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

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U.S. Citizenship
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Services

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FILE:

[REDACTED]
LIN 07 076 50556

Office: NEBRASKA SERVICE CENTER

Date:

JUL 16 2009

IN RE:

Petitioner:
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:

[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).

UDeadndk
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. Specifically, the director concluded that the petitioner meets only two of the ten regulatory criteria, of which an alien must meet at least three.

On appeal, counsel submits a brief asserting that the director applied too high a standard and required evidence not required under the plain language of the pertinent regulation. For the reasons discussed below, we do not find counsel’s assertions persuasive or based on the plain language of the criteria, which she often ignores. Moreover, the AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). Thus, the AAO need not give any more deference to favorable findings by the director than adverse ones. While we do not lightly withdraw favorable findings, for the reasons discussed below the record does not support the director’s finding that the petitioner meets the scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi). Finally, we reach our conclusion that the petitioner has not established his eligibility for the classification sought by both considering the evidence to meet each criterion 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.

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 researcher. At the time of filing, the petitioner had recently begun his Ph.D. studies, although we acknowledge that he was also working part-time. While the petitioner's student status does not preclude eligibility, we will not limit the petitioner's field to those still pursuing their education. Rather, the petitioner must compare with the most renowned members of the field, including those who have completed their education.

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.

On appeal, counsel cites a July 30, 1992 correspondence memorandum from [REDACTED] cting Assistant Commissioner, to the then Director of the Nebraska Service Center, Mr. [REDACTED]. [REDACTED] issued his correspondence memorandum in response to an inquiry from [REDACTED] and makes clear that he is discussing his personal inclinations. Moreover, in contrast to official policy memoranda issued to the field, correspondence memoranda issued to a single individual do not constitute official USCIS policy and will not be considered as such in the adjudication of petitions or applications. Although the correspondence may be useful as an aid in interpreting the law, such letters are not binding on any USCIS officer as they merely indicate the writer's analysis of an issue. *See* Memorandum from [REDACTED] Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).

Regardless, even accepting that meeting three criteria is sufficient to establish eligibility without further inquiry in the alien's sustained national or international acclaim, we concur with [REDACTED] that in determining whether an alien meets a particular criterion, USCIS must evaluate the evidence, not merely count it. Such an evaluation must take into account whether the evidence is indicative of or consistent with national acclaim if that statutory standard is to have any meaning.

Counsel also relies on *Buletini v. INS*, 860 F. Supp. 1234 (E.D. Mich. 1994) for the proposition that the director erred in going beyond the plain language of the regulatory criteria. In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. Regardless, we do not find that *Buletini* precludes USCIS from examining whether the evidence submitted to meet a given criterion is indicative of or consistent with national or international acclaim, the ultimate statutory standard for the visa classification sought. *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).

Counsel asserts that the term "acclaim" is "open to any number of interpretations." We disagree; the evidence must demonstrate at a minimum that the petitioner is nationally recognized as extraordinary, which necessarily implies that he is well known beyond his immediate circle of colleagues and the geographic region where he works. This standard is consistent with the statutory language and commentary quoted above and the legislative history for this classification, whereby Congress explicitly indicated that individuals qualifying for this classification would demonstrate either a one-time achievement "such as receipt of the Nobel Prize" or a "career of acclaimed work in the field." H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Thus, it is clear that Congress intended this classification to be exclusive.

The director concluded that the petitioner meets the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) and the scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi). Given the evidence relating to the judging criterion *in the aggregate* (which includes evidence beyond the mere participation in the peer review process referenced by the director) we will not withdraw that finding. For the reasons discussed below, the evidence is far less persuasive that the petitioner meets the scholarly articles criterion. Even if we were to uphold the director's finding that the petitioner meets the scholarly articles criterion, he would still need to meet an additional criterion. The petitioner has submitted evidence that, he claims, meets the following additional criteria.¹

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

Initially, the petitioner's laboratory supervisor at Columbia University, [REDACTED] asserts that the petitioner meets this criterion based on an Excellent Achievement Award recognizing a poster presentation from the Metropolitan Association of College and University Biologists (MACUB) and a nomination for a student best paper award from the Engineering in Medicine and Biology Society (EMBS) of the Institute of Electrical and Electronics Engineers (IEEE).

