4 F. Supp. 3d 126, 134 (D.D.C. Dec. 16, 2013). The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The director determined that the petitioner did not meet the requirements of this criterion. In addition to raising concerns that the director went beyond the plain language requirements of this criterion, the petitioner asserts on appeal that the director did not view the evidence under this criterion as a whole, focused on whether the contributions extended beyond the petitioner's field, and did not properly analyze the expert letters. The petitioner claims her contributions in her field relate to the use of curcumin to treat stomach ulcers, her research relating to cancer, and her research relating to influenza.

The focus of this criterion is not how far the petitioner has risen within her field; rather, it is on the level of impact the petitioner's work has already effected in her field. Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

With respect to the petitioner's concern that the director should have considered all of the petitioner's individual pieces of evidence as a coherent whole, rather than separately, we will review all of the evidence relating to this criterion in the aggregate. That said, USCIS determines the truth not by the quantity of evidence alone but by its quality. *Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010) citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm'r 1989).

1. Stomach Ulcer Research

The petitioner's appellate brief references her citation record in the context of the impact factor of the journal in which her articles appear. The article that the petitioner identifies as a contribution of major significance on appeal appeared in the and is titled, ." Although the petitioner demonstrated that researchers in the field have cited to this article at a rate above this journal's average impact factor, she did not submit evidence indicating that the field has heavily relied upon this article. That other researchers cite to the petitioner's article at an above average rate shows that other researchers have found her work relevant to their own work. For example, within the citing articles the petitioner provided for the record that relate to her two most cited articles (' and " these articles are one of several cited for the same proposition. Such recognition does not support the petitioner's assertion that her cited works amount to contributions that are of major significance in the field as she has not presented evidence demonstrating that the citing authors placed significant reliance on her findings in conducting their own studies.

Moreover, the expert letters, discussed below, do not describe the manner in which this article is influential or heavily relied upon. Although some of the experts state that the petitioner's articles are published in top publications, none of the experts indicates that he or she has cited to the petitioner's work within their own published research. Where other articles cite to the petitioner's work as background information about similar research and show little or no reliance on the petitioner's findings, the citing articles have less probative value than citations that show significant reliance or influence. The petitioner has not shown that her above average citation rate related to these two articles is indicative of a contribution of major significance in the field.

Associate Professor of Pediatrics and Microbiology and Immunology at the , provides a detailed discussion of how the petitioner's research relating to curcumin, a South Asian spice, and ulcers has possible broad application in several areas involving the gastrointestinal field. Dr. states:

> Because inflammation is a component of many chronic diseases, the potential of curcumin has been examined in neoplastic, neurological, cardiovascular, pulmonary and metabolic disorders. The therapeutic efficacy of curcumin have been re-examined in animals and in humans by many research groups such as , 2005), (2008). [sic] , 2010). The fact that [the petitioner's] work was able to elicit so much interest from other research groups shows the impact this work has had on the field as a whole."

Although Dr. indicates that three research groups have re-examined the work within this paper, he did not state that the petitioner's work was influential in the research groups' work; he simply stated that these three groups had re-examined published work in which the petitioner was named as one of six coauthors. The petitioner provided two of these articles, which are part of the record. The first article titled, ' by et al. cites to the petitioner's work within a group of multiple citations reflecting that these authors did not rely heavily on the petitioner's work as a basis for their own research. The second article titled, is a review article rather than a research article. This review article briefly discusses numerous recent studies and does not build on the petitioner's work. As review articles summarize the current state of research, instead of reporting a researcher's original findings that build on the petitioner's work, review articles do not demonstrate actual reliance on the petitioner's work. For example, the cite to the petitioner's work consists of one sentence, which is incorporated into a paragraph containing nine citations summarizing the effects of curcumin in multiple studies. The petitioner did not provide the 2005) article for the record, nor did she provide a letter from this author. The petitioner has not provided evidence demonstrating that other researchers that cite to her work relied on her findings to support their research sufficient to support her assertion that her research relating to curcumin is a contribution of major significance in the field.

