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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **AUG 04 2009**  
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IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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).

John F. Grissom  
Acting Chief, Administrative Appeals Office

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

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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.

On appeal, counsel submits a brief. For the reasons discussed below, while we are satisfied that the petitioner meets one of the ten regulatory criteria,<sup>1</sup> of which an alien must meet at least three, we uphold the director’s ultimate decision that the petitioner has not established his eligibility for the exclusive classification sought. We reach this conclusion both through a consideration of the evidence under each criterion claimed and in the aggregate.

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, 60898-9 (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.

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<sup>1</sup> The scholarly articles criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi).

It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

According to Part 6 of the petition, this petition seeks to classify the petitioner as an alien with extraordinary ability as a postdoctoral research associate in medical science. Postdoctoral positions are temporary training positions that allow a biological scientist to accrue the publication record required for a permanent position. See <http://www.bls.gov/oco/ocos047.htm#training> (accessed July 30, 2009 and incorporated into the record of proceeding). While an entry-level training position does not preclude eligibility, it is the petitioner's burden to demonstrate that he compares with those at the very top of his field, including the most experienced and renowned members of that field.

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, international 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. The petitioner has submitted evidence that, he claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).<sup>2</sup>

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

Initially, counsel indicated that Exhibit C included evidence of awards. That exhibit included a letter from the petitioner's supervisor recommending the petitioner for a Postdoctoral Travel Award to attend an American Society for Biochemistry and Molecular Biology (ASBMB) conference, a letter from ASBMB addressed to "Travel Award Recipient," a Federation of European Microbiological Societies (FEMS) Young Scientist Grant "to assist [the petitioner] in attending the FEMS Meeting" and 1992 and 1993 Certificates of Honor from Nanjing Agricultural University recognizing the petitioner as an excellent graduate.

On March 14, 2008, the director issued a Request for Evidence (RFE) specifically requesting evidence that the petitioner's awards, which the director characterized as academic awards, were lesser nationally or internationally recognized awards. In response, counsel no longer claimed that the petitioner meets this criterion. The director concluded that the petitioner had not demonstrated that he meets this criterion. On appeal, counsel does not specifically address this criterion but asserts that while he is addressing what he considered the director's "main errors," he is "by no means stating that the [petitioner] fails to qualify under other rubrics as well."

Academic awards that are limited to current students at a specific university cannot serve as evidence to meet this criterion. Similarly, the experienced and renowned members of the field do not aspire to win postdoctoral or young scientist travel grants that allow new members of the field to attend scientific

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

conferences. Thus, we concur with the director that the awards documented in the record cannot serve to meet 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.*

Initially, the petitioner submitted evidence of his membership in Sigma Xi, ASBMB and the American Society for Microbiology (ASM). The letter from [REDACTED] Executive Director of Sigma Xi indicates that Sigma Xi membership is by election and restricted to those who have demonstrated "noteworthy achievements" evidenced by "publications, patents, written reports or a thesis or dissertation." The letter from [REDACTED] Executive Officer of ASBMB indicates that regular membership in ASBMB is limited to those with a Ph.D. and one published paper in the field after receiving his degree. [REDACTED] Director of Member Services for ASM asserts that ASM is "open to anyone who is interested in the Society's objectives and has a minimum of a bachelor's degree or equivalent experience in microbiology or a related field."

In his RFE, the director advised that the evidence submitted did not document qualifying memberships. Counsel's response did not address this criterion. The director concluded that the membership requirements of the above societies, including the "noteworthy achievements" as defined by Sigma Xi, were common in the petitioner's field. On appeal, counsel does not specifically address this criterion, but implies that the petitioner meets criteria not discussed in the appellate brief.

A Ph.D. is usually required for independent research, industrial research and college teaching in the petitioner's field. See <http://www.bls.gov/oco/ocos047.htm#training>. A solid record of published research is essential in obtaining a permanent position involving basic research. *Id.* Thus, we concur with the director that educational requirements or even a requirement for authorship of a published article are not requirements for outstanding achievements in the petitioner's field.

