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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
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FILE: [Redacted]  
SRC 07 270 50294

Office: NEBRASKA SERVICE CENTER

Date: NOV 30 2009

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

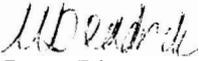
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:  
[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).

  
Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on September 10, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a physician specializing in Gastroenterology. At the time of filing, the petitioner was completing his postgraduate training fellowship in Gastroenterology at Maimonides Medical Center, which is affiliated with the Mount Sinai Medical Center in New York. The petitioner was also a resident in Internal Medicine and Gastroenterology at Coney Island Hospital in Brooklyn from July 2002 through June 2008. In July 2008, the petitioner began working as a Gastroenterologist at High Desert Gastroenterology, Inc. in Lancaster, California.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).<sup>1</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 asserted that the petitioner was submitting evidence of "Awards and Memberships in Societies." Under this heading, however, counsel only discussed the petitioner's alleged "leading and critical roles," his work as a "prolific teacher," the publication of the petitioner's case studies, his presentations, and his memberships. Counsel did not initially specify any awards received by the petitioner. None of the documentation initially discussed by counsel equates to nationally or internationally recognized prizes or awards for excellence in the petitioner's field of endeavor.

In response to the director's request for evidence, the petitioner submitted a certificate presented to him by the Division of Liver Diseases of the Mount Sinai Hospital, New York indicating that he received the Division's "Most Humble Award" at the Hepatology Fellowship Dinner on June 11, 2007. This award reflects institutional recognition rather than a nationally or internationally recognized prize or award for excellence in the petitioner's field of endeavor.

The petitioner's response also included a June 25, 2008 letter from [REDACTED] New York Society for Gastrointestinal Endoscopy (NYSGE), stating: "[The petitioner] is the 2008 recipient of the New York Society of Gastrointestinal Endoscopy's **David Faulkenstein Award** for the best presentation on endoscopic techniques submitted for presentation at a national

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

gastrointestinal meeting.” The petitioner also submitted a January 8, 2009 letter from [REDACTED], NYSGE, and an unsigned March 19, 2009 letter from her on appeal confirming NYSGE’s recognition of the petitioner’s presentation. The petitioner’s appellate submission also includes information from the NYSGE’s internet site stating that the “David B. Faulkenstein Memorial Award for Endoscopic Research (Fellows Only)” is an “annual award presented to the fellow *trainee* with the top research abstract submitted for presentation at a national GI meeting. This award is currently \$250, and is administered by the NYSGE Executive Council.” [Emphasis added.] The petitioner received the 2008 David Faulkenstein Memorial Award subsequent to the petition’s September 10, 2007 filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this award in this proceeding. Nevertheless, there is no evidence demonstrating that the petitioner’s David Faulkenstein Memorial Award from the NYSGE equates to a nationally or internationally recognized award for excellence in the field rather than a regional award for New York gastroenterologists in the latter stage of their postgraduate medical training. The petitioner’s selection for an award restricted to a “fellow trainee” is not an indication that he is among “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). Receipt of this award offers no meaningful comparison between the petitioner and experienced gastroenterologists in the field who have long since completed the training phase of their career. The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

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

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

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

Initially, counsel asserted that the petitioner had been “selected for membership to the most respected and renowned gastroenterology societies in the country and the world.” The petitioner submitted letters from the NYSGE and the American Society for Gastrointestinal Endoscopy (ASGE) affirming his membership in these societies. The petitioner also submitted evidence that ASGE has over 9,000 members “who utilize endoscopy as a diagnostic and therapeutic method of treatment for diseases of the digestive tract.” These materials do not establish that ASGE requires outstanding achievements of its members. Rather, it appears to be a professional association open to most if not all members of the

profession. The petitioner did not submit the membership requirements for the NYSGE. Regardless, this appears to be a local association and there is no evidence indicating that recognized national or international experts in the discipline judge prospective members.

