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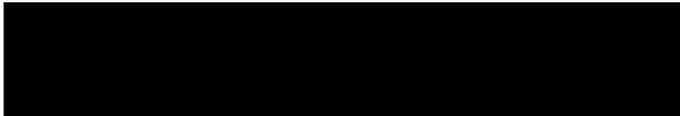
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FILE: LIN 07 108 52851 Office: NEBRASKA SERVICE CENTER Date: DEC 19 2008

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:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in cursive script, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

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* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means 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. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on March 2, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a researcher and an Instructor in Pathology. The petitioner earned his Ph.D. in Virology

from the Albert Einstein College of Medicine of Yeshiva University in 2003. At the time of filing, the petitioner was working as an Instructor in Pathology in the Department of Pathology, Dana-Farber Cancer Institute, Harvard Medical School.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria.¹

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

The petitioner submitted evidence showing that he received a United Nations Educational, Scientific and Cultural Organization (UNESCO) Short-Term Fellowship (1997) to perform research for three months at the Max Planck Institute in Germany "under the supervision of [REDACTED]" In response to the director's request for evidence, the petitioner submitted information from UNESCO's internet site stating that its fellowship program is intended for graduates and postgraduates seeking to pursue training, undertake advanced research, upgrade skills, or attend courses.

The petitioner submitted evidence showing that he received a Basic Research Fellowship from the American Foundation for AIDS Research (amfAR) to pursue research entitled "Sexual Transmission of HIV: **Dendritic Cells and HIV**" from July 1, 2003 to May 30, 2005. The petitioner also submitted information from amfAR's internet site stating that its fellowships "enable young researchers to conduct original studies under the guidance of experienced senior scientists. The funded projects were selected from among nearly 180 letters of intent submitted in response to amfAR's February 2003 request for proposals." On appeal, the petitioner submits a June 11, 2007 letter from [REDACTED] Director of Grants Administration and Compliance, AMFAR, stating:

amfAR's fellowship grants provide two years of support to outstanding postdoctoral investigators who are embarking on or redirecting a career in HIV/AIDS research. . . . In particular, evaluation of fellowship applications includes intensive assessment of the applicant's potential to make significant contributions to HIV/AIDS research, and of the

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

scientific merit of the studies proposed. The award of an amfAR fellowship recognizes the applicant as an HIV/AIDS scientist of exceptional promise.

We cannot conclude that “exceptional promise” is tantamount to “excellence in the field.” The petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

With regard to the petitioner’s UNESCO and amfAR fellowships, we find that they represent his receipt of financial support for advanced research training rather than nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Such support funding is presented not to established researchers with active professional careers, but rather to “young researchers” in pursuit of further research training and experience. We cannot ignore that the petitioner’s fellowships were under the guidance experienced senior scientists.

The petitioner submitted evidence showing that he was awarded his Ph.D. degree “with Departmental Honors” from the Albert Einstein College of Medicine of Yeshiva University. The petitioner also submitted a June 28, 1999 letter from [REDACTED], Chair of the Academic Affairs Committee, Sue Golding Graduate Division, Albert Einstein College of Medicine of Yeshiva University, congratulating the petitioner for “outstanding performance” in his graduate courses. In respect to academic awards from universities and other learning institutions, USCIS views such awards as local or institutional honors rather than nationally or internationally recognized awards for the reason that they are limited to students who attend the school or institution presenting the awards. Further, university study is not a field of endeavor, but rather training for future employment in a field of endeavor. The petitioner’s receipt of academic honors, limited by their terms to students, is not an indication that he “is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). Such honors do not measure the petitioner’s standing or selection from among those already working in the field who have long since completed their educational training. Thus, they do not show his extraordinary ability under this regulatory criterion.

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

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

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

not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence of his membership in the New York Academy of Sciences (NYAS) since 2004. In response to the director's request for evidence, the petitioner submitted a March 23, 2007 letter from [REDACTED], Membership Office, NYAS, stating: "The Academy accepts only those individuals who are at the head of their chosen field." This brief statement is not sufficient to meet the plain language this regulatory criterion. The record does not include supporting evidence (such as membership bylaws or official admission requirements) showing that the NYAS requires outstanding achievements of its members as judged by recognized national or international experts in the petitioner's field or an allied one.

The petitioner submitted a February 12, 2007 letter from the [REDACTED] Membership Manager, American Society for Cell Biology, stating that the petitioner "has been a member . . . in good standing since 2000." [REDACTED] further states:

The purpose of the Society is to promote and develop the field of cell biology. According to the American Society for Cell Biology Constitution and Bylaws:

Membership in the Society shall be open to scientists who share the stated purpose of the Society and who have educational or research experience in cell biology or an allied field.