In light of the above, we concur with the director that 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.*

Initially, the petitioner submitted citations and a press release published on Brown University's own website reporting that scientists at Brown mapped the structure of a DNA-doctoring protein complex. The press release states that the achievement occurred in [REDACTED] laboratory and quotes the petitioner as a postdoctoral researcher in that laboratory and the study's lead author. The press release, according to the initial evidence submitted, was reproduced at [www.physorg.com](http://www.physorg.com).

In the RFE, the director advised that citations are not published material about the alien and noted that the media report was a “reprint” of the press release on Brown’s website. In response, counsel questioned what is wrong with a reprint from a university, asserting that the *New York Times* sometimes reprints such material.<sup>3</sup> The petitioner submitted evidence that the same press release also appeared on the following websites: [www.sciencedaily.com/releases](http://www.sciencedaily.com/releases), [www.medicalnewstoday.com](http://www.medicalnewstoday.com), [www.eurekalert.org/pub\\_releases](http://www.eurekalert.org/pub_releases), [www.sflorg.com](http://www.sflorg.com), [www.biologynews.net](http://www.biologynews.net), [www.innovations-report.de/html](http://www.innovations-report.de/html) and [www.whatsnextnetwork.com](http://www.whatsnextnetwork.com). The press release also apparently appeared in Chinese at [www.biotech.org.cn](http://www.biotech.org.cn) although the petitioner did not submit a certified translation of this evidence pursuant to 8 C.F.R. § 204.5(h)(iii) and 8 C.F.R. § 103.2(b)(3).

The director concluded that the material was not primarily about the petitioner. On appeal, counsel does not specifically address this criterion but implies that the petitioner meets criteria not addressed in the appellate brief.

We concur with the director that the frequently reproduced press release is not primarily about the petitioner. Compare 8 C.F.R. § 204.5(i)(3)(i)(C), which permits the submission of published material about the petitioner’s work rather than published material about the alien relating to his work.

In addition, the petitioner has not established that a press release reproduced on websites of undocumented significance can serve to meet this criterion. Notably, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires evidence of the author of the published material. Thus, the identity of the author is a relevant consideration. A press release issued by a university promoting research at that university is not indicative of or consistent with national or international acclaim to the same extent as the independent journalist-authored published material contemplated by the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

In a related issue, the petitioner has not established whether any of the websites that reproduced the press releases constitute major media. In today’s world, the Internet consists of numerous websites on every subject. 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.” The record does not disclose whether the websites that reproduced this press release review the press releases for significance or simply reproduce press releases from legitimate institutions as a general service or even for a fee. Without such evidence, we cannot determine whether these websites constitute major media.

Finally, we concur with the director’s conclusion in the RFE that citations cannot serve to meet this criterion as they are “about” the citing author’s own work; a citation is not published material about the authors of every article cited in the citing article.

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<sup>3</sup> Assuming that the *New York Times* reproduces university press releases without additional investigation by a journalist, the record before us does not contain evidence that the Brown University press release was reproduced by the *New York Times*.

In light of the above, 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 specification for which classification is sought.*

Initially, the petitioner submitted an electronic mail message thanking the petitioner for reviewing a manuscript for the *Journal of Bacteriology* and a letter from his supervisor, [REDACTED], asserting that the petitioner "independently, and together with me and his colleagues has reviewed many manuscripts for different prestigious journals." The petitioner also provided two examples of reviews performed with [REDACTED]

The director's RFE requested evidence that the petitioner had garnered any acclaim from his work as a reviewer. In response, counsel asserts that the director's request reflects a lack of knowledge about the peer-review process, which is anonymous. Counsel notes that reviewers are rarely credited, although some journals publish a list of reviewers, "even if they are Nobel Prize winners."