The petitioner also submitted documentation from the internet site of the American College of Gastroenterology (ACG) indicating that the ACG is open to those who meet certain education requirements. The petitioner, however, did not initially submit evidence demonstrating that was a member of the ACG. On appeal, the petitioner submits a letter from the ACG's Vice President of Membership stating that the petitioner has been a member since January 2006. Regardless, meeting educational requirements does not equate to outstanding achievements. Rather, the education required appears commensurate with the petitioner's occupation. Further, it has not been shown that recognized national or international experts in the discipline judge ACG's prospective members.

In response to the director's request for evidence, the petitioner submitted a certificate from the American Board of Internal Medicine (ABIM) stating that he "has met the requirements of this board and is hereby certified for the period 2005 through 2015 as a diplomate in internal medicine." On appeal, the petitioner submits letters from the ABIM Credentials Manager and Director of Registration verifying his certification status. The record, however, does not include evidence showing the certification requirements for the ABIM. Despite counsel's statement that certification requires passing "a notoriously difficult two day examination," we cannot conclude that passing a standardized medical certification exam for entry into the occupation equates to outstanding achievements.

In this case, there is no evidence showing that the NYSGE, the ASGE, the ACG, and the ABIM require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one. Accordingly, the petitioner has not established that he meets this criterion.

*Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>2</sup>

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<sup>2</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

In response to the director's request for evidence, the petitioner submitted a January 14, 2009 letter from [REDACTED] of the Digital Atlas of Video Education (DAVE) Project. Mr. [REDACTED] states:

In May 2008, The DAVE Project published a video by [the petitioner] and his co-authors titled "Novel Spy-Scope Video of Biliary Papillomatosis." Since that time, the video has been viewed over 3800 times.

The DAVE Project . . . is a free-to use collection of teaching tools published with a permissive copyright. The project consists of a gastrointestinal endoscopy video atlas and medical lectures and presentations. Physicians are encouraged to submit, for consideration, new entries to enrich and expand the atlas.

The DAVE Project published the petitioner's video subsequent to the petition's filing date. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, the plain language of this regulatory criterion requires "[p]ublished material about the alien in professional or major trade publications or other major media" including "the title, date, and author of the material." The preceding video was contributed to the DAVE Project by the petitioner and his colleagues rather than being published material about him. Further, there is no evidence showing that the digital atlas qualifies as a professional or major trade publication or some other form of major media. Accordingly, 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.*

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." The evidence submitted to meet this criterion, or any criterion, must be indicative of or consistent with sustained national or international acclaim.<sup>3</sup> A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

The petitioner did not initially claim to meet or submit evidence relating to this regulatory criterion. On December 30, 2008, the director issued a notice requesting evidence for this criterion and the other regulatory criteria under 8 C.F.R. § 204.5(h)(3). The petitioner's response to the director's

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<sup>3</sup> We note that although not binding precedent, this interpretation has been upheld in *Yasar v. DHS*, 2006 WL 778623 \*9 (S.D. Tex. March 24, 2006) and *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 \*11 (S.D. Tex. Aug. 26, 2005).

request for evidence did not address the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iv). Rather, counsel indicated that the petitioner had “no further evidence in this category.” On appeal, the petitioner submits documentation showing that he served on the ACG’s Practice Parameters Committee in 2008. The petitioner has not submitted evidence showing that he was a committee member as of the petition’s September 10, 2007 filing date or evidence showing the specific work he had judged as of that date. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this evidence in this proceeding. Further, we note that the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence for this criterion and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Accordingly, 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.*

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 clinical medicine, it can be expected that a new diagnostic procedure would be widely adopted or at least under consideration at a number of hospital or clinics. Otherwise, it is difficult to gauge the impact of the petitioner’s work.

The petitioner relies at least partly on reference letters to meet this criterion. 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. at 158, 165.

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. Vague, solicited letters from local colleagues or letters that do not specifically identify contributions or how those contributions have influenced the field are insufficient. *See Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9<sup>th</sup> Cir. 2009).