Qualifications for membership are that:

The applicant must be sponsored by a regular or postdoctoral member in good standing and must hold a Ph.D., M.D. or an equivalent degree, or must have equivalent experience. Having applied for membership initially as a student, the qualifications were as follows: For student membership, the applicant must be a candidate in good standing for a graduate degree. The application must also be endorsed by the student's research advisor.

We cannot conclude that the preceding membership requirements (such as holding an advanced degree) are tantamount to outstanding achievements. Further, there is no evidence showing that prospective members are evaluated by recognized national or international experts in the petitioner's field or an allied one.

In response to the director's request for evidence, the petitioner submitted an April 4, 2007 letter from [REDACTED], Executive Director, Sigma Xi, The Scientific Research Society, welcoming the petitioner as a "new member." This letter reflects that the petitioner's membership in Sigma Xi commenced subsequent to the petition's filing date. A petitioner, however, must establish eligibility 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). Accordingly, the AAO will not consider this membership in this proceeding. Nevertheless, there is no evidence showing that Sigma Xi requires outstanding achievements of its

members as judged by recognized national or international experts in the petitioner's field or an allied one.

In light of the above, 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.

In general, in order for published material to meet this criterion, it must be primarily 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. An alien would not earn acclaim at the national level from a local publication. 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.²

The petitioner submitted a September 1, 2001 article in *Ciencia y Tecnologia*, but it was not accompanied by a full English language translation. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Further, the article only mentions the petitioner's name in passing. The plain language of this regulatory criterion, however, requires that the published material be "about the alien." Finally, there is no evidence (such as circulation statistics) showing that *Ciencia y Tecnologia* qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted an article from 2001 in *Biological Research* discussing a student symposium in which the he participated. This article only briefly mentions the petitioner and is not primarily about him. Further, there is no evidence showing that *Biological Research* qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted an August 21, 2005 article in the *Star of Arica*, an August 23, 2005 article posted at www.universia.cl, and a January 13, 2007 article posted at www.chasquis.cl, but the author of these articles was not identified as required by the plain language of this regulatory criterion. The petitioner also submitted a discussion about him posted on [REDACTED]'s internet blog. There is no evidence showing that the preceding publication, internet sites, and scientific blog qualify as professional or major trade publications or some other form of major media.

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

² 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.

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

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “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.” 8 C.F.R. § 204.5(h)(2).

The petitioner submitted a December 12, 2006 letter from [REDACTED], Assistant Professor, Department of Microbiology and Immunology, Albert Einstein College of Medicine, stating: “I was [the petitioner’s] thesis supervisor and in several occasions I have asked [the petitioner] to review papers I have received to review manuscripts [sic] from internationally renowned journals such as *Proceedings of the National Academy of Sciences* and the *Journal of Virology*.”

The petitioner also submitted a January 9, 2007 letter from [REDACTED] Professor of Pathology at Harvard Medical School, and Chief of the Retrovirology Division, Department of Cancer Immunology and AIDS, Dana-Farber Cancer Institute, stating: “I am [the petitioner’s] direct supervisor and, on several occasions, I have asked [the petitioner] to review papers (the work of others) that have been submitted to me for review from international journals such as the *Proceedings of the National Academy of Sciences* and *Virology*.” In a May 16, 2007 letter submitted in response to the director’s request for evidence, [REDACTED] states that the petitioner “reviewed five manuscripts, two of them were published, three were rejected.”

The record does not include documentary evidence to support [REDACTED] and [REDACTED] assertions regarding the petitioner’s participation as a reviewer. 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)). For example, there is no correspondence from the editorial staff of the *Proceedings of the National Academy of Sciences* acknowledging the petitioner’s participation as a reviewer. Further, we cannot ignore that it was the petitioner’s superiors who were requested to perform the reviews rather than the petitioner. The petitioner has not established that performing manuscript reviews delegated to him by his superiors is indicative of sustained national or international acclaim at the very top of his field.

Even if the petitioner were to submit substantive evidence of his participation in the peer review process for the aforementioned journals, we note that peer review is a routine element of the process by which

articles are selected for publication in scientific journals. Occasional participation in the peer review process does not automatically demonstrate that the petitioner 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. Normally a journal's editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication to ask several reviewers to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals (rather than requests delegated to him by his superiors), or served in an editorial position for a distinguished journal in the same manner as ██████████³ we cannot conclude 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 petitioner submitted several recommendation letters in support of the petition.

