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

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: SEP 16 2010

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The 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 sciences. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

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

On appeal, the petitioner argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

I. Law

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

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

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

> (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
>
> (ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
>
> (iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;
>
> (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
>
> (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
>
> (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
>
> (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
>
> (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

> (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
>
> (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

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

Id. at 1119.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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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

This petition, filed on July 22, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a cancer biologist specializing in ovarian and prostate cancer research. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).[2]

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The petitioner initially submitted a certificate from [redacted], [redacted] which confirmed that the petitioner was an elected member of the organization in 2009. The petitioner also provided a letter from the society, dated February 23, 2009, which indicated that he is now a full member. The letter explained that membership is conferred upon those "who have made noteworthy contributions in research." The petitioner also cites to [redacted] website, indicating that there are nearly 60,000 [redacted] members and more than 200 members who have won the Nobel Prize. In addition, the petitioner relied on the [redacted] website which explained that "full membership is conferred upon any individual who has shown noteworthy achievement as an original investigator in a field of pure or applied science or engineering." However, the petitioner failed to submit the actual pages from the Internet. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). On appeal, no further evidence was provided. Nonetheless, the petitioner again cited to Sigma Xi's website as requiring a noteworthy achievement to be "evidenced by publication as a first author or two articles published in a refereed journal, patents, written reports or a thesis or dissertation."

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation of the alien's membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not

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

determinative; the issue here is membership requirements rather than the association's overall reputation.

In this case, the documentary evidence reflects that a full member for [redacted] must demonstrate a "noteworthy achievement." Even if we would concur that [redacted] noteworthy achievement equates to an outstanding achievement, which we do not, full membership in [redacted] only requires a single noteworthy achievement and not multiple noteworthy achievements, and therefore, fails to satisfy the plain language of the regulatory criterion requiring more than one outstanding achievement.

Furthermore, the submitted documentary evidence about [redacted] reveals that [redacted] invites to full membership "those who have demonstrated noteworthy achievements in research." These achievements must be evidenced by "publications, patents, written reports or a thesis or dissertation, which must be available to the Committee on Admission if requested." A noteworthy achievement is not necessarily an outstanding achievement given that a noteworthy could be two first-authored articles, one of which could be a thesis or dissertation. In fact, the record reveals that the society does not take a particularly strict view of noteworthy achievements. It remains, a "noteworthy" achievement, as defined by the society, is not an outstanding achievement. Moreover, even if we would have found that the petitioner's membership with [redacted] demonstrated outstanding achievements of its members, which we do not, the petitioner would have only demonstrated membership with one organization, in which more than one is required pursuant to the regulation.

For the reasons stated above, the petitioner failed to establish that his membership with [redacted] demonstrates eligibility for this regulatory criterion. Merely submitting documentation reflecting membership with an organization in the petitioner's field, without documentary evidence establishing that those organizations require outstanding achievements of their members as judged by recognized national or international experts, is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner provided an excerpt from [redacted] dated November 2007, entitled [redacted]" which highlights the material that is in this specific publication. The excerpt fails to mention the petitioner or an author. The petitioner also submitted pages from the [redacted] website, [redacted] one of which recommends an article that he co-authored and discusses its subject matter. The discussion is in the form of comments, which does not include a title or author. The second page from the [redacted] website provides information about the organization. In addition, the petitioner references the numerous publications which have cited to his findings.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about" the petitioner relating to his work. *Compare* 8 C.F.R. § 204.5(i)(3)(i)(C), relating to outstanding professors and researchers, which only requires published material about the alien's work. Articles authored by the petitioner, or articles which cite the petitioner's work, are not articles about the petitioner relating to his work. Thus, while his publications and citations therein are not relevant to this criterion, they will be considered below as they relate to the petitioner's contributions and scholarly articles at 8 C.F.R. §§ 204.5(h)(3)(v) and (vi).

The comments from the [redacted] website does not include an author or a title as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Also, it is simply a brief summary of the petitioner's article with a reference to where the article was published.

In general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.[3]

A review of the materials submitted by the petitioner reflect that they are not primarily or principally "about" the petitioner. Instead, the materials simply summarize the contents of the articles and refer the reader to the journal publication.

Notwithstanding the above, the petitioner failed to establish that any of these publications are professional or major trade publications or other major media. While the petitioner submitted a page from the [redacted] website, this information comes from the publication itself. The petitioner failed to submit independent evidence establishing that this publication is a professional or major trade publication or major media. In addition, we note that the "article" from the [redacted] website appears to be an exclusively online or web-based publication. In today's world, many newspapers, regardless of size and distribution, post at least some of their stories on the Internet. To ignore this reality would be to render the "major media" requirement meaningless. We are not persuaded that international accessibility by itself is a realistic indicator of whether a given publication is "major media." We will not presume that articles posted on the Internet will notably increase the readership of that publication if it is otherwise unknown or distributed nationally.