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

In the request for additional evidence, the director requested evidence regarding the significance of the award and the criteria for selection. In response, the petitioner submits a letter from [REDACTED] Corresponding Secretary of MACUB, asserting that MACUB “is a professional organization comprised of college and university biologists in the New York-New Jersey-Connecticut Metropolitan region.” [REDACTED] further asserts that every “research poster presentation of *students* is competitively judged for award by a Judging Committee comprised of professors from member colleges.” (Emphasis added.)

The director concluded that the petitioner’s awards were student prizes that were not open to veterans in the field and, thus, could not serve to meet this criterion. On appeal, counsel asserts that the MACUB award is not a student award but is open to anyone affiliated with institutions within MACUB’s region. Counsel further asserts that student awards “can be awarded to Ph.D. candidates at the highest echelon of research” and, as such, constitute “‘lesser’ prizes.” Counsel concludes that since it can take several years to earn a Ph.D., these students should not be excluded from the director’s definition of “veterans.”

Counsel is not persuasive. First, counsel’s focus on the word “lesser” from the regulation at 8 C.F.R. § 204.5(h)(3)(i) out of context is disingenuous. The word “lesser” modifies “nationally or internationally recognized,” and is used to distinguish these awards from the major internationally recognized prize that would constitute a one-time achievement. Thus, the awards and prizes must still be nationally or internationally recognized.

Second, while the letter from [REDACTED] states that MACUB membership is open to anyone affiliated with colleges or universities in its region, the only discussion of awards is limited to research poster presentations “of students.” Thus, the director’s conclusion that the MACUB award is a student award is reasonable. Even if the MACUB certificate is not limited to students, MACUB is clearly a regional society covering a small geographic region. Thus, its prizes are not indicative of national or international acclaim. The record lacks evidence that the most renowned members of the field nationally aspire to win this certificate of achievement recognizing a poster presentation at a regional conference.

The petitioner appears only to have been nominated for a student best paper award by EMBS. The plain language of the regulation clearly states that the petitioner must provide evidence of the petitioner’s “receipt” of a qualifying award or prize. A nomination is not a prize or award. Regardless, we concur with the director that an award limited to students cannot serve to meet this criterion. The regulation at 8 C.F.R. § 204.5(h)(2) defines an alien of extraordinary ability as one of that small percentage who have risen to the very top of the field of endeavor. Regardless of the number of years it may take to complete a Ph.D., it remains that the most experienced and renowned members of the field do not compete for student paper awards. Thus, while IEEE may enjoy a distinguished reputation, student awards issued by a section of this association cannot be considered the type of lesser *nationally or internationally recognized* awards required to meet this criterion.

In light of the above, the petitioner has not demonstrated that the petitioner 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.

Initially, the petitioner submitted evidence of his membership in IEEE, the American Astronautical Society (AAS), the American Institute of Aeronautics and Astronautics (AIAA), MACUB, the Korean-American Scientists and Engineers Association (KSEA). The petitioner also submitted evidence of his student membership in the American Society of Mechanical Engineers (ASME). Finally, the petitioner submitted evidence of his membership in a teacher's union.

Regarding the membership requirements for the above associations, the petitioner submitted Internet materials reflecting that IEEE membership is open "to those who have satisfied IEEE-specified educational requirements and/or who have demonstrated competence in IEEE-designated fields of interest." The specific requirements that follow are limited to requiring the completion of a three to five year university-level degree or six years of experience demonstrating "competence."

The director requested evidence that the above associations require outstanding achievements of their members. In response, counsel asserts that higher education and job experience are outstanding achievements. The petitioner submits evidence of the following membership criteria:

- Counsel mischaracterized the IEEE membership criteria as requiring education *and* experience. In fact, IEEE requires a three-to-five year university-level or higher degree from an accredited institution in an IEEE-designated field *or* a similar degree in a different field plus experience in an IEEE-designated field *or* six years of experience in an IEEE-designated field. Thus, the absolute minimum membership requirement is a degree in an IEEE-designated field or mere "competence" demonstrated through experience.

Once again, counsel mischaracterized AAS as requiring "detailed evidence of significant contributions to Astronomy." In fact, AAS requires "one" of the following: a Ph.D. in astronomy or a closely related field, independent or senior authorship of acceptable, refereed papers, *or* detailed evidence of significant contributions to Astronomy "other than research publications." Counsel correctly notes that the AAS application requires the signatures of two members.

- AIAA membership requires a baccalaureate in science or engineering or equivalent qualifications through experience. While counsel asserted that a nominating signature is required, the application submitted does not include a line for such a signature.
- A sponsor is required on the ASME membership application. Counsel relied on the requirements for an affiliate member, but the petitioner is a student member. Regardless,

affiliate membership requires evidence of capability and interest in rendering service to the field of engineering in lieu of specific education or experience in that field, which would qualify the applicant as a regular member.