██████████ states:

[The petitioner] joined my laboratory three years ago. [The petitioner] came to my laboratory highly recommended by ██████████, his doctoral thesis advisor. In ██████████ laboratory, [the petitioner] made several important discoveries regarding the processes of avian leukosis virus (an HIV-like retrovirus) entry and induction of cytopathic effects. [The petitioner] showed that endocytosis is a critical element of the entry pathway for these retroviruses. In collaboration with ██████████ (Cambridge University, UK), [the petitioner] went on to demonstrate the role of clathrin in the cellular uptake of avian leukosis viruses. As the entry pathways for each group of retroviruses differ in requirements, these results helped establish conceptual models for entry by distinct retroviruses that utilize the endocytic pathway to gain access to the target cell. [The petitioner] also made important discoveries regarding the cytopathic effects induced by the avian leukosis virus. The cytopathic effect is the ability of viruses to kill cells during infection. An understanding of this process could shed light on new ways to prevent cell death from retroviral infection. The cytopathic consequences of infection by some subgroups of avian leukosis virus have been linked to the ability to utilize a receptor, TVB, that contains a death domain in its cytoplasmic tail. [The petitioner] has shown the importance of signaling through TVB for cytopathic effects and that most of this killing involves bystander effects, not infected cells. The pathways that [the petitioner] has worked out for cell killing represent a lasting contribution to our understanding of retrovirus-host cell interactions. As a result of his graduate studies, [the petitioner] attained an extraordinary level of expertise in virology, cell biology and molecular biology.

██████████'s resume indicates that he serves on the editorial boards of multiple journals.

Upon his arrival in my laboratory, [the petitioner] began working on an emerging area of retrovirology, the early restriction of viruses by host cell factors. We had recently identified a protein in the cells of Old World monkeys, TRIM5 α , that potently blocks human immunodeficiency virus (HIV-1) infection. TRIM5 α is a member of a fairly large family of tripartite motif (TRIM) proteins, some of which may be involved in blocking virus infection. [The petitioner] found that TRIM5 α , like several other TRIM proteins, forms cytoplasmic bodies of unknown composition and function. [The petitioner] showed that TRIM5 exhibited an unusually rapid turnover in the cell, depending upon a proteasome-mediated degradation. The rapid turnover was dependent on the RING and B-box 2 domains of TRIM5. By creating a long-lived chimera with TRIM21, [the petitioner] showed that rapid turnover is not absolutely essential for the antiviral activity of these proteins. Slowing down the degradation of TRIM5 α by proteasome inhibition allowed [the petitioner] to demonstrate that TRIM5-associated cytoplasmic bodies are pre-aggresomal structures dependent on the relative levels of TRIM5 α synthesis and decay. These insights provide some interesting possibilities for practically manipulating TRIM5-mediated retroviral restriction. They also clarified the nature of cytoplasmic bodies, a feature associated with many TRIM proteins.

In [the petitioner's] recent work, he has nicely dissected the functionally important domains of TRIM5 α and TRIMCyp, a restriction factor in owl monkeys. [The petitioner] identified a key sequence predicted to be exposed on the surface of the TRIM B-box 2 domain that is critical for retroviral restriction. Alteration of this sequence does not appreciably affect TRIM5 α localization, oligomerization or binding to the viral capsid. These data suggest that the B-box 2 contributes an effector function, and [the petitioner] is currently exploring the nature of this critical function. This knowledge may provide new opportunities for the development of therapies that can stop the spread and progression of HIV-1.

[REDACTED] states:

[The petitioner] joined my laboratory as a Ph.D. student in 2000 He established that avian leukosis retroviruses ALV-B, an HIV-like retrovirus, require a low pH step for entry and endocytosis. His findings ended the ongoing controversy about the involvement of a low pH in ALV entry. In addition, [the petitioner's] findings drastically improved our understanding cell killing mediated by avian leucosis viruses. [The petitioner] found that ALV infections lead to killing of uninfected "bystander" cells, while the infected cell population survives. He also demonstrated that the ALV receptor plays a key role in cell killing and that repeated rounds of infections are not linked to cell killing by ALV as commonly believed. This work challenges the belief that superinfection is the cause for cell killing by ALV-B. He was able to very convincingly demonstrate that the cellular receptor for ALV-B plays a key role in cytopathic effects triggered by ALV-B. [The petitioner] established retroviral entry and killing assays, which greatly enhanced our ability to study retroviral uptake and cytopathic effects. [The petitioner's] work in my lab turned into four publications in world-renowned journals, and we are currently working on two additional manuscripts. [The petitioner] received his Ph.D. degree on December 2002, and all 6 committee members agreed on giving him honors for his thesis.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or published research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner's superiors discuss the value of his research, there is no evidence that his work constitutes original contributions of major significance in his field consistent with sustained national or international acclaim.