In light of the above, while the evidence discussed above is relevant as to the significance of the petitioner's contributions and scholarly articles, it does not meet the plain language requirements for this criterion, set forth at the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

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[3] Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner claims eligibility for this criterion based on being requested to review articles for various journals. The petitioner submitted evidence that he reviewed articles for [redacted] and the [redacted].

Accordingly, the petitioner has provided sufficient evidence to establish that he meets the plain language of this criterion.

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

The petitioner argued that his research has yielded two main discoveries; that he characterized [redacted] to evidence these discoveries, the petitioner points to his published articles, citations to his publications, his involvement in a presentation, and reference letters. The petitioner also provided the following reference letters:

1. A reference letter from [redacted], the Vice President of Oncology Clinical Research at [redacted] dated July 10, 2009;
2. A reference letter from [redacted], a Professor at [redacted] School of Medicine, dated July 13, 2009;
3. A reference letter from [redacted] a Professor at [redacted] School of Medicine, dated July 17, 2009;
4. A reference letter from [redacted], a Professor at the [redacted], dated July 8, 2009;
5. A reference letter from [redacted], a Professor at [redacted] School of Medicine, dated July 6, 2009; and
6. A reference letter from [redacted], Assistant Professor at the [redacted], dated July 12, 2009.

On appeal, the petitioner did not provide further evidence. Nonetheless, the petitioner explained his research and continued to argue that he satisfied this 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." In compliance with *Kazarian*, the AAO must focus on the plain language of the regulatory criteria. 596 F.3d at 1121. Here, the evidence must be reviewed to see

whether it rises to the level of "original scientific, scholarly, or business-related contributions of major significance in the field."

Aside from the petitioner's publications, citations thereto, and involvement in presentations, the petitioner relies solely on reference letters for this criterion. The petitioner provided four reference letters from those with whom he appears to have a personal relationship, items 2 through 5. [redacted] has known the petitioner for over a year, and has been working closely with him. [redacted] states that the petitioner has been "leading the research project on the HBXAP (Rsf-1) protein" and:

> [H]as mastered the intra-bursa injection skill, and has produced the Lentivirus for knocking down the expression of HBXAP (Rsf-1), a critical reagent to test our hypothesis in our proposal.

However, [redacted] provides no specific description of what kind of impact the petitioner has made by his ability to master the intra-bursa injection skill or to produce the Lentivirus reagent. It is unclear whether other scientists have also accomplished these tasks, or whether these accomplishments are merely impressive rather than rising to the level of a contribution of major significance. Further, there is no independent evidence to support his statements. Likewise, [redacted], who also works with the petitioner, echoes [redacted] claim but again fails to specifically explain how the petitioner's findings have impacted the field. [redacted] claims that the petitioner is:

> [A] highly motivated investigator. He has pioneered research in the molecular genetic changes associated with ovarian cancer since he joined our Division. Under the supervision of [redacted] and [redacted], who are both internationally renowned scientists, [redacted] has, in a relatively short time, made significant contributions towards the characterization of an important ovarian cancer oncogene, HBXAP (Rsf-1), and the analysis of DNA copy number alternations in ovarian cancers. [redacted] is now focused on further characterizing the role of Rsf-1 in DNA repair, a critical event that is related to cancer development. He is also investigating the potential role of candidate tumor suppressor genes in ovarian cancer. His studies are highly innovative and represent important advances in the field, as they enhance our current view of ovarian carcinogenesis and have a very high potential of opening up new avenues of research.

While he claims that the petitioner's work is "innovative" and represents "important advances in the field," he does not describe any alleged advancement in detail. In fact, he states that the petitioner's work has "a very high potential of opening up new avenues of research." Such a statement implies that the petitioner's work has yet to have any impact on his field and speculates about its future potential. On appeal, the petitioner argues that [redacted] letter illustrates that he has made contributions of major significance. Specifically, the petitioner indicates that [redacted] credits the petitioner with "[linking] TOPORS to prostate cancer by

demonstrating that TOPORS regulates the protein level of an important prostate-specific tumor suppressor, NKX3.1."

[redacted] also mentions that the petitioner's work has been published in the [redacted] and that it has been cited eight times since February 2008. Similarly, [redacted] notes that the petitioner has made a "remarkable discovery" that has "opened the door for more options to re-activate the tumor suppressor activity of NKX3.1, and might possibly lead to novel therapeutic options for prostate cancer." However, his remarks fail to describe any current impact of the petitioner's discovery. Rather, he states that the petitioner's work "might" lead to new ways of dealing with prostate cancer.

