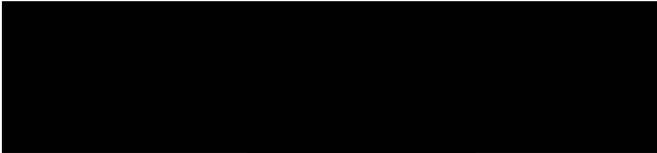




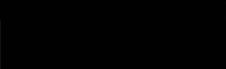
U.S. Citizenship  
and Immigration  
Services

In analyzing data collected to  
prevent clearly unwarranted  
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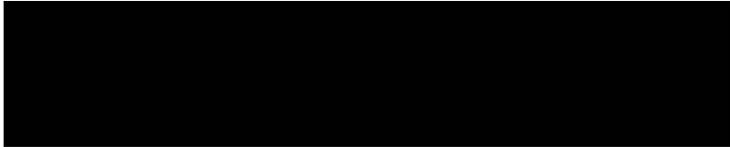
IN RE:

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:



PHOTOCOPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to  
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The AAO upheld that determination.

Counsel has now filed a motion to reconsider. According to the regulation at 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy.

At the outset, counsel relates his recollections of a phone call with the Chief of this office, asserting that it was agreed that “unless there is an obvious reason to deny a case, it should be approved.” This principle does not change the fact, supported by statute, that the burden of proof of establishing eligibility is on the petitioner. Section 291 of the Act. This section of law goes on to assert that the evidence must establish eligibility “to the satisfaction” of the adjudicating officer. This burden is confirmed in *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965) and *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). We reject any implication that the act of submitting evidence shifts the burden of proof to CIS. Rather, that evidence must be evaluated to determine whether the petitioner has met his burden.

Counsel also attempts to rely on a lesser standard in this matter, stating:

Trying to make the case that a scientist whose first publication was in 1989 who now has 37 articles and 13 presentations, who is not a postdoc, but and [sic] INSTRUCTOR (faculty) at the University of Connecticut, is not even “exceptional” is an exercise in sophistry.

We note that exceptional ability is an entirely separate classification with a significantly lower regulatory standard. *See* section 203(b)(2) of the Act; 8 C.F.R. § 204.5(k)(3)(ii). Thus, the dismissal of the appeal at issue, in which the petitioner seeks the more exclusive extraordinary ability classification pursuant to section 203(b)(1)(A) of the Act, in no way reflects a determination as to whether the petitioner is an alien of exceptional ability.<sup>1</sup>

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<sup>1</sup> We note that counsel also submitted the same brief in support of a motion to reconsider the dismissal of an appeal from the denial of another petition filed by the petitioner seeking benefits pursuant to section 203(b)(2) of the Act. That classification, however, normally requires an alien employment certification

Counsel has repeatedly made allegations of incompetence, demanding disciplinary action against the AAO officer who authored the initial decision. Such claims must be taken seriously, but should be well supported. In this instance they are based on severe mischaracterizations of the concerns raised by the AAO. For example, counsel states:

[The petitioner] has been an INSTRUCTOR at the University of Connecticut since February of 2003. He is NOT a postdoctoral [sic]. The fact that the [AAO] doesn't know the difference is just another reason that individual is not qualified for the job he/she is doing.

At no point anywhere in the appellate decision did the AAO imply that the petitioner is a postdoctoral researcher or that an instructor is equivalent to a postdoctoral researcher. Rather, the AAO pointed out that, regardless of the petitioner's position, publication is expected in the field, *even for entry-level postdoctoral researchers*. Where the AAO specifically addressed the petitioner's position, the AAO acknowledged that he is an instructor with the University of Connecticut. The AAO also expressly acknowledged that the instructor position was not the type of temporary position represented by a postdoctoral appointment. Counsel's remaining assertions, which involve similar mischaracterizations, will be addressed below.

The law and regulations were set forth in our previous decision and need not be repeated here. We note, however, that CIS 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* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991).

At issue are the petitioner's claims to meet the following four regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3).<sup>2</sup> We note that the petitioner must meet at least three to establish eligibility.

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

In his initial cover letter, counsel asserted that in 1998, the petitioner received the "International Renaissance Foundation – Open Society Institute (New York) Award (George Soros)." Counsel characterized this award as "a highly competitive international award with a significant monetary stipend attached to it." Exhibit C of the initial submission included the petitioner's academic diplomas and a second place diploma in the VII Scientific Competitive Conference of Young Investigators of the South Regional Scientific Center of the Academy of Science of the Soviet Union. Exhibit D included a 1994 grant from INTAS and a foreign language document with a partial translation. The partial

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certified by the Department of Labor. The petitioner sought a waiver of that requirement. As such, the dismissal of that petition also made no finding as to whether the petitioner qualifies as "exceptional."