The petitioner submitted review requests and acknowledgements dated December 1, 2006, December 22, 2006, February 10, 2007, April 7, 2007, July 4, 2007, August 16, 2007, October 27, 2007, November 30, 2007, December 13, 2007, January 12, 2008, January 17, 2008, January 29, 2008, February 26, 2008, April 28, 2008 and May 12, 2008. The petition was filed February 20, 2007. Thus, of the 15 new review requests and acknowledgements submitted, only three of them predate the filing of the petition.

The director concluded that the record did not establish that the petitioner's participation in the peer-review process exceeded that of other scientists or was indicative of national or international acclaim.

On appeal, counsel characterizes the director's reasoning as "absurd," asserting that only "established or accomplished scientists receive invitations for reviewing the work of others because of their reputation and expertise in their respective fields." Counsel concludes: "Most scientists do not have this kind of status with this many high ranking journals" although counsel acknowledges that his conclusion cannot be documented. Counsel asserts, however, that the director's conclusions are also unsupported and irrelevant as the regulation does not require any evidence other than evidence that the alien has judged the work of others.

Counsel further asserts that the number of average articles reviewed by peer-reviewers is not available and that if the director had access to this data he should have provided it. Counsel concludes that the director had no basis to deny the petition and "just decided that he wanted to deny this category."

The evidence submitted to meet this criterion, or any criterion, must be indicative of or consistent with national or international acclaim if that statutory standard is to have any meaning. We cannot ignore that scientific journals are peer-reviewed and receive hundreds of thousands of manuscripts for potential publication that must be peer-reviewed. It is not conjecture, but a logical conclusion from the

above fact that scientific journals rely on many scientists to review these manuscripts. Thus, peer-review is routine in the field and is not, by itself, indicative of or consistent with sustained national or international acclaim.

Counsel appears to be attempting to have it both ways, asserting that peer-review is anonymous with little known about who participates and how often, and that it is synonymous with sustained national or international acclaim. Assertions that selection for peer-review is reserved for renowned members of the field cannot be supported by vague assertions that a particular journal looks for peer-reviewers with expertise or accomplishments in the field. Rather, such an assertion must be supported by official information from the journal's website or another official source documenting, for example, exactly what is required to serve as a peer-reviewer beyond publications in the field and a willingness to volunteer or a that the journal boasts a small, exclusive, elite cadre of peer-reviewers.

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, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner meets this criterion.

As noted by counsel on appeal, the director states that the response to the RFE consisted of reviews that "all" postdated the filing of the petition. Counsel asserts that this statement was in error as "many reviews took place before the filing of the petition." Counsel concludes that the petitioner "routinely receives invitations for reviewing papers submitted to high-ranking scientific journals."

As stated above, of the 15 reviews documented in response to the RFE, only three predate the filing of the petition. The petitioner must establish his eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Thus, the evidence relating to a given criterion must be indicative of sustained national or international acclaim as of that date. We cannot "consider facts that come into being only subsequent to the filing of a petition." *Matter of Izummi*, 22 I&N Dec. 169, 176 (Comm'r. 1998) citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981).

While there is no bright line test for the amount of reviews or independent requests that could, on a case-by-case basis, meet this criterion, the petitioner has documented only four reviews that predate the filing of the petition, two of which were done jointly with the petitioner's supervisor, which is not indicative of or consistent with any recognition beyond the petitioner's own laboratory. The petitioner has not established that this small number of reviews is significant.

In consideration of all the evidence submitted under this criterion, we concur with the director that the petitioner's record as a peer-reviewer, by itself, is insufficient to meet this criterion.

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

Initially and in response to the director's RFE, the petitioner submitted several reference letters which will be discussed in detail below. The record also contains the petitioner's publications, including one book, the press release discussed above, reprint requests and citations of his work. The director acknowledged that the petitioner's work was original and viewed as significant by his references but concluded that the evidence as a whole, including the small number of citations for an individual article, did not support a finding that the petitioner's contributions were of major significance.