[redacted] reference letter acknowledges that his statements are based upon a "careful and thorough review of the [petitioner's] work." As such, this reference does not appear to be based on any prior recognition of the petitioner or his work. Rather, it appears to have been solicited solely for this proceeding and is based on a review of the petitioner's publications, curricular vitae and research projects. Given no indication that he was aware of the petitioner's research or findings prior to writing the letter, such a reference is not sufficient to demonstrate the petitioner's impact. Moreover, similar to [redacted], [redacted] also has failed to indicate the present impact that the petitioner's work has had on the field. Rather, [redacted] letter states that the petitioner's work will "potentially provide a critical step toward the future development of therapeutic agents for patients with ovarian cancer."

In this case, while the recommendation letters praise the petitioner for his work and indicate his original findings, they fail to indicate that his contributions are of *major significance* to the field. The letters provide only general statements without offering any specific information to establish how the petitioner's work has been of major significance. Moreover, while describing the petitioner's research and generally referring to the importance of his research, the letters fail to provide specific details to explain how his research has currently impacted his field so as to be considered contributions of major significance.

Given the descriptions in terms of future applicability and determinations that may occur at a later date, it appears that the petitioner's research, while original, is still ongoing and that the findings he has made are not currently being implemented in his field. Again, while we acknowledge the originality of the petitioner's findings, the letters do not indicate that anyone is currently applying the petitioner's research findings so as to establish that these findings have already impacted the field in a significant manner. Accordingly, while we do 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, the actual present impact of the petitioner's work has not been established. Rather, the petitioner's references appear 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. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 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

we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Many of the letters proffered do in fact discuss far more persuasively the future promise of the petitioner's research and the impact that may result from his work, rather than how his past research already qualifies as a contribution of major significance in the field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. The assertion that the petitioner's research results are likely to be influential is not adequate to establish that his findings are already recognized as major contributions in the field. While the experts praise the petitioner's research and work as both novel and of great potential interest, the fact remains that any measurable impact that results from the petitioner's research will likely occur in the future.

While those familiar with the petitioner highly praise his work, there is insufficient documentary evidence demonstrating that his work is of major significance. This regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those contributions to be significant. We are not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[4] The lack of supporting evidence gives the AAO no basis to gauge the significance of the petitioner's present contributions.

USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts 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. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance. Furthermore, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Finally, the record reflects that the petitioner submitted documentary evidence reflecting that his work has been cited 43 times. We are not persuaded that the moderate citations of the petitioner's articles are reflective of the significance of his work in the field. The petitioner failed to establish how those findings or citations of his work by others have significantly contributed to his field. While the citation of the petitioner's work by others is reflective that others have taken some notice of his work, there is insufficient evidence that the petitioner's research has significantly impacted his field, such as extensive citation of the petitioner's work.

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[4] *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.).

Without additional, specific evidence showing that the petitioner's work has been original, influential, or has otherwise risen to the level of contributions of major significance, we cannot conclude that he meets this criterion.

Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner submitted articles that he authored and co-authored in [redacted] The petitioner also submitted a chapter from a book, entitled [redacted]" that he co-authored, as well as emails that were exchanged prior to his involvement in writing this chapter.[5]

We find that such evidence sufficiently establishes that the petitioner meets the plain language of this criterion.

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

The petitioner initially submitted evidence demonstrating that his research entitled, "Regulation of tumor suppressor NKX3.1 by ubiquitination" was selected for a poster presentation at the [redacted] in 2007. No new evidence was provided on appeal. In addition, the petitioner's appeal brief conceded that he is "not fit for this criterion."

The plain language of this criterion indicates that it is intended for artists. As the petitioner is a scientific researcher, this criterion does not apply to him.

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

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

The petitioner claims that he has played a leading and critical role as a research fellow in the [redacted] at Johns Hopkins Hospital at University of Maryland, Baltimore County (UMBC). The petitioner submitted the following as evidence:

1. A reference letter from [redacted], a Professor at [redacted] of Medicine, dated July 13, 2009, who stated that the petitioner was "leading

[5] Although it is not clear that the chapter was actually published at the time of filing, the remainder of the submitted evidence satisfies this criterion.

the research project on the HBXAP (Rsf-1) protein" and that he "plays a critical role in carrying out this NIH-funded study that aims to identify the mechanism underlying how HBXAP (Rdf-1) contributes to ovarian cancer."

2. A reference letter from [redacted], a Professor at [redacted] School of Medicine, dated July 17, 2009, stating that the petitioner has "pioneered research in the molecular genetic changes associated with ovarian cancer."
3. A reference letter from [redacted], a Professor at [redacted] of Medicine, dated July 6, 2009, indicating that the petitioner has "become an indispensable member in our group, especially in the HBXAP project funded by NIH." Specifically, his letter states that the petitioner has "set up the powerful lentiviral system that allowed us to perform novel experiments and thus benefited every researcher in our group."
4. Evidence regarding the grant project entitled, "The Roles of HBXAP Gene in Ovarian Cancer," indicating that [redacted] is the principal investigator.
5. A reference letter from [redacted], a Professor at the [redacted], dated July 8, 2009, stating that the petitioner had played a leading and critical role in the project in his laboratory.