The petitioner submitted a July 7, 2006 letter from [REDACTED] who identifies himself as a governor of the American College of Gastroenterology and submits his letter on the college's letterhead. [REDACTED] asserts that his opinion is based on a review of the petitioner's professional credentials. A review of [REDACTED]'s curriculum vitae, however, reveals that he is also currently Director of Medical Education and Research at Maimonides Medical Center and an assistant professor of medicine at the Mount Sinai School of Medicine. Moreover, the record establishes that he coauthored a study with the petitioner presented at a 2006 meeting of the American College of Gastroenterology and that they later coauthored a book chapter. Thus, it would appear that [REDACTED] knowledge of the petitioner actually derives from his personal association with the petitioner. [REDACTED] states:

[The petitioner] has distinguished himself in the field with his extraordinary ability diagnosing, treatment and managing patients with various types of acute and chronic liver disease, including the most serious cases or cirrhosis and end stage liver disease as well as Hepatitis C.

\* \* \*

Moreover, [the petitioner] has conducted studies one of which is "Correlation of histological severity between genotype 3 and others in HCV chronic hepatitis" which was published and presented at the American College of Gastroenterology 2005 Annual Meeting. The aim of this study was to see the significance of different hepatitis C genotypes in relation to the severity of liver disease and to determine if the histological activity index (HAI) and fibrosis are more severe in genotype 3 than others. The impact of this study provided insight into epidemiology of a specific kind of hepatitis C viral infection. It identified the high risk population whose activity is similar and would help in further management.

The record, however, lacks evidence showing that the study was of major significance in the field of gastroenterology. For example, there is no evidence showing that the study is widely cited in medical literature.

[REDACTED] of Medicine, Mount Sinai Medical Center, provides general praise of the petitioner's expertise, asserting that he "is an excellent clinician in treating hepatitis, specifically hepatitis C." [REDACTED] further states that there is a shortage of qualified "hepatologists" in the United States. We note that the classification sought was not designed merely to alleviate labor shortages in a given field. In fact, the issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor through the alien employment certification process. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 (Commr. 1998). We do not contest the importance of the petitioner's work or the general value of having gastroenterologists or hepatologists who possesses expertise in evaluating patients with liver

disease.<sup>4</sup> At issue for the classification sought is whether the petitioner is one of the small percentage who has risen to the top of the field and whether he has earned sustained national or international acclaim in the field. Nevertheless, there is no evidence demonstrating that the petitioner seeks employment as a “hepatologist” rather than as a gastroenterologist. The statute and regulations require that the petitioner seeks to continue work in his area of expertise in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii), and 8 C.F.R. § 204.5(h)(5).

\_\_\_\_\_ for the Division of Gastroenterology at the Maimonides Medical Center, has coauthored material with the petitioner. \_\_\_\_\_ provides examples of the petitioner’s published and presented work. The regulations, however, contain a separate criterion regarding the authorship of published articles and abstracts. 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. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. We will fully address the petitioner’s published work under the next criterion.

With regard to the petitioner’s published and presented case studies under this criterion, there is no evidence showing that the mere authorship of case studies is indicative sustained national or international acclaim or consistent with a contribution of major significance. For example, the internet materials for *Chest*, submitted by the petitioner, indicate that it publishes “cutting edge clinical investigations” in addition to “case studies,” suggesting that not every case study represents a cutting edge clinical investigation. More persuasive than the case studies themselves would be objective evidence of their influence in the field, such as evidence that they are widely and frequently cited on a level consistent with sustained national or international acclaim. See also *Kazarian v. USCIS*, 580 F.3d at 1036 (publications and presentations are insufficient absent evidence that they constitute contributions of *major* significance). The petitioner submitted an exhibit entitled “citations.” The evidence included in the exhibit, however, does not establish that the petitioner has ever been cited. Rather, the petitioner simply searched for his own last name on Scholar.google.com and the name of his coauthor on Yahoo.com and submitted the results. The Scholar.google.com results pulled up articles *by* the petitioner but the links below the individual articles, which will list the number of citations when there are any, do not list any citations. While the search results may include several hits for the petitioner’s last name, without submitting a list of all of the results, we cannot conclude that any of them represent citations of the petitioner’s articles or even relate to the petitioner as opposed to other individuals with the same last name. The petitioner has not explained the significance of the Yahoo.com search for his coauthor’s last name.