On appeal, counsel states that he has "a right to DEMAND to know" how the director determined that the citations were insufficient and threatens to sue USCIS to determine the director's "bright line test." Counsel further states that the petitioner's area of specialty is not a heavily researched area, that citations do not appear for several years and that the petitioner's 2006 article with six citations was recent. Counsel concludes that the selection of one of the petitioner's articles as a cover article for a distinguished journal is sufficient evidence of the work's significance and that the opinions of the petitioner's peers should be considered definitive evidence under this criterion. Counsel notes that the director "is NOT a peer" and, thus, concludes that director's "subjective opinion, or even some secret number of citations that he is referring to is not enough."

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. 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. 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.

Furthermore, the regulations include a separate criterion for scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). Thus, while the authorship of original articles is relevant to this criterion, the mere authorship of scholarly articles alone cannot serve as presumptive evidence to meet this criterion. To hold otherwise would render the regulatory requirement that a petitioner meet at least three criteria meaningless. Moreover, while the journal's reputation can be considered, we will not presume the significance of an article from the journal in which it appeared. While the nature of the journal may demonstrate that the research was deemed promising, it is the ultimate application of the research that is relevant to whether the research actually constitutes a contribution of major significance.

We concur with the director that 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. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is

ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions. Persuasive letters should also provide specific examples of how those contributions have already influenced the field as opposed to merely speculating that the petitioner's work has the potential to influence 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.

The petitioner received his Ph.D. from Kiel University in Germany in April 2002. The petitioner then worked as a visiting scientist at the University of Constance in Germany. In April 2003, the petitioner joined Brown University as a postdoctoral researcher where he remained when the petition was filed.

Executive Chairperson of the Swedish Senior Experts Organization and an appointee of the Chinese State Administration of Foreign Talents Affairs, asserts that the petitioner was a key member of a Chinese research team investigating and developing functional products by using lactic acid bacteria resulting in the use of the normal micro flora of the human body to prevent infectious disease. asserts that the petitioner developed "functional products which have being [sic] produced on a large scale in China." While the petitioner's work in China has been moderately cited, the record contains no Chinese patents, letters from Chinese manufactures, advertisements for medical products, media coverage or other similar evidence that the petitioner's products were widely produced and utilized in China.

Director of the Institut für Mikrobiologie, Kiel, Germany, asserts that the petitioner worked in laboratory from June 1998 through July 2002, where he independently performed "extremely important microbiological research." explains that the petitioner investigated bacteriophage infections during biomedical and food fermentation, which causes economic losses every year. While asserts that the petitioner presented this work, he does not explain the results of this work or how it has impacted bacteriophage infections during food fermentation nationally or internationally. further indicates that the petitioner proved himself an

“extraordinary research scientist” by completing the cloning, over-expression and protein purification tasks involved in his project for ██████████ at the University of Constance. Once again, Dr. ██████████ does not explain the results of this work or its impact in the field.

██████████ explains that his own work focuses on the *Escherichia coli* bacteriophage  $\lambda$  to study the process mobile DNA uses to gain entry into a target chromosome. While ██████████ group resolved the structure of  $\lambda$  integrase in higher-order complexes, they have yet to resolve the structures of more “delicate and short-lived intermediate complexes.” In order to resolve these structures, the use of sophisticated technologies such as in-gel Fluorescence Resonance Energy Transfer (FRET) is required. ██████████ explains that the petitioner was recruited for this purpose based on his “grasp of these technologies” and “ability to apply them effectively in his experiments.” According to ██████████, the petitioner participated in the design and validation of this work and is the primary person in the laboratory working on this system. ██████████ notes that the petitioner presented the results of this work at two conferences and that it was the cover article in a 2006 volume of *Molecular Cell*. ██████████ explains that the petitioner “is the first person in the world to resolve a DNA trajectory within a six protein regulatory complexes, which is an inaugural research for understanding important biological questions in transcription, replication, recombination and RNA processing.” In a second letter, Dr. ██████████ speculates that the number of “postdoctoral applicants” selected to present their research is small. We will not narrow the petitioner’s field to postdoctoral researchers. ██████████ also asserts that the petitioner’s findings “are leading to the novel application” of FRET technology in structural biology. ██████████ however, provides no examples of these new applications being used in independent laboratories.