Additionally, the petitioner noted that Johns Hopkins has a distinguished reputation, providing its *U.S. News and World Report* rankings. However, no evidence was submitted to support these statements. On appeal, no new evidence was provided for this criterion, including the distinguished reputation of UMBC.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a *leading or critical role* for organizations or establishments that have a distinguished reputation [emphasis added]." At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In this instance, the petitioner and his references have not provided specific examples of his responsibilities or the critical nature of his role in the laboratory. It appears that the thrust of the recommendation letters cite his involvement, however the letters fail to indicate specifically how his participation has been critical and his responsibilities have made him integral to the team. Further, it is unclear whether he played a leading role with respect to the federal grant because his name was not included in the grant materials. In fact, [redacted], and [redacted] all appeared to have played a leading role in the laboratory and/or on the project. The petitioner failed to show how his role was leading or critical in comparison to them and other researchers on his team. While the recommendation letters refer to the petitioner's involvement in various studies, they do not, however, reflect that the petitioner performed in a leading or critical role in studies consistent with the plain language of the regulation.

In this case, the record does not establish that the petitioner was responsible for the success or standing to a degree consistent with the meaning of "leading or critical role" pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

Accordingly, the petitioner has not established that he meets this criterion.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1115. The petitioner established eligibility for two of the criteria, in which at least three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

With regard to the documentation submitted for 8 C.F.R. § 204.5(h)(iv), we cannot conclude that the petitioner's participation as a reviewer for various journals demonstrates a level of expertise indicating that he is among that small percentage who have risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). We note that peer review is a routine element of the process by which articles are selected for publication in scientific journals or for presentation at scientific conferences. Occasional participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his field. Reviewing manuscripts is recognized as a professional obligation of researchers who publish themselves in scientific journals or who present their work at professional conferences. Normally a journal's editorial staff or a conference technical committee will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication or technical committee to ask multiple reviewers to review a manuscript and to offer comments. The publication's editorial staff or the technical committee may accept or reject any reviewer's comments in determining whether to publish, present, or reject submitted papers. Without evidence pre-dating the filing of the petition that sets the petitioner apart from others in his field, such as evidence that he has received and completed independent requests for review from a substantial number of journals or conferences, served in an editorial position for a distinguished journal, or chaired a technical committee for a reputable conference, we cannot conclude that the beneficiary is among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Further, with regard to the evidence submitted for 8 C.F.R. § 204.5(h)(vi), although the petitioner has met the plain language of the regulation through his co-authorship and authorship of scholarly articles, he has not established that the publication of such articles in publications such as [redacted], the [redacted], [redacted] and [redacted] demonstrates a level of expertise indicating that he is among that small percentage who have risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). As authoring scholarly articles is inherent to science, we will evaluate a citation history or other

evidence of the impact of the petitioner's articles to determine the impact and recognition his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the petitioner would provide solid evidence that his work has been recognized and that other researchers have been influenced by his work. On the other hand, few or no citations of an article authored by the petitioner may indicate that his work has gone largely unnoticed by his field. As previously discussed, the petitioner claims that his work has been independently cited 43 times. While these citations demonstrate some interest in his published and presented work, they are not sufficient to demonstrate that his articles have attracted a level of interest in his field commensurate with sustained national or international acclaim at the very top of his field.

This conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). While the petitioner's accomplishments may distinguish him from other postdoctoral fellows and cancer researchers, we will not narrow his field to others with his level of training and experience. For example, one of his references, [redacted], the petitioner's supervisor, from Johns Hopkins School of Medicine, claimed that his research team has published over 150 research articles. Dr. Shih also mentioned in his letter that he is the principal investigator in several NIH sponsored research projects, and [redacted] the Johns Hopkins Ovarian Cancer Research program and is co-director in a multi-institutional Ovarian Cancer Research Consortium supported by the United States Department of Defense. [redacted] similarly plays a leading role on the research team at Johns Hopkins, and acts as [redacted], likewise, has impressive credentials, having authored 100 original publications and book chapters related to early phase oncology clinical trials and the biology of cancer drug targets. Additionally, [redacted] has served on several editorial boards, including [redacted] and [redacted], and as a deputy editor for Clinical Cancer Research. When compared to the accomplishments of these individuals, it appears that the highest level of the petitioner's field is far above the level he has attained.

In this case, the specific deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The petitioner submitted documentation relating to his achievements in cancer biology. The submitted evidence, however, is not indicative of the petitioner's national or international acclaim and there is no indication that his individual achievements have been recognized in the field.

III. Conclusion

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or

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

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO 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 at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.