- Counsel asserts that the petitioner's regular membership in KSEA is the highest level of membership offered by KSEA and notes that the KSEA application requests information on education and experience. Counsel further asserts that the petitioner "has taken an active role" with KSEA.

The director concluded that the educational and experience requirements set forth in the materials provided did not demonstrate that any of the above associations require outstanding achievements of their members.

On appeal, counsel asserts that the term "outstanding" is not defined in the regulations, precedent decisions or by the director and that it must be less than "extraordinary" because otherwise meeting this criterion alone would demonstrate eligibility. Thus, counsel concludes that "outstanding achievements" should include the "rigorous demands upon applicants" documented above. Finally, counsel asserts that, in the alternative, the evidence submitted should be considered "comparable" evidence pursuant to 8 C.F.R. § 204.5(h)(4). None of these assertions are persuasive or consistent with any statutory or regulatory authority.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires that the petitioner demonstrate membership in associations that require outstanding achievements as judged by nationally or internationally recognized experts. We must presume that the phrase "outstanding achievements" is not superfluous and, thus, that it has some meaning. However counsel wishes to define "outstanding," clearly such achievements must be those that are not inherent to the field and somehow set the alien apart from others in the field.

A degree is the necessary result of completing the academic requirements set forth by the degree-granting institution. Moreover, it does not take a nationally or internationally recognized expert in the field to judge whether or not an applicant received the necessary degree. Further and most significantly, a bachelor's degree in engineering is required for almost all entry-level engineering positions. *See* the training section for engineers in the Occupational Outlook Handbook (OOH) available at <http://www.bls.gov/oco/ocos027.htm#training> (accessed July 2, 2009 and incorporated into the record of proceedings). Thus, it simply cannot be credibly asserted that a requirement for a baccalaureate in engineering is an outstanding achievement.

We acknowledge that a Ph.D. is not required for employment in the field of mechanical engineering. Nevertheless, a Ph.D. is still the predicted outcome of fulfilling academic requirements set by the institutions granting the degrees and is preparatory for a career rather than an accomplishment in the field. The OOH further states:

Graduate training is essential for engineering faculty positions and many research and development programs, but is not required for the majority of *entry-level* engineering jobs. Many experienced engineers obtain graduate degrees in engineering or business administration to learn new technology and broaden their education.

Id. (Emphasis added.) Nothing in the OOH suggests that a Ph.D. is an outstanding engineering achievement. Moreover, as stated above, it does not require a nationally or internationally recognized engineering expert to judge whether or not an applicant has a Ph.D.

In addition, the first alternative to obtaining a Ph.D. for AAS membership is authorship of a refereed paper. We are not persuaded that such authorship is an outstanding achievement in the petitioner's field. The petitioner has submitted evidence that he was nominated for a student best paper award. Given that there are sufficient student papers out there to warrant student best paper awards in the field, it would appear that authorship is inherent to research in the petitioner's field and does not set him apart from other graduate students in the field. As the first two means of establishing eligibility for AAS membership are clearly not outstanding achievements, we need not examine whether the final alternative might be considered an outstanding achievement, although we note that the record lacks evidence regarding what AAS considers a "significant contribution" or who judges whether a specific contribution is sufficient.

We also conclude that obtaining signatures from current members is not an outstanding achievement. Specifically, there is no evidence that the nominating members must be recognized national or international experts or that they are attesting to having judged the applicant's achievements as outstanding. Rather, they are simply other professionals in the field who could be the applicant's own advisor or collaborator.

Finally, whether or not the petitioner played an active role for KSEA is irrelevant. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires that we focus on the membership requirements and not whether the petitioner, once admitted, volunteered his services to the association.

In light of the above, the evidence falls far short of establishing that the petitioner meets this criterion.

Finally, counsel's assertion that the evidence should be considered as "comparable" evidence to meet this criterion is not persuasive. First, the regulation at 8 C.F.R. § 204.5(h)(4) permits the consideration of "comparable" evidence where the criteria are not "readily applicable" to the alien's occupation. The petitioner has submitted no evidence that there are no engineering associations that might meet this criterion. Significantly, [REDACTED] is a fellow of AIAA and AAS, a far more exclusive membership category than those demonstrated by the petitioner.² Moreover, counsel has

² We note these memberships solely as evidence of more exclusive memberships in the petitioner's field and not as examples of which memberships might serve to meet this criterion.

not explained how evidence directly related to a given criterion but insufficient to meet the plain language requirements of that criterion can be considered “comparable” to the evidence required to meet that criterion.