██████████, Associate Professor, Center for AIDS Health Disparities Research, Meharry Medical College, states:

[The petitioner] established that the HIV-like retrovirus ALV needs an acidic environment step to enter and infect cells. These findings ended the ongoing scientific controversy about the involvement of a low pH in ALV entry. Furthermore, [the petitioner] in collaboration with the University of Cambridge in UK defined that the intracellular protein clathrin, one of the many endocytosis systems of the cell, was essential for transporting the virus to an acidic environment.

Another important sphere of his work was to study the ability of the monkey protein TRIM5-alpha to inhibit HIV-1 infection. [The petitioner] under the supervision of an extraordinary mentor, ██████████ embarked in an HIV-1 leading edge research. [The petitioner's] publications provided a deeper understanding on how TRIM5-alpha inhibits HIV infection. One of the most notable discoveries of [the petitioner] was to establish that binding of HIV-1 capsid by TRIM5-alpha was not sufficient for restriction of viral infection, an important effector function was required. This is very deep result, since it gives shape and direction to the HIV field. Understanding this precise mechanism will be instrumental for the development of new anti-AIDS therapies and prevention methods. It is relevant to mention here that [the petitioner] have [sic] been incredible productive publishing more than 12 peer-review articles in well-known international journals.

██████████, Assistant Professor, Section of Microbial Pathogenesis, Boyer Center for Molecular Medicine, School of Medicine, Yale University, states:

Having worked on model systems to understand HIV/AIDS throughout his graduate work, it was the logical consequence for [the petitioner] to seek an HIV laboratory for his postdoctoral training. By joining ██████████'s laboratory at Harvard Medical School, a highly productive young scientist, joined one of the most important HIV/AIDS research laboratories in the US. The results are remarkable. Within just two years, [the petitioner] has authored 8 publications with ██████████. Most importantly, his mechanistic insight into

innate immunity against HIV represents a highly significant advance for the development of future AIDS therapies. [The petitioner] joined the Sodroski laboratory at a time when his group had just discovered a protein, designated TRIM5, that could potentially protect cells against incoming HIV virions. How TRIM5 exhibits its antiviral activity was unknown. It is in great part thanks to [the petitioner] that we are beginning to understand the biology of TRIM5. His work has taught us that TRIM5 exists in two pools, a soluble form as well as a form that is concentrated in cytoplasmic bodies.

* * *

[The petitioner's] research was presented at international meetings and published in renowned journals such as the *Journal of Virology*, *Virology*, *Journal of Biological Chemistry* and the *Proceedings of the National Academy of Sciences*.

The petitioner's published and presented work relates to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. We will fully address the material authored by the petitioner under the next criterion.

Assistant Professor, Department of Infectious Diseases, Imperial College of Science and Technology, London, states:

I met [the petitioner] in 2003, at the HIV/Retroviruses conference at the Cold Spring Harbor laboratory, where he gave a lecture on the mechanism by which retroviruses, like HIV-1, killed infected cells. Since then I have kept track of his research achievements. [The petitioner] has performed extensive research in the field of HIV, a virus that threatens society. [The petitioner's] expertise comes from studying a protein in monkeys that completely blocks HIV infection. His research described the mechanism by which this monkey protein, called TRIM5, potentially blocks HIV infection when expressed in human cells. This research is likely to be a key for the development of a safe anti-HIV treatment, since the generation of a vaccine have [sic] already failed several times.

* * *

During his Ph.D. research he performed extensive studies on how viruses like HIV-1 kill cells. The pathways that [the petitioner] has identified for cell killing by viruses represent a lasting contribution to our understanding of retrovirus-host cell interactions. As a result of his graduate studies, [the petitioner] attained a high level of expertise in virology, cell biology, biochemistry and molecular biology.

Higgins Professor of Biochemistry and Molecular Biophysics, Howard Hughes Medical Institute, Columbia University, states:

[The petitioner's] initial contribution to the retroviral field under the supervision of Dr. [REDACTED] was the discovery that an HIV-like retrovirus, Rous sarcoma virus, requires an acidic environment for entry. . . . Furthermore, [the petitioner], in collaboration with [REDACTED] (University of Cambridge, UK), went on to show that endocytosis mediated by clathrin is essential for infection of these viruses. This research provides important basic knowledge about these viruses. After [the petitioner] published these findings, he went on to tackle the mechanism by which this HIV-like retrovirus killed cells during infection. The ability of this virus to kill infected cells was described 25 years ago by [REDACTED], a prominent retrovirologist. However, the mechanism by which this process occurred was unknown until [the petitioner] shed light on it. In very elegant work, [the petitioner] demonstrated that signaling by the viral receptor triggers cell death in uninfected and bystander cells. This is one of the few examples in which cell death cause by a retrovirus is known in detail.