That the petitioner's original finding that curcumin has the potential to be an inhibitor for several gastrointestinal issues is important. However, the speculation that her findings have the potential to impact the field is not sufficient to satisfy the regulatory requirements at 8 C.F.R. § 204.5(h)(3)(v). The impact must have already been realized within the field at the time the petitioner filed the present petition. 8 C.F.R. § 103.2(b)(1), (12). Dr. also discusses the petitioner's subsequent research stating: "These findings were published in [the] in 2006 (cited 37 [times] since then), paving the way for additional studies connecting MMPs to gastric ulcer, for example the work done by 2007)." The petitioner did not provide a copy of this article, nor did she provide a letter from this author. Therefore, the petitioner has not submitted corroborating evidence to establish that she has made a contribution of major significance in her field. However, this is an additional instance in which an expert in the field identifies the future potential of the petitioner's work to have an impact in the field, but falls short of describing how the impact has already occurred as of the petition filing date. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12). A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

2. Cancer Research

Regarding the claims within the expert letters that the petitioner's work is widely cited, a review of the citing material that the petitioner provided within the initial filing does not reflect that the authors heaviliy relied upon the petitioner's findings as a foundational basis for their work. The petitioner provided two of the articles referenced within the expert letters. Within the article titled, appearing in , the authors briefly reference the petitioner's work in the closing paragraphs as an alternative view. The article's conclusion cites the petitioner's work for the proposition that "it has been well proven . . . that tumor-associated, high-density neovascularization was responsible for the development of tumor growth." The petitioner's article, according to the final paragraph, was not reporting neovascularization's responsibility for tumor growth as an original finding; rather, it concluded that such high density neovascularization "is blocked by tunicamycin through a distinct mechanism of unfolded protein response." It is not apparent from this citation of the petr's article that the authors are using the petitioner's original reasearch findings as a foundation for their own findings, which might support the petitioner's assertions that her published work appearing in *Hepatology* is indicative of a contribution of major significance within her field.

Within the article titled, ' ' appearing in the petitioner's work is only referenced in the concluding remarks paragraph. The citing article cites to the petitioner's work within a footnote as another study that reported results from tunicamycin. The citation in context does not support the petitioner's position that these authors relied upon her findings so heavily that it can be considered to be a contribution of major significance in her field.

Professor of Biochemistry at the indicates in his letter that the petitioner has further advanced a study related to cancer treatment. Dr. who has coauthored multiple published articles with the petitioner, characterizes the petitioner's findings as extraordinary and states that her work with tunicamycin "can be considered as [a] 'hallmark' for the discovery of an anticancer therapeutic." Dr. subsequently indicates that the petitioner's findings pertaining to monitoring a patient receiving treatment "would protect patients' health and also substantially lower the treatment cost." He did not, however, specify how the field is building on the petitioner's work to reach this goal. He also did not clearly indicate that this hallmark in cancer research has resulted in any tangible advancement in the petitioner's field. Dr. further states that the petitioner "is an outstanding cell biologist who has already contributed significantly to this field of research." However, he did not sufficiently describe the petitioner's work as already having a significant impact within her field. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.D.C. 1990).

Assistant Professor of Neurology, Biophysics and Biophysical Chemistry at has also worked with the petitioner and describes some of her same accomplishments that Dr. discusses. Dr. states: "These scientific findings regarding curing breast cancer with the antibiotic tunicamycin experiments, made by [the petitioner], clearly elucidate an innovative treatment strategy for breast cancer." Dr. does not identify any research building on the petitioner's work towards a treatment strategy for breast cancer. Dr. also indicates that the petitioner's current work on prostate cancer, gastric ulcer and influenza is an expansion on her previous findings and that her contributions toward these diseases "will highly help in curing public health not only restricted with USA but also worldwide." Future prospective benefits that the petitioner's findings may have in the field will not qualify her under this criterion. The regulation requires that the petitioner has already made major and significant impacts within her field. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12). A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak,* 14 I&N Dec. at 49. This evidence does not establish that, as of the priority date, the petitioner had contributed to her field in a significant manner as required by the regulation.

Professor of Medicine at the discusses the petitioner's accomplishments and indicates that the petitioner is an exceptional scienctist with extraordinary ability in the field of scientific research. Dr states:

> Her groundbreaking findings include the discovery that tunicamycin inhibits breast tumor angiogenesis through endoplasmic reticulum (ER) stress-induced programmed cell death (apoptosis). The knowledge thus gained has been successfully translated to the development of a new generation breast cancer therapeutic targeting angiogenesis.

Dr. does not explain or provide examples of research that successfully translates the petitioner's work towards the development of a new generation treatment for breast cancer. Dr. also discusses the petitioner's work relating to stomach cancers stating: "This novel work opens a new

avenue for gastric ulcer treatment using an alternate pathogenic mechanism involving MMPs signaling." Although Dr. notes that these findings have been published, he does not claim that the petitioner's findings have resulted in any improvements in the rate of gastric ulcer treatment or significant advancement towards that goal.