██████████ concludes in his first letter that the petitioner’s area of research and continued work is in the national interest. We note that the petitioner is the beneficiary of an approved visa petition for an advanced degree professional pursuant to section 203(b)(2) of the Act where the alien employment certification was waived in the national interest. At issue in this petition is whether the petitioner has sustained national or international acclaim. While ██████████ asserted that the petitioner’s presentations “attracted the attention of many experts” and explained how the petitioner’s work was original and necessary for the next step in this area of research, he provided no examples of how the petitioner’s work had already been applied in the field.

Several of the remaining letters merely provide broad generalizations that are not helpful in determining the petitioner’s impact in his field. For example, ██████████ of Brandeis University asserts that the petitioner has made “tremendous contributions to the field of site specific recombination,” that his work “represents a major leap in our understanding” in site specific recombination in bacteriophage  $\lambda$  and that the petitioner is “one of the world’s leading experts in in-gel FRET.” While speculating that this work “will benefit a wide audience of world scientists,” ██████████ does not provide examples of how the petitioner’s work has already impacted the field.

Similarly, [REDACTED], a professor at the University of California, Los Angeles (UCLA) who has coauthored articles with [REDACTED] speculates that the petitioner's research "will have medical benefits" and "will eventually lead to the development of effective therapies and novel preventive methods for many medical conditions." Once again, [REDACTED] does not, in his initial letter, provide examples of other laboratories applying the petitioner's work.

[REDACTED] a professor at the University of Illinois at Urbana-Champaign, asserts that the petitioner's results using in-gel FRET "in and of itself merits him a classification as an extraordinary research scientist." [REDACTED] however, merely speculates that this process "will be of significant interest to scientists in the many other applications within the area of protein-nucleic acid interactions" and offers only "the possibility of determining other complex structures that are known to be involved in interesting and fundamental biological processes." [REDACTED] concludes only that the petitioner is "among the rising young scientists in the area of site-specific recombination." The classification sought, however, requires that the petitioner already be among the small percentage at the top of the field, including the most renowned and experienced members of that field, rather than a "rising" member of the field in comparison with other "young scientists."

The letters in response to the director's RFE are more specific. [REDACTED] a professor at Yale Medical School, asserts that his own research was "strongly affected" by the petitioner's in-gel FRET work. Specifically, [REDACTED] explains that his laboratory was unsure of its results using FRET, but after reading the petitioner's article, was able to apply his methodology to their system allowing them to achieve convincing results that were published. Similarly, [REDACTED] of the Centre National de la Recherche in France, asserts that he is aware of the petitioner's work and cited it in 2007. In his second letter, [REDACTED] asserts that he used and cited the petitioner's work. The list of citations from Google.Scholar and Scopus.com, provided by the petitioner, does not list an article by [REDACTED] although we acknowledge that these services do not always provide a complete list of citations. Dr. [REDACTED], a professor at the University of Illinois at Urbana-Champaign, also confirms citing the petitioner's work and his article is listed among the citing articles provided by the petitioner.