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

translation, which is not certified as required pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), reflects that the document is a letter to the petitioner advising him of “a grant for scholars and educators” from the Board of International Science and Education Program (ISEP). The top of the translation reads:

International Renaissance Foundation  
Open Society Institute (New York)  
International Science and Education Program

The uncertified partial translation does not include any information as to the size of the monetary “award.”

The AAO listed numerous problems with the claim that this evidence reflects an award. First, none of the references discussing the receipt of the “award” attest to any personal knowledge of this award. In addition, the regulation at 8 C.F.R. § 103.2(b)(3) requires a full certified translation for all foreign language documentation. Finally, the record did not establish the relationship of the “International Science Foundation” to the “International Renaissance Foundation,” although, in a footnote, the AAO acknowledged confirming the relationship on the Internet but noted that the same Internet information suggested that the “award” was actually fellowship limited to recent graduates.

On motion, counsel asserts that the AAO rejected the “award” for two reasons: the lack of a full, certified translation, which the AAO did raise, and a conclusion that the amount of the award was too small, which the AAO did *not* raise. Counsel acknowledges on motion that the regulation at 8 C.F.R. § 103.2(b)(3) applies to foreign language documents submitted as evidence of the truth of what is stated, which is exactly the purpose of the “award” letter. Despite this concession, counsel still attempts to fault the AAO by changing the nature of the translations found lacking from the award to published articles. Based on this disingenuous analysis, counsel concludes that the AAO “does not understand the law.” As stated above, the AAO never required translations for the published articles. We affirm our contention, however, that the regulation requires a full, certified translation of the “award” letter if the content of that letter is to be considered evidence.

Finally, the AAO did not question whether the amount of the “award,” claimed by counsel to be \$3,200, was significant. Rather, the AAO noted that the only evidence of the amount was counsel’s own statement. As stated by the AAO, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel has not overcome that concern on motion.

In light of the above, we concur with our initial finding that the petitioner has not established that he meets this criterion.

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

The AAO acknowledged that letters from one's colleagues are important and necessary to explain the alien's role on various projects. The AAO noted, however, that such letters are more persuasive when supported by other evidence of the petitioner's influence beyond those colleagues, such as independent letters from researchers who have applied the alien's work or frequent citation of the alien's work. The AAO explained that general claims of ability and notoriety in the field are far less persuasive than concrete examples of the petitioner's contributions in the field and an explanation of the impact of those contributions.

As also stated in our previous decision, the regulation at 8 C.F.R. § 204.5(h)(3)(v) states that an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work.

The AAO noted: "The petitioner's field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field." On motion, counsel responds that "the same criticism could have been leveled against Albert Einstein, or for that matter anyone else who publishes any scientific research." The AAO was not demeaning the act of adding to the general pool of knowledge in the field. Rather, the AAO concluded that minor improvements in a field that is constantly improving are insufficient as they do not set the alien apart from his peers. Counsel effectively concedes that adding to the general pool of knowledge does not set the petitioner apart from his peers by stating that such "criticism" could be leveled at any researcher publishing his work. Albert Einstein, by contrast, did not *merely* add to the general pool of knowledge in physics. Rather, he postulated radical new theories that were ultimately confirmed by others. His work forms the foundation for most, if not all, subsequent theoretical physics. Such a contribution is a far cry from adding another building block in an ever-increasing body of scientific knowledge.

The AAO examined the reference letters in great detail in the context of the above discussion and concluded:

While the record includes attestations of the potential impact of the petitioner's work, none of the petitioner's references provide examples of how the petitioner's work is already influencing the field. While the evidence demonstrates that the petitioner is a talented scientist with potential, it falls short of establishing that the petitioner had already made contributions of major significance. Thus, the petitioner has not established that he meets this criterion.

On motion, counsel asserts that the AAO's discussion of the letters reflects a misunderstanding of what the petitioner does and how his impact might be demonstrated. Counsel further asserts that the AAO violated due process in requesting evidence that other laboratories have applied the petitioner's work in developing drugs or otherwise. Even assuming the AAO erred in suggesting the petitioner's work, characterized by counsel on motion as developing "methods that could be used to develop drugs," could be applied in the pharmaceutical industry, the AAO's contention that the record lacked any evidence of the petitioner's work being applied outside his own circle of colleagues remains a valid conclusion.

