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

U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: DEC 04 2009
SRC 08 800 38353

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

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).

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. 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).[1] 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 and a new exhibit. For the reasons discussed below, we uphold the director's findings. We reach this conclusion by considering the evidence under the regulatory criteria individually 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.

[1] The petitioner selected box "a" on part two of the petition, indicating that he seeks classification as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act. Counsel's initial cover letter also references this classification. On appeal, counsel asserts that the applicable authorities are section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(3), which relate to aliens of extraordinary ability. Counsel includes a heading, however, stating: "**Relevant Standard for Determining a National Interest Waiver**." (Emphasis in original.) This waiver, however, is applicable to the lesser classification set forth at section 203(b)(2) of the Act. Regardless, the discussion under this heading includes the regulatory criteria at 8 C.F.R. § 204.5(h)(3), which pertain to aliens of extraordinary ability. Thus, the reference to the national interest waiver appears to be an inadvertent error. Regardless, we will adjudicate the appeal based on the original classification requested.

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. 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 seeks to classify the petitioner as an alien with extraordinary ability as a colloid science researcher. 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).[2]

> *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.*

Counsel initially asserted that the petitioner has served as a peer reviewer of manuscripts submitted for publication to the *Journal of Rheology* and the *ASME Journal of Fluids Engineering*. 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). The petitioner also lists his peer review duties for these journals on his self-serving curriculum vitae. Exhibit 18 is simply a self-serving list of these journals and the editors who allegedly invited the petitioner to review a manuscript. 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'r. 1998) (citing *Matter of Treasure Craft of* California, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). Significantly, none of the petitioner's references assert that he has ever served as a peer reviewer.

The director concluded that the record lacked evidence indicating that the petitioner's peer review participation set him apart from others in the field. On appeal, counsel asserts that the journals for which the petitioner has allegedly reviewed manuscripts are prestigious and, thus, print articles that "must be reviewed by experts in the field who are in the top percentage of their field to insure that all the information is accurate and up to date." Once again, the unsupported assertions of counsel do not

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

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.

First, the record contains no documentary evidence establishing that the petitioner has served as a peer reviewer for any journal. Specifically, the record lacks the invitations to serve as a peer reviewer, acknowledgements of past reviews or similar evidence from the journals for which the petitioner has allegedly reviewed manuscripts. Thus, the petitioner has not submitted the necessary initial required evidence required under this criterion. 8 C.F.R. § 204.5(h)(3)(iv).

Regardless, the evidence submitted to meet this criterion, or any criterion, must be indicative of or consistent with sustained national or international acclaim.[3] We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field and, by itself, is not indicative of or consistent with sustained national or international acclaim. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed manuscripts for a journal that credits a small, elite group of referees, 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.

In light of the above, 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 petitioner relies on his publication record and letters mostly from colleagues where he has worked or studied to meet this criterion. The director concluded that the petitioner had not established his impact in the field. On appeal, counsel asserts that the reference letters establish that other scientists have utilized the petitioner's work.

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.

The regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). We will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would

[3] *Accord Yasar v. DHS,* 2006 WL 778623 *9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.,* 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005).

render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. *See also Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) (publications and presentations are insufficient absent evidence that they constitute contributions of *major* significance).

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 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 the most persuasive. 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. Vague, solicited letters from local colleagues or letters that do not specifically identify contributions or how those contributions have influenced the field are insufficient. *Kazarian*, 580 F.3d at 1036.

The petitioner received his Ph.D. in Chemical Engineering from Texas A&M University in May 2006. He worked as a research associate at that institution for four months before accepting a postdoctoral research associate position at the University of Wisconsin, Madison, where the petitioner remained as of the date of filing.

The petitioner submitted letters from his Ph.D. advisor at Texas A&M University, [redacted] a member of his Ph.D. advisory committee while previously employed at Texas A&M University, [redacted] (currently at the Universi of Massachusetts, Amherst); one of the petitioner's professors at Texas A&M University, [redacted] and a professor who collaborated with [redacted] during his appointment at Texas A&M University, [redacted] (currently at Old Dominion University). In addition, the petitioner submitted a letter from the supervisor of the petitioner's postdoctoral research at the University of Wisconsin, Madison, [redacted]. Finally, the petitioner submitted an independent letter from [redacted] an

assistant professor at Texas Tech University, which does not establish the petitioner's recognition outside of Texas where he received his Ph.D.