In addition to the letters from those who have applied and cited the petitioner's work, as stated above, the petitioner also provided search results demonstrating that the petitioner's work in China had been moderately cited. Specifically, his article in *Molecular Cell* had been cited six times as of the date of the response to the RFE, at least two of which postdate the filing of the petition. The petitioner's article in *Virology* had been cited four times, two of which postdate the filing of the petition and are self-citations by coauthors. We concur with counsel that a "bright line" test for citations would be inappropriate and that some areas of research may not lend themselves to widespread and frequent citation. While counsel has asserted that the petitioner's area of research is one that is not heavily cited, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel does not support his assertion with objective

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<sup>4</sup> The petitioner's 2006 article in *Molecular Cell*, submitted into the record by the petitioner, cites a 2002 article coauthored by [REDACTED] and [REDACTED]

evidence, such as evidence that [REDACTED] article in *Nature* referenced in the press release submitted has similarly garnered only a small number of citations. Significantly, it is the petitioner's burden to demonstrate that the evidence submitted is indicative of or consistent with national or international acclaim.

We also acknowledge that the petitioner has authored a book which is available on multiple Internet sites such as Amazon.com. Far more persuasive, however, would be evidence as to how well this book has sold and whether it is referenced in other literature in the field. The record contains no such evidence.

The above evidence demonstrates that the petitioner's work has application in the field but is not reflective of sustained national or international acclaim. Even if we were to conclude that the petitioner meets this criterion, and we do not, for the reasons discussed above and below, the evidence falls far short of establishing that the petitioner meets a third criterion.

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

As stated above, the petitioner has authored articles in peer-reviewed articles, including a cover article in *Molecular Cell* and a book and has presented his work at several conferences. As stated above, the evidence submitted to meet a given criterion must be indicative of or consistent with sustained national or international acclaim. The Department of Labor's Occupational Outlook Handbook, (OOH), available at <http://www.bls.gov/oco/ocos047.htm#training> (accessed July 30, 2009 and incorporated into the record of proceeding), provides that a solid record of published research is essential in obtaining a permanent position in basic research. As a researcher must demonstrate published research prior to even obtaining a permanent job in the petitioner's field, published research alone cannot serve to set the petitioner apart from others in his field. Moreover, we disagree with counsel that citations after the date of filing are relevant to this classification. At issue is whether the petitioner can demonstrate his sustained national or international acclaim as of the date of filing the petition. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). A petitioner may not file a petition and secure a priority date in the hopes that he will be recognized for his subsequent work during the adjudication of the petition.

That said, we acknowledge that the petitioner's article was featured on the cover of *Molecular Cell*, that the petitioner is the author of a book and that he is moderately cited in China. Thus, we are satisfied, considering the evidence in the aggregate, that the petitioner meets this criterion.

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

██████████ asserts that the petitioner is “irreplaceable,”<sup>5</sup> a “lead scientist on many important projects” and played “a leading and key role in many ways.” The director’s RFE advised that there was no “identifiable evidence” in the record relating to this criterion. In response, counsel notes that the petitioner’s principal investigator and others attest to the petitioner’s role in the laboratory at Brown University. Counsel asserts that the petitioner has been a “research scientist” at Brown and Tufts, although the petitioner had not yet begun working at Tufts University as of the date of filing. Counsel concludes that a “research scientist” (the petitioner actually was employed at Brown as a “postdoctoral research associate”) “is the top of all possible research positions,” while acknowledging in the same sentence that the petitioner works for a principal investigator. As there is no “award” for serving in a leading or critical role, counsel concludes that the assertions of the petitioner’s principal investigator “should be determinative.”

The director concluded that the petitioner had not demonstrated that the role of “postdoctoral researcher” was a leading or critical role for Brown or Tufts beyond the obvious need to employ researchers. The director noted that postdoctoral research positions are actually training positions and that not every postdoctoral researcher plays a leading or critical role for the institution where they work.