Thus, the petitioner has also failed to establish that consideration of “comparable evidence” is warranted or to submit evidence that is comparable to the evidence required to meet 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 a general search of his name, without quotations, on Google Scholar.³ The search produced 275 results. As is clear from the first 30 results submitted by the petitioner, many of these results have no relation to the petitioner. The petitioner also submitted Google Scholar results pertaining to specific papers authored by the petitioner. The results reflect the number of citations each article has garnered. A review of those articles authored by the petitioner reveals that no one article by the petitioner had been cited more than three times as of the date of filing. In response to the director’s request for additional evidence, the petitioner submits a self-serving list of citations that counsel asserts was taken from an official source. 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 list reflects that the petitioner’s articles have been cited between two and eight times, all by the petitioner’s coauthors.

The director did not address this criterion. Counsel asserts on appeal that this evidence was ignored. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published material “about” the petitioner related to his work. Articles which cite the petitioner’s work are primarily about the author’s own work, not the petitioner’s, or a general review of the area of research. As such, they cannot be considered published material about the petitioner and cannot serve to meet the plain language requirements of this criterion.

We will consider the evidence below as it relates to the petitioner’s claim to meet the contributions and scholarly articles criteria. As noted above, however, none of these cites are from independent research teams such that they reflect any recognition beyond the petitioner’s immediate circle of colleagues.

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

The petitioner submits several reference letters to meet this criterion. The director appears to have concluded that the letters did not confirm that the petitioner meets this particular criterion. On appeal, counsel asserts that the director did not give sufficient consideration to the letters and notes the

³ Google Scholar, the advanced search page, allows users to conduct a search limited to the author’s name and to put the entire name in quotes.

favorable evaluation of reference letters in *Matter of Price*, 20 I&N Dec. 953, 955 (Assoc. Comm'r. 1994).

We will consider the letters below as they relate to this criterion. At the outset, however, we note 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). USCIS, however, 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 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.

Finally, as we consider the letters we must keep in mind that, according to the plain language of 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.

Initially, the only letter submitted to even discuss the specifics of the petitioner's work is the letter by [REDACTED]. Dr. [REDACTED] an assistant professor at the City University of New York (CUNY) where the petitioner is a part-time lecturer, asserts that the petitioner "has conducted important research, with impressive published results in several related field." [REDACTED] notes specifically the petitioner's published work on Deterministic Boolean-Networks (DBN) and modeling and simulation of carbohydrate metabolism using Petri Net. [REDACTED] concludes that the "fields [the petitioner] works in

have important scientific implications.” does not provide any examples of how the petitioner’s work has already impacted the field. We note that neither article singled out by [REDACTED] has been cited outside of the petitioner’s immediate circle of colleagues.

The remaining letters submitted initially merely reiterate the evidence already in the record, such as the petitioner’s judging activities and the number of articles authored by the petitioner, or provide general praise of his work ethic. We do not contest that the petitioner meets the judging criterion set forth at 8 C.F.R. § 204.5(h)(3)(iv). Meeting that criterion does not create a presumption that the petitioner also meets the contributions criterion. The publication of scholarly articles is also a separate criterion, 8 C.F.R. § 204.5(h)(3)(vi) and, thus, articles will not be presumed to meet this criterion. To hold otherwise would negate the regulatory requirement that an alien meet at least three separate criteria. A good work ethic, while important to the petitioner’s employer, is not a contribution of major significance in the field of mechanical engineering. Thus, these letters add nothing to the record that is not already apparent from a review of the objective evidence itself.

In response to the director’s request for additional evidence, [REDACTED] provided a new letter with more detail about the specifics of the petitioner’s research than his initial letter. [REDACTED] explains that the focus of the petitioner’s research is “learning and repetitive control,” areas that are new and developing rapidly. In general, [REDACTED] asserts that they have “the ability to very substantially improve the precision of motion control systems simply by better algorithms for control.” More specifically, [REDACTED] asserts that the petitioner investigated the use of repetitive controllers to cancel the influences of multiple unrelated vibration sources, relevant to spacecraft. According to Dr. [REDACTED] the petitioner developed “a precise mathematical formulation of how to cancel the influence of such disturbance sources, and make use the best available repetitive control algorithms on this more general problem.” In addition, [REDACTED] asserts that the petitioner “produced a publication” explaining how the two objectives of eliminating the influence of periodic disturbances and producing good feedback interact. [REDACTED] explains that this work developed “an understanding of where the controller should be placed around the control loop to optimize the performance for each objective.” Finally, [REDACTED] discusses research that was only “in press” at the time of his letter, which postdates the filing of the petition. We cannot gauge the significance of this as of yet published research as of the date of filing, the date as of which the petitioner must demonstrate his eligibility. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l. Comm’r. 1971).