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<sup>4</sup> Congress has devised the alien employment certification process, under the jurisdiction of the Department of Labor, to address the issue of whether there are sufficient workers who are able, willing, qualified and available. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a). Congress has also designed a program to address the need for physicians in designated shortage areas or veterans facilities. Section 203(b)(2)(B)(ii) of the Act.

provides a discussion of various “modern” procedures the petitioner has mastered. Dr. Iswara does not, however, explain how using technology developed by others is an *original* contribution or provide any examples of how the petitioner’s ability to perform procedures developed by others has impacted the field. [REDACTED] also notes that the petitioner instructs interns, residents, fellows, and his senior peers. Participation in the routine training of one’s immediate colleagues in the latest procedures developed by others is not original and cannot establish that the petitioner has already impacted the field nationally or internationally.

[REDACTED] of Medicine at the Indiana University School of Medicine and another governor for the American College of Gastroenterology, does not explain how he came to know of the petitioner and his work. We note that, according to his curriculum vitae, he was an invited speaker at the Mount Sinai Liver Disease Meeting in 2006. [REDACTED] asserts that there is a shortage of qualified gastroenterologists in the United States. As stated above, however, the question of labor shortages does not fall under our jurisdiction. *NYS DOT*, 22 I&N Dec. at 221. Rather, the issue of shortages in a given occupation falls under the jurisdiction of the Department of Labor through the alien employment certification process. *Id.* [REDACTED] further asserts that the petitioner’s expertise in both hepatology and advanced therapeutic “ERCP” allows the petitioner to identify and manage cirrhosis and end stage liver disease as well as Hepatitis. Merely having a diverse skill set, however, would not appear to be an original contribution of major significance in and of itself. Rather, the record must be supported by evidence that the petitioner has already used those combined skills to impact the field at the national or international level in an original way.

While [REDACTED] asserts that the petitioner is “far more qualified than the vast majority of his peers” to keep patients alive while waiting for a liver transplant and after receiving the transplant, he does not provide examples of unique treatments developed by the petitioner or explain how they are being adopted nationwide or worldwide. [REDACTED] does assert that the petitioner uses “the latest medications.” [REDACTED] does not explain why prescribing medications developed by others is either original or of major significance to the field of medicine. Rather, it would appear that even the most minimally competent physician would take advantage of the latest medicines where appropriate. Finally, [REDACTED] asserts that the petitioner took part in a liver study that “provided critical insight into the field” of gastroenterology. [REDACTED] does not discuss the results of this study or explain how it has impacted the treatment of liver disease. We will discuss the petitioner’s publication record and the lack of evidence of its impact under the next criterion.

[REDACTED] Division of Gastroenterology, Maimonides Medical Center, states:

[The petitioner] is best known for being the first to ever use a novel spy scope to diagnose biliary papillomatosis. This entire procedure was recorded and provides the most clear and best visualized images of this disease ever to have been produced.

\* \* \*

The above spy scope procedure was selected for inclusion in the DAVE Project.

The fact that [the petitioner's] Spy-scope video inclusion in DAVE projects [sic] is of tremendous significance and evidences very clearly the great reputation that he has sustained in the field already. . . . [The petitioner's] work has already been viewed over 1500 times around the world.