[redacted] explains that the petitioner "independently implemented Stokesian-Brownian Dynamic simulations and an associated theoretical framework to investigate thermodynamic and hydrodynamic factors controlling self- and directed- assembly of colloidal structures in interfacial systems." More specifically, [redacted] explains that the petitioner implemented "his own Stokesian Dynamics simulation code to rigorously simulate multi-body hydrodynamic interactions in interfacial colloidal systems of interest to my group." [redacted] notes that Stokesian Dynamics is a mathematically complex simulation method and that few approaches had been previously explored for applying the technique to interfacial colloidal systems, making the petitioner's work "novel." [redacted] notes that the petitioner developed this simulation code under the supervision of an advisor with little experience in dynamic simulation codes, resulting in the petitioner's two-month collaboration with the professor at the California Institute of Technology (Caltech) who is the originator of Stokesian Dynamics and recognized the petitioner's proficiency with these codes. [redacted] does not explain how this work has had a demonstrable impact on the field.

[redacted] further asserts that the petitioner applied his simulation codes to multi-body hydrodynamic interactions and Brownian motion in interfacial colloidal systems to test the validity of his codes. In this work, the petitioner discovered an apparently neglected term and a cancellation of errors in previous work, showing that a more rigorous treatment could correctly discriminate all conservative and dissipative forces acting between two particles and a wall. According to [redacted] **this work** addressed a 10 year old problem. [redacted] provides no examples, however, of its impact on the field.

In addition, [redacted] discusses the petitioner's identification of a dynamic signature for the equilibrium percolation threshold of weakly attractive colloidal fluids. In this work, the petitioner adapted existing theories for self-diffusion, originally developed for problems in suspension rheology. The petitioner demonstrated that the percolation threshold corresponds to a transition of the high frequency dynamic viscosity dominated by multi-body hydrodynamic contributions in contravention of previous thoughts on this issue. While [redacted] **asserts that this work has "great significance" to** various areas of physics, he does not explain how the petitioner's work is already being utilized.

Significantly, [redacted] concludes that the petitioner has "displayed many of the characteristics of an exceptional independent investigator" and compares with the top Ph.D. students [redacted] has known. At issue, however, is whether the petitioner enjoys national or international acclaim and whether he is within the top percentage of his field, including the most experienced and renowned members of the field.

Similarly, [redacted] concludes that the petitioner "has demonstrated his outstanding potential as an independent scientist." [redacted] asserts that the petitioner was the first of [redacted] students to focus on modeling, he had to implement all simulation tools from scratch although, as stated above, [redacted] references the petitioner's collaboration with an expert at Caltech. Regardless, [redacted] does

not explain, however, how the petitioner's ability to implement these tools has impacted the wider field of fluid dynamics. While [redacted] provides areas where the petitioner's work may eventually have an impact, such as separating crude oil from suspension containing other elements, he does not explain how the petitioner's work has already had the type of impact indicative of a contribution of major significance to fluid dynamics. Finally, one of the petitioner's professors at Texas A&M University, [redacted], asserts that the petitioner is as good if not better than the best graduate students he has encountered. We will not, however, narrow the petitioner's field to those just studying for their careers. Rather, the petitioner must compare with the most experienced and renowned members of his field.

[redacted]sserts that the petitioner demonstrated his "potential to be a leader in science and technology" upon joining [redacted] group at the University of Wisconsin-Madison. [redacted]n further asserts that the petitioner initiated two projects in fluid mechanics in [redacted] laboratory. Specifically, according to the petitioner first developed a highly efficient computational method for studying the dynamics of thin films of fluid containing nanoparticles. discusses the importance of this work and the complexities involved. [redacted] concludes that the petitioner's "new tool will enable for the first time the computational treatment of the dynamics of large collections of nanoparticles during field-driven assembly into multiparticle structures, with full incorporation of the effects of hydrodynamic interactions and confinement." [redacted] does not identify any independent laboratories utilizing the petitioner's tool.