Moreover, we do not find that the AAO's discussion of the deficiencies of the record constitutes an impermissible request for evidence at the appellate stage. The director stated that the record did not establish that the petitioner "has had a substantial impact in his field of endeavor." The AAO concurred with the director's finding, explaining in more detail the deficiencies in the letters. Ultimately, the petitioner and counsel were on notice from the regulation at 8 C.F.R. § 204.5(h)(3)(v) that the petitioner must demonstrate contributions of *major significance* in the field. The director noted that the letters did not show a substantial impact in the field. The AAO concurred, providing a more reasoned and detailed analysis of the letters. We fail to find a due process error in this chronology. Even if the AAO had identified a new deficiency on appeal, 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 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

In general, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. CIS 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. 1988). However, CIS 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; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. Ultimately, evidence in existence prior to

the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

In light of the above, we uphold our finding that the record lacks evidence, such as letters from independent researchers applying the petitioner's work or a record of frequent and wide citation, which might corroborate the references' claims of significant contributions on the part of the petitioner.

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

The AAO stated:

Initially, counsel asserted that the petitioner had authored 36 articles and presented his work at 10 international conferences. Exhibit B contains two abstracts and 16 articles. We cannot consider the *new* articles submitted *on appeal*, as they do not relate to the petitioner's eligibility as of the date of filing.

(Emphasis added.) On motion, counsel characterizes this paragraph as "incorrect" because of an "assumption that 16 of [the petitioner's] articles were published since submission of the petition and therefore cannot be considered." Counsel then references the petitioner's self-serving curriculum vitae as evidence of when the petitioner's articles were published.

On this one point, we concede that the AAO could have been clearer in its previous decision. A review of the record reveals that the only labeled exhibits were the ones submitted initially. Exhibit B of the *initial submission* included abstracts and articles. None of the other exhibits submitted initially include any articles or conference presentations. Given counsel's concerns, we have carefully recounted the publications included in the initial exhibit B and now count 15 articles and three conference abstracts. These numbers do not differ significantly from our appellate determination. Given these facts and a careful reading of the AAO's language, it appears that the AAO was making two separate and unrelated conclusions that, perhaps, could have been distinguished better: (1) the number of articles submitted initially was fewer than the number claimed by counsel and (2) the new articles submitted on appeal could not be considered.

The AAO acknowledged that the petitioner's publication record demonstrates that he is a prolific author but concluded that, based on a lack of citations or other comparable evidence, the record lacked evidence of the impact those articles have had. On motion, counsel asserts that most of the petitioner's articles were published in the Soviet Union and "it is quite impossible to get either copies of most of them or citations to them." The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2). Moreover, the petitioner has several articles published in the United States prior to the date of filing and has not submitted any evidence that those articles had been published.

In light of the above, we affirm our initial finding that 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 AAO stated:

We have already considered the petitioner's contributions while at the University of Connecticut above. At issue for *this* criterion, however, are the role the petitioner was hired to fill and the reputation of the entity that hired him. We do not contest the distinguished reputation of the University of Connecticut as a whole. At the time of filing, however, the petitioner filled the role of instructor. We cannot conclude that the role of instructor, while not temporary, is a leading or critical role for the University of Connecticut as a whole beyond the obvious fact that the university requires the services of its numerous instructors to participate in the research occurring at that institution. Thus, we concur with the director's ultimate conclusion that the petitioner does not meet this criterion.

On motion, counsel responds:

Horse feathers! Where does [the AAO] get off telling the University of Connecticut who is important and who is not. Clearly the only person capable of making that distinction is the candidate's boss, or the chairman of the Department. We have letters from senior faculty at UConn, and very clearly, if these letters were read, [the petitioner's] leading and critical role would be understood. Does [the AAO] believe that an instructor with 18 years of research experience, almost 50 publications and a faculty rank would be insignificant to a major university?

As stated in our previous decision, at issue for this criterion is not the petitioner's individual achievements while serving in a given position, but the nature of the position itself. In other words, the nature of the position should be so notable that the mere selection for the job is indicative of or consistent with acclaim in the field. The AAO acknowledged that an instructor may be deemed "critical" to the needs of a university in so far as the university desires the services of talented instructors. We further acknowledge the references' expertise in academia and their sincere conclusions as to the petitioner's value at the University of Connecticut. Our expertise, however, is immigration law. We are entrusted with enforcing and, thus, interpreting the meaning of the regulation at 8 C.F.R. § 204.5(h)(3)(ix). The petitioner relies on a declaration by fiat that the petitioner, as an instructor, is critical, without any evaluation of the academic hierarchy at the University of Connecticut (including assistant professors, associate professors, full professors, professors who receive endowed chairs or similarly distinguished positions, deans, etc.). Such a declaration essentially renders the entire

faculty of the university, at the level of instructor and above, sufficiently “critical” as to meet this criterion. Such an interpretation provides no means for separating the ordinary from the extraordinary in the field and is untenable. We reaffirm our initial conclusion that the petitioner has failed to establish that the petitioner meets this criterion.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a researcher to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows tremendous talent as a researcher, but is not persuasive that the petitioner’s achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

**ORDER:** The AAO’s decision of July 18, 2005 is affirmed. The petition is denied.