█ does not provide information regarding the number of times the hundreds of other gastroenterology videos posted online through the DAVE project have been viewed. Nevertheless, the DAVE Project posted the petitioner's video on May 6, 2008, several months after the petition's filing date. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, there is no evidence demonstrating that the petitioner's use of a novel spy scope designed by others to diagnose biliary papillomatosis is tantamount to an original contribution of major significance in the field.

While the petitioner is well trained and his case studies are no doubt of value, it does not follow that every well-trained physician who writes up case studies that add to the general pool of knowledge has inherently made an original contribution of major significance to the field as a whole. Without letters from a wide selection of independent hospitals or clinics who have adopted the petitioner's original procedures, if, in fact, the petitioner has even developed any original procedures, evidence of wide and frequent citation of his case studies or comparable evidence of an impact on the field, we cannot conclude that the petitioner's work equates to original contributions of major significance in the gastroenterology or hepatology fields. The record lacks evidence showing that the petitioner's work has had a substantial national or international impact or that his field has significantly changed as a result of his work. In this case, there is no evidence showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance. Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner initially submitted evidence of his co-authorship of case reports in *Infections in Medicine* and *Chest*. The petitioner also submitted evidence showing that he coauthored abstracts for various scientific meetings and medical conferences. In response to the director's request for evidence, the petitioner submitted evidence that he contributed a video to the DAVE Project in May 2008. The petitioner's response also included a January 13, 2009 letter from █, stating that the petitioner and █ wrote a chapter in the forthcoming book *Curbside Consultation of the Pancreas: 49 Clinical Questions* due to print in late 2009. On appeal, the petitioner submits pages from the book confirming his co-authorship of a brief section in the book. The petitioner's contribution of a video to the DAVE Project and his publication of the preceding book chapter post-date the filing of the petition. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the Dave Project video and the book chapter in this proceeding. The petitioner also submitted an unsigned letter from

[REDACTED] the WJG Press, announcing the launch of three new journals and inviting the submission of future articles. This unsigned and undated letter does not bear the petitioner's name. Nevertheless, there is no evidence showing that the petitioner authored a scholarly article in any of the WJG Press's three journals specified in [REDACTED] letter.

Several of the petitioner's references assert that the invitations to present his work at different locations demonstrate his widespread notoriety. As stated above, however, the record lacks any evidence that other clinicians have cited or otherwise relied on his case studies. 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. *See Kazarian v. USCIS*, 580 F.3d at 1036. For this reason, we will evaluate a citation history or other evidence of the impact of the petitioner's articles and abstracts when determining their significance to the field. For example, numerous independent citations for an article authored by the petitioner would provide solid evidence that others have been influenced by his work and are familiar with it. On the other hand, few or no citations of an article authored by the petitioner may indicate that his work has gone largely unnoticed by his field. **The record contains no citation indices or other similar evidence to demonstrate that the petitioner's work has attracted a level of interest in his field consistent with sustained national or international acclaim.**

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

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

On appeal, counsel asserts that the petitioner's work has been presented at leading professional conferences in the field. The petitioner's field, however, is not in the arts. The plain language of this regulatory criterion indicates that it is intended for visual artists (such as sculptors and painters) rather than for gastroenterologists such as the petitioner. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner's conference presentations are more relevant to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi), a criterion that has already been addressed. Nevertheless, in the fields of science and medicine, acclaim is generally not established by the mere act of presenting one's work at a conference or symposium along with numerous other participants. Nothing in the record indicates that the presentation of one's work is unusual in the petitioner's field or that invitation to present at venues where the petitioner's work appeared was a privilege extended to only a few top physicians. Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the petitioner above almost all others in his field at the national or international level. Accordingly, the petitioner has not established that he meets this criterion.

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

While the petitioner may have performed in a “leading role” on a particular case study, this criterion requires us to examine his role for a specific organization or establishment. At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien’s selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim. As previously discussed, the petitioner submitted letters from [REDACTED] discussing his work at Maimonides Medical Center. In response to the director’s request for evidence, the petitioner submitted a June 25, 2008 letter from [REDACTED] of Medicine, State University of New York Downstate Medical Center, Brooklyn, stating:

[The petitioner] is currently employed in the Department of Gastroenterology at Maimonides Medical Center and Mount Sinai Medical Center.