3. Citation Record

We acknowledge that the petitioner's overall citation record exceeds an average amount; however, not every researcher who receives an above average amount of citations has inherently made a contribution of major significance to the field, as a whole. The petitioner's citation record does not approach that of one of her references, Director of the who indicates his work has been cited more than 3,400 times. 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). It remains the petitioner's burden to document the actual impact of her articles. The regulation at 8 C.F.R. § 204.5(h)(3) contains a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). If every provision of the regulation is to have meaning, USCIS must presume that the regulation views contributions as a separate evidentiary requirement from scholarly articles. Published material may be relevant to this criterion provided it is relevant and probative of whether or not the research discussed in the material is a contribution of major significance. *Kazarian v. USCIS,* 580 F.3d at 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). 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.

Notably, of all the articles that the petitioner chose to provide that cite to her own work, half are review articles that briefly discuss numerous recent studies rather than research articles that build on the petitioner's work. As these review articles summarize the current state of research, instead of reporting a researcher's original findings that build on the petitioner's work, these review articles do not demonstrate actual reliance on the petitioner's work.

We are not persuaded that such citations are reflective that the petitioner's work has been of major significance in the field. Furthermore, the petitioner did not submit any documentary evidence demonstrating that her articles have been unusually influential, such as articles that discuss in-depth the petitioner's findings or credit the petitioner with influencing or impacting the field. In this case, the petitioner's documentary evidence is not reflective of having a significant impact in the field. The petitioner has not established how those findings or citations of her work by others have demonstrated that her work has been seminal in, or have significantly contributed to her field as a whole.

4. Journal Rankings

The petitioner also asserts that the journal rankings in which her work is published, as well as each journal's impact factor are elements that should contribute to her satisfying this criterion's requirements. First, while it is notable that some top rated journals have published the petitioner's work, this

information is not sufficient to demonstrate that the petitioner's work appearing in each journal meets the regulatory requirements under this criterion. The petitioner still bears the burden of establishing that her work is commensurate with a contribution of major significance in her field. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Second, that a publication bears a high impact factor is reflective of the average citation rate of each article within a publication. It does not however, demonstrate the influence of any particular author within the field or how an author's research has had an impact within the field. Although the record shows that others in the petitioner's field have cited to her work at an above average rate compared to the impact factor, it lacks evidence that this citation rate is indicative of significant influence within the field. That the petitioner has published work within highly ranked journals does not necessarily demonstrate contributions that are of major significance.

The petitioner provided evidence from dated February 24, 2014. This evidence postdates the petition filing date. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12). A petition may not be approved if the petitioner was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. at 49.

5. Peer Review

The petitioner also claims her peer review for contributes to establishing she has made contributions of major significance in her field. The evidence related to this claim consists of a letter dated November 15, 2013 from the journal's Editor-in-Chief, Dr. indicates that the journal maintains a pool of experts and continues:

> [The petitioner] has been selected as a reviewer of this journal for her expertise in the field of due to inhibition of N-glycosylation pathway. Her expertise was demonstrated in her publication in in 2011 . . . as a first author.

Dr. does not indicate that retained the petitioner to perform peer review because she had made contributions of major significance in her field. Nor has the petitioner explained how her reviewing the work of her peers constitutes a contribution of major significance in her field, other than to assert that highly regarded journals would not select her to review articles were it not for her expertise and her renown. This assertion is not persuasive evidence that the petitioner has made a significant impact in her field. We have already considered this evidence under the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). Meeting that criterion does not create a presumption that the petitioner also meets the contributions criterion at 8 C.F.R. § 204.5(h)(3)(v). It is the petitioner's burden to demonstrate how that evidence is also relevant to this criterion. The petitioner has not established that every research scientist that an editor selects to review manuscripts submitted for publication to a peer-reviewed journal, must have made or is, by completing the reviews, making significant contributions to their field as anticipated by the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Regarding the remaining evidence of the petitioner's peer review duties, only the letter from Editor of indicates that the petitioner's selection as a reviewer was based on the petitioner's contributions. Dr. states: "The selection of reviewers is based on their renowned and contribution in the field of ." Dr. did not, however, state the extent to which such contributions must impact the field or otherwise detail how the editors select reviewers. Therefore, this conclusory letter is not sufficient evidence to demonstrate that this journal requires contributions commensurate with this criterion's requirements, or that the petitioner's selection as a peer reviewer for this publication should be considered beyond the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). More specifically, 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*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.

6. Published Material

Dr. also noted the petitioner's publication record, indicating that she has presented her findings at several conferences, and that the is working on submitting the petitioner's invention to the U.S. Patent and Trademark Office. While each of these achievements is noteworthy, none constitutes a contribution of major significance in the petitioner's field. Regarding presentations at conferences, many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. Professional associations, businesses, educational institutions, and government agencies promote and sponsor these conferences. Participation in such events, however, does not equate to an original contribution of major significance in the field as the petitioner has not demonstrated the impact of her presentations. In reference to the patent application, patents and patent applications by themselves do not serve as the measure of an individual's ability to qualify for this classification. Rather, the level of the impact in the field as a whole through the wide use of the innovation is a more appropriate measure to determine if an alien has sufficiently influenced her field. *See Dep't. of Transp.*, 22 I&N Dec. 215, 221 (Assoc. Comm'r 1998). The petitioner has not established that the innovation the petitioner describes in her patent application has produced any measureable impact in her field. For example, the record contains no evidence of any independent research team expressing interest in licensing the patent.