[redacted] then discusses the petitioner's second project involving the study of the dynamics of blood flow in the presence of various additives. [redacted] explains that scientists have observed beneficial effects on the circulation of animals from the injection of small amounts of certain polymers and the explanation of this process "has the potential to provide an important new class of therapies for treatment of hemorrhage, coronary artery disease, diabetes and many other circulatory disorders." According to [redacted]n, the petitioner "developed an extraordinary computational method for [the] simulation of flowing blood in the capillaries, which allows him to perform, in a matter of hours, simulations that in other research groups take weeks." [redacted] further asserts that the petitioner extended this approach to capture the effect of polymer molecules on blood flow, which has allowed the petitioner's group to make "the first predictions of how these additives change blood flows, generating knowledge that will allow the understanding and rational design of therapies for circulatory disorders." While [redacted] asserts that publications will result from this work, he does not explain how this work has already impacted the field, such as by providing examples of other laboratories utilizing the petitioner's methods.

The petitioner submitted a single letter from an independent reference, [redacted], an assistant professor at Texas Tech University, who asserts that he knows of the petitioner through his publications and through interactions at conferences. [redacted] asserts that he is pursuing research in the same field and praises the petitioner's work without indicating any personal reliance on that work. [redacted]e asserts that the impact of the petitioner's work is evident from the journals in which his work has appeared. We will not, however, presume the significance of an article from the journal in which it

appeared. Rather, it is the petitioner's burden to demonstrate the impact of the individual article. As stated above, the publication of scholarly articles is a separate criterion, 8 C.F.R. § 204.5(h)(3)(vi), and evidence directly relating to that criterion is not presumptive evidence to meet this criterion without evidence of the article's individual impact. *See Kazarian,* 580 F.3d at 1036.

The petitioner also submitted a self-serving list of citations. Once again, 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. at 165 (citing *Matter of Treasure Craft of California,* 14 I&N Dec. at 190). The petitioner did not submit copies of the citing articles or the results of a search on a citation database. Regardless, of the 15 alleged citations listed, 10 are self-citations by the petitioner or his coauthors. While self-citation is a normal and expected practice, it cannot establish the petitioner's influence beyond his immediate circle of colleagues.

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 postdoctoral 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 to the field as a whole. Without additional evidence of the impact of the petitioner's research, we cannot conclude that the petitioner 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 initially submitted copies of six articles. As stated above, the petitioner did not document any citations of this work and only lists five independent citations on his self-serving list of alleged citations. The director concluded that publication is inherent to the petitioner's field of scientific research and concluded that the petitioner's publication and citation record was not indicative of or consistent with national or international acclaim. On appeal, counsel asserts that the director erred in failing to consider the 15 citations claimed, asserting that some of them appear in the top journal *Langmuir*. Counsel does not reconcile this assertion with [redacted] assertion that he has been cited over 300 times and [redacted] assertion that he has been cited approximately 1,400 times. While counsel states that this issue should have been addressed in a request for additional evidence, the only new evidence submitted on appeal is material from *Langmuir*'s website indicating that the journal ranks second among 110 journals in physical chemistry. Significantly, the petitioner does not submit any evidence of the claimed citations themselves.

The Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at www.bls.gov/oco on November 30, 2009 and incorporated into the record of proceedings), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See* www.bls.gov/oco/ocos066.htm. The handbook expressly states

that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field.

While we acknowledge that we must avoid requiring acclaim within a given criterion, it is not a circular approach to require some evidence of the community's reaction to the petitioner's published articles in a field where publication is expected of those merely completing training in the field. *Kazarian*, 580 F.3d at 1036. Even if we accepted the self-serving list of alleged citations, we are not persuaded that five independent citations, even if appearing in top journals, demonstrate that the petitioner's publications are indicative of or consistent with national or international acclaim, the statutory standard in this matter.

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, relies on his alleged volunteer services as a manuscript reviewer, coverage of his work on two websites, his publication record, and the praise of his immediate circle of peers and one independent researcher. While this may distinguish him from other postdoctoral researchers and research associates, we will not narrow his field to others with his level of training and experience. [redacted] is an external reviewer for tenure evaluations. [redacted] is an associate editor of a high impact journal and has been cited 1,400 times. [redacted] is also an associate editor of a distinguished journal. [redacted] has been cited at least 300 times. Thus, it appears that the highest level of the petitioner's field is far above 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 colloid science 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 colloid science 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.