[REDACTED] a research leader at Brookhaven National Laboratory, discusses his collaboration with the petitioner on fuel cells. [REDACTED] praises the petitioner’s skill with Repetitive Control research but provides no specific examples of contributions or explanation as to how the petitioner’s work had already impacted the field as of the date of filing.

[REDACTED] the petitioner’s collaborator at the Institute for Research and Technology Transfer (IRTT), asserts that the petitioner is a key member of a research team developing fuel cells and has “provided solutions to a number of critical questions.” [REDACTED] does not identify these “critical

questions,” explain when the petitioner provided these solutions (before or after the date of filing), or explain how this work has already impacted fuel cell research at the national level.

The petitioner also submitted a letter from New York State Senator Eric T. Schneiderman, asserting that the petitioner’s work on satellite engineering “is contributing to our national security” and is applicable to other fields. [REDACTED] asserts that the petitioner’s strengths in this area have been recognized by the National Institutes of Health (NIH) and the IEEE. The record contains no evidence of recognition by either entity beyond the nomination for the best student paper award by IEEE which the petitioner ultimately did not win. Assuming NIH funds the petitioner’s work, all research is funded by some source. While funding attests to the promising nature of the research, not every funded research project is already a contribution of major significance.

As is clear from the above review of the *content* of the letters submitted, none of the references provide specific examples of how the petitioner has influenced his field. Most of the letters are from the petitioner’s immediate circle of colleagues and collaborators and the independent references do not appear to have known of the petitioner or his work prior to being contacted for a reference letter. Similarly, all of the citations documented in the record are by the petitioner’s own coauthors. While self-citation is a normal and expected process, it cannot demonstrate the petitioner’s influence beyond his collaborators.

While the petitioner’s area of 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 graduate 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 research student 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.

In light of the above, the evidence falls far short of demonstrating 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 submitted several published articles and conference presentations. The OOH (accessed at www.bls.gov/oco on July 2, 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 does not set the researcher apart from faculty in that researcher’s field.

As discussed above, the petitioner's articles have not been cited by independent research teams. Thus, we are not persuaded that the petitioner's publication record is indicative of or consistent with national or international acclaim, the statutory standard in this matter. Even if we accepted counsel's assertion that publication alone meets this criterion based on her narrow interpretation of the "plain language" of 8 C.F.R. § 204.5(h)(3)(vi), the petitioner would meet only two criteria. For the reasons discussed above and below, the petitioner falls far short of meeting the "plain language" of a third criterion.

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

We acknowledge the submission of letters from the petitioner's collaborators attesting to the critical nature of his participation on their projects. We have already considered the petitioner's purported contributions in research laboratories above. At issue for this criterion are the nature of the position the petitioner was hired to fill and the reputation of the entity that hired him. Specifically, the nature of the position should be such that his selection for the position, in and of itself, is indicative of and consistent with national or international acclaim. The petitioner was a Ph.D. student at the time the petition was filed. He also worked as a non-salaried visiting research engineer for IRTT, an adjunct professor at the New York City College of Technology and a tutor at Columbia University where he was pursuing his Ph.D. We are not persuaded that any of these positions are leading or critical for these institutions beyond the obvious need to employ competent individuals in these positions.

In light of the above, the evidence falls far short of establishing that the petitioner, a Ph.D. student and adjunct faculty member at the time this petition was filed, meets 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 Ph.D. student at the time of filing, relies on academic and regional recognition, invitations to judge the work of others, his professional memberships requiring minimal education or experience in the field, evidence that he is a prolific author and the praise of his immediate circle of peers. While this may distinguish him from other Ph.D. students, we will not narrow his field to others with his level of training and experience. [REDACTED] is a fellow of the AIAA and AAS, is a member of the Board of Directors for AAS and is an editor for the *Journal of Astronautical Sciences*. [REDACTED] is the Director of IRTT. Thus, the top of the petitioner's field is significantly 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 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.