The petitioner also claims that her work was highlighted in two instances by "significant online media." The petitioner's work, ' appears in The online posting lists no author and refers to information gathered from "[o]ur news journalists." The petitioner's appellate brief indicates that one form of media, "is ranked #2 in google pagerank among all Medical News websites, evidencing its reach and importance in the field. It is also ranked #2 by pagerank among all Science publications in the area of Biology/Physiology and all news and media for the Pharmaceutical industry as well." The petitioner submitted the portion of the website itself rather than published circulation statistics from an official or independent

publicly available source. The record lacks evidence from Google or any other website ranking service. USCIS need not rely on the self-promotional material of the publisher. *Cf. Braga v. Poulos,* No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 317 F. App'x 680 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). Regardless, nothing in the record suggests that limits its coverage to contributions of major significance; rather than serving as an online source for pooling a large number of summaries of recent medical research. Moreover, the posting itself does not evaluate the work or its significance; rather, it reiterates what the authors reported and concluded and refers readers to the first author, not the petitioner, for further information.

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 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Regardless of the reach of the media outlet, the fact that any media summarized without evaluating the petitioner's work as part of its production of weekly health information does not demonstrate that her work is a contribution of major significance in the field. There is no documentary evidence establishing that the posting is probative of the petitioner's influence on others in the field.

On appeal, the petitioner references an unpublished AAO decision asserting that the discussion of the contributions criterion in that case is relevant to her case. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. We may consider the reasoning within the unpublished decision; however, the analysis does not have to be followed as a matter of law. The petitioner claims that, like her research, the unpublished case involves a basic researcher. Referencing this unpublished case, the petitioner states: "Clearly the AAO agrees that the impact must be shown to the research field (for a researcher) and NOT to another field or to a specific application of the work." (Emphasis in the original). The petitioner has not submitted probative evidence that research itself is a field in which she may make contributions of major significance in order to qualify under this criterion. Regardless, the petitioner has not demonstrated her impact on other researchers. Merely adding to the general pool of knowledge is inherent to the field of basic research and is not, by itself, indicative of a contribution of major significance in basic or applied research.

The Board of Immigration Appeals (BIA) has stated that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing *Matter of M-D-*, 21 I&N Dec. 1180 (BIA 1998); *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998); *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); see also *Matter of Acosta*, 19 I&N Dec. 211, 218 (BIA 1985)). The Board clarified, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Matter of S-A-*, 22 I&N Dec. at 1332. If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. at 1136.

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS,*

580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated the conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The opinions of experts in the field are not without weight and have been considered above. While such letters can provide important details about the petitioner's skills, they cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *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"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. While letters authored in support of the petition have probative value, they are most persuasive when supported by evidence that already existed independently in the public sphere. *See also Visinscaia*, 2013 WL 6571822, at *8 (concluding that USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious).

Considering the evidence the petitioner presents to corroborate her claims under this criterion, even when considered in the aggregate, the petitioner has not provided sufficient evidence to demonstrate that she has made improvements that are tantamount to contributions of major significance in her field as a whole. As such, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

B. Summary

The petitioner has not satisfied the antecedent regulatory requirement of three types 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 have risen to the very top of the field of endeavor.

Had the petitioner 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 we conclude that the evidence 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, we need not explain that conclusion in a final merits determination.[3] Rather, the proper conclusion is that the petitioner, proposing to work as a postdoctoral fellow,[4] has not satisfied the antecedent regulatory requirement of three types 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 appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. at 128. Here, that burden has not been met.

ORDER: The appeal is dismissed.

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[3] 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).

[4] The director noted the petitioner's employment as a postdoctoral researcher and noted that the National Science Foundation defines the postdoctoral research position as "a temporary and defined period of mentored advanced training to enhance the professional skills and research independence needed to pursue his or her chosen career path." The director questioned how the petitioner can meet the requirements of the regulation in that she has attained "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor" if she currently occupies, and intends to remain in, a training position prior to pursuing her career path. The petitioner did not address the director's concern regarding her level of employment on appeal. Notably, the petitioner's references include journal editors, a former division head at the members of grant review committees, an elected whose work has been cited more than 3,400 times, and an elected . Thus, the top of the petitioner's field is considerably higher than the level she has achieved.