On appeal, counsel asserts that the director’s analysis modifies the regulatory language at 8 C.F.R. § 204.5(h)(3)(viii) and that this analysis would preclude not only postdoctoral researchers but all researchers from meeting this criterion. As an example, counsel asserts that Dr. Albert Einstein would not meet this criterion under the director’s analysis in his faculty position with the Institute for Advanced Study because he did not play a leading or critical role for Princeton University as a whole. Counsel then speculates that the director’s analysis would be more favorable to Bill Bradley, whose performance as a basketball player did more for the university as a whole by raising money for the institution.

There are several problems with counsel’s critique. First, the hypothetical eligibility of Dr. Einstein, a Nobel laureate who is the subject of several biographies and authored seminal articles that fundamentally changed the direction of theoretical physics, would not hinge on the nature of his position at any given institution. Second, the Institute for Advanced Study is not a department or division of Princeton University. Rather, it is an independent institution with no formal affiliation with any institution, although it enjoys close collaborative ties with multiple institutions including Princeton. See <http://www.ias.edu/about/mission-and-history/> (accessed July 30, 2009 and incorporated into the record of proceedings). Finally, as will be explained below, it is the role the alien was hired to fill rather than the alien’s services in that role that serves to meet this criterion. Thus, it does not

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<sup>5</sup> The petitioner has since left ██████████ laboratory and is now working at Tufts University according to the submission in response to the RFE.

necessarily follow from the director's analysis that a student basketball player would necessarily have a stronger claim to meet this criterion, although that is not the issue before us.

While a scientist need not reach the level of Dr. Einstein to qualify for the classification sought, invoking the name of Dr. Einstein, a Nobel Laureate who fundamentally changed theoretical physics and enjoyed acclaim both in his field and among the public, is not helpful in establishing that the petitioner is one of the small percentage at the top of his field.

Significantly, we have already considered the petitioner's contributions while working in [REDACTED] laboratory above pursuant to 8 C.F.R. § 204.5(h)(3)(v). The regulation at 8 C.F.R. § 204.5(h)(3)(viii) is a separate criterion with different considerations. Specifically, according to the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner must demonstrate that he was hired into or selected for a leading or critical role and that the entity that hired or selected him enjoys a distinguished reputation. In other words, the nature of the position for which the petitioner was hired must be indicative of sustained national or international acclaim irrespective of what the petitioner ultimately does in that role. We reiterate that we are not suggesting that the petitioner's performance in his job is irrelevant; rather, what the petitioner did in that role is far more related to the contributions criterion at 8 C.F.R. § 204.5(h)(3)(v).

As the petitioner was not yet employed at Tufts University as of the date of filing, we will not consider his role there. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. The petitioner worked as a postdoctoral research associate in [REDACTED] laboratory. Counsel's assertion that this position is the "top of all possible research positions" is not supported by any of the statements from the petitioner's references, including principal investigators, a senior research fellow at a major pharmaceutical company and a director of an entire institute.<sup>6</sup> The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. As stated above, postdoctoral positions are temporary training positions that allow a biological scientist to accrue the publication record required for a permanent position. See <http://www.bls.gov/oco/ocos047.htm#training>.

In light of the above, the evidence falls far short of meeting this criterion.

Finally, the 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. The petitioner, a postdoctoral research associate at the time of filing, relies on his professional memberships, publications, moderate citation record, participation in the widespread peer-review process and the praise of his immediate circle of peers. While this may distinguish him from other postdoctoral researchers, we will not narrow his field to others with his level of training and experience. [REDACTED] is a member of the National Academy of Sciences. [REDACTED] is director of an

<sup>6</sup> This list is provided as a list of far higher research positions than postdoctoral research associate, and is not intended as a list of positions that would necessarily always serve to meet this criterion.

institute and edited a book on genetic engineering. [REDACTED], an investigator at the Howard Hughes Medical Institute and one of the petitioner's references, reviewed grant applications for both the National Institutes of Health and the National Science Foundation. [REDACTED] served as an executive editor for three peer-reviewed journals. These credentials reveal that the top of the petitioner's field is far higher than the level he has attained.

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 talent as a postdoctoral 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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.