\* \* \*

[The petitioner] plays a leading role at Maimonides Medical Center, providing state of the art care in the field of gastroenterology. Most notably, he is a pioneer in a wide range of novel endoscopic techniques. He currently performs state of the art procedures including endoscopic ultrasound (EUS), ERCP, and capsule endoscopy as well as providing care for patients with Hepatitis B and C.

In addition to his leading role as a clinician, [the petitioner] plays a critical role performing research in his field. He currently dedicates approximately 30% of his time to research. His current research includes the following studies – A randomized, double-blind, placebo-controlled study of ARVERAPAMIL in the treatment of IBS with diarrhea, A 5 year registry study of Adalimumab in subjects with moderate to severe active Crohn’s disease.

While the petitioner has performed admirably for the patients and research projects to which he was assigned, there is no evidence showing that his temporary training role as a postgraduate fellow was leading or critical for the Maimonides Medical Center and the Mount Sinai Medical Center. We note that the petitioner’s fellowship in gastroenterology was designed to provide specialized research experience and training in his field of endeavor. The petitioner’s evidence does not demonstrate how his subordinate training position differentiated him from the other physicians and researchers employed at the preceding institutions, let alone their more senior staff and principal investigators. A comparison of the petitioner’s position with those of his superiors (such as [REDACTED]) and of the other individuals offering letters of support indicates that the very top of his field is a level above his present level of achievement. The documentation submitted by the petitioner does not establish that he was responsible for the preceding institutions’ success or standing to a degree consistent with the meaning of “leading or critical role” and indicative of sustained national or international acclaim. Accordingly, the petitioner has not established that he meets this criterion.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The petitioner submitted his "New York City Health and Hospitals Corporation Individual House Staff Contract" for the "Period of Residency Program Year" July 1, 2007 to June 30, 2008 reflecting a total salary of \$57,385.00. In response to the director's request for evidence, the petitioner submitted a January 25, 2009 salary survey from PayScale.com indicating that the median salary for Hospital Gastroenterologists in the United States is \$205,591. Accordingly, the petitioner has not submitted evidence showing that his salary at the time of filing was significantly high in relation to others in the field.

The petitioner's response also included an "Independent Contractor Agreement" with his present employer, High Dessert Gastroenterology, Inc., that was executed on December 3, 2007 and commenced on July 7, 2008 stating that the petitioner would receive "the amount of \$250,000 per year." The petitioner also submitted 2008 pay receipts from High Dessert Gastroenterology, Inc. and his Form W-2 Wage and Tax Statement for 2008. On appeal, the petitioner submits an October 30, 2009 letter from the President of High Dessert Gastroenterology, Inc. stating that the petitioner is expected to earn between \$540,000 and \$550,000 for his second year of employment. The petitioner's salary agreement and earnings from High Dessert Gastroenterology, Inc. post-date the filing of the petition. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's High Dessert Gastroenterology, Inc. salary agreement and earnings in this proceeding.

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

In this case, we concur with the director's finding that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). 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. 8 C.F.R. § 204.5(h)(2). The petitioner, a physician, relies on his professional memberships, publication and presentation of case studies and the accolades of colleagues. [REDACTED] is the Director of Medical Education and Research at the Maimonides Medical Center, Vice President of the New York State Society of Gastrointestinal Endoscopy, and a fellow of the American College of Gastroenterology and the American College of Physicians. Dr. [REDACTED] has also authored 13 books and book chapters in addition to numerous articles and abstracts. [REDACTED] has similar leading roles and serves on the editorial board of four journals. Thus, the top of the petitioner's field appears to be far higher than the level he has attained.

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's

achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The 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).

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.