After obtaining his Ph.D. degree at the Albert Einstein college of Medicine in New York, [the petitioner] continue [sic] his academic career in the laboratory of [REDACTED] at the Harvard Medical School in Boston. [The petitioner's] research involved work with the newly discovered monkey protein TRIMS. It was known for many years that some monkeys are resistant to HIV, but only recently did the Sodroski laboratory find the responsible protein for this restriction. The discovery of TRIMS is potentially very beneficial for the AIDS research field since understanding the mechanism of action of this protein will help in the development of new methods to prevent HIV transmission. Over the last couple of years [the petitioner] has worked out many of the functions of TRIMS. His initial work showed that TRIMS protein localized to cytoplasmic bodies but that these bodies have no implication in the ability of TRIMS to inhibit HIV-1 replication. Remarkably, [the petitioner] found a drug that can eliminate cytoplasmic bodies without affecting the ability of this protein to restrict HIV. This [sic] experiments are important since they showed that very small amounts of TRIMS are required to effectively block HIV. In addition, he described the unusual rapid turnover of TRIMS that might be involved in the ability of TRIMS to restrict HIV1. Finally, the most important contribution that [the petitioner] has achieved in this field is the proof that the interaction of TRIMS protein with the capsid of HIV is not sufficient for restriction and that an effector function is required. This will constitute a start toward revealing the molecular mechanism of this process.

In addition to his contributions to the understanding of the molecular mechanisms of HIV restriction by TRIMS proteins, [the petitioner's] work should also have a positive impact in the development of microbicides (compound that could be applied in mucosal tissues for prevention of HIV transmission).

We note [REDACTED] statements that the petitioner's findings represent "a start toward revealing the molecular mechanism" of HIV restriction and "should . . . have a positive impact in the development

of microbicides.” In the same manner as [REDACTED] opines that the petitioner’s “research is likely to be a key for the development of a safe anti-HIV treatment.” With regard to the witnesses of record, many of them they discuss what may, might, or could one day result from the petitioner’s 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. *See Matter of Katigbak*, 14 I&N Dec. at 45, 49. While the petitioner has performed admirably under the direction of [REDACTED] and [REDACTED] the evidence of record does not establish that he has made original scientific contributions of major significance in his field.⁴

In this case, the letters of support submitted by the petitioner’s professional contacts and their discussion of his contributions are not sufficient to meet this criterion. The opinions of experts in the field, while not without weight, 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 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795-796. Thus, the content of the experts’ statements and how they became aware of the petitioner’s reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a researcher who has sustained national or international acclaim. Without evidence showing that the petitioner’s work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of contributions of major significance, we cannot conclude 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 evidence of his co-authorship of articles appearing in publications such as *Journal of Virology*, *Virology*, and *Proceedings of the National Academy of Sciences*. The petitioner also submitted evidence of dozens of articles that cite to his work. These citations demonstrate the significance of the petitioner’s articles to his field. As such, the petitioner has established that he meets this single criterion.

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

The petitioner argues that presentation of his work at scientific conferences and symposia meets this regulatory criterion. The petitioner’s field, however, is not in the arts. The plain language of this regulatory criterion indicates that it is intended for visual artists (such as sculptors and painters)

⁴ A comparison of the petitioner’s achievements with those of [REDACTED] and [REDACTED] indicates that the very top of his field is a level above his present level of achievement.

[REDACTED] indicates that the very top of

rather than for researchers such as the petitioner. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner's conference presentations are more relevant to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi), a criterion that we find the evidence in this case already satisfies. Nevertheless, in the fields of science and medicine, acclaim is generally not established by the mere act of presenting one's work at a conference or symposium along with dozens of other participants. Nothing in the record indicates that the presentation of one's work is unusual in the petitioner's field or that invitation to present at the venues where the petitioner spoke was a privilege extended to only a few top researchers. Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the petitioner above almost all others in his field at the national or international level.

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

In this case, we find that the petitioner meets only a single regulatory criterion, three of which are required to establish eligibility. 8 C.F.R. § 204.5(h)(3). The petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

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 or 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.

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

ORDER: The appeal is dismissed.