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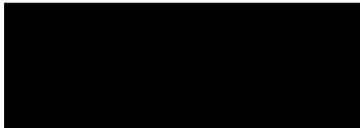
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED]
LIN 07 180 52857

Office: NEBRASKA SERVICE CENTER

Date: OCT 02 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:



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).

M. DeAdn de
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). Counsel also challenges the applicability of *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971) to the instant case.

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 June 11, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a dental researcher. At the time of filing, the petitioner was a research assistant and graduate student at the University of Washington completing programs of study toward a Ph.D. in Oral Biology and a Master of Science in Dentistry (MSD). These degrees were conferred upon the petitioner on December 14, 2007, more than six months after the petition was filed. In January 2008, the petitioner began working as tenure track assistant professor at Ohio State University College of Dentistry.

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).¹

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

The petitioner submitted a certificate from the University of Washington stating that he received a Warren G. Magnuson Scholarship "for Academic Excellence." The petitioner also submitted a March 12, 2004 letter informing him of his selection "as a 2004-2005 Magnuson Scholar" and stating that he would receive "\$25,000 for the next academic year" to support his education. The petitioner's submission also included an April 21, 2005 article in *Uweek*, the University of Washington Faculty and Staff Newspaper, stating that six graduate students were selected as Magnuson Scholars "on the basis of their academic performance and their *potential* contributions to research in the health sciences." [Emphasis added.] The petitioner's receipt of a scholarship from his university reflects institutional recognition rather than a nationally or internationally recognized prize or award for excellence in the field. Further, we cannot ignore that competition for the Magnuson Scholarship was limited to graduate students at the petitioner's university and therefore it is not an indication that the recipient "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 also submitted certificates indicating that he received a United Laboratories Education Scholarship (Golden Prize) (1997-1998) and Bayer-Shanghai Dental Ltd. Awards (1992 and 1993)

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

for his studies at West China University of Medical Sciences.² Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The preceding certificates were not accompanied by certified English language translations as required by the regulation.

The petitioner's scholarships to attend the University of Washington and the West China University of Medical Sciences represent his receipt of financial assistance for his university studies rather than his receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. University study is not a field of endeavor, but rather training for future employment in a field of endeavor. The petitioner's university scholarships offer no meaningful comparison between him and experienced researchers in the field who had long since completed their academic studies. 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.

The petitioner submitted a document from the 2007 American Association of Anatomists (AAA) Annual Meeting indicating that he was among six finalists for the "Langman Graduate Student Award." We acknowledge the petitioner's selection as a finalist, but the plain language of this regulatory criterion requires evidence of the petitioner's receipt of "nationally or internationally recognized prizes or awards." In this instance, there is no evidence from the AAA showing that the petitioner ultimately received the Langman Graduate Student Award at the association's Annual Meeting. Nevertheless, we cannot ignore that competition for the award was limited to graduate students. Accordingly, selection for this award is not an indication that its recipient "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). Selection for the Langman Graduate Student Award offers no meaningful comparison between its recipient and experienced researchers in the field who had long since completed their graduate studies.

In response to the director's request for evidence, the petitioner submitted a March 6, 2008 letter from the president of the American Association of Orthodontists Foundation stating that the petitioner's "2008 Post-Doctoral Fellowship Award proposal . . . was approved for funding for a two-year period at \$50,000 per year, for a total of \$100,000." The petitioner also submitted an April 7, 2008 letter from the president of the American Association of Orthodontists stating that the petitioner's fellowship application was approved for funding in the amount of \$90,000 for a duration of three years. The letter further states: "This program was created . . . to help reduce the student debt for dental education in the U.S. and Canada. The fellowship program is intended to address a recognized crisis in orthodontic education by providing funds to encourage and support the recruitment and retention of orthodontic educators." The petitioner received the preceding fellowships subsequent to the petition's filing date. A petitioner, however, must establish eligibility

² The record reflects that the petitioner holds both a Bachelor of Medicine degree (1996) and a Master of Science degree (1999) from West China University of Medical Sciences.

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 these fellowships in this proceeding. Nevertheless, the petitioner's fellowships represent financial support for his future research projects and advanced training rather than nationally or internationally recognized prizes or awards for excellence in his field of endeavor. A substantial amount of research is funded by fellowship grants from a variety of public and private sources. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the researcher are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a fellowship grant is principally designed to fund future projects, and not to honor or recognize past achievement. Thus, we cannot conclude that having one's work funded in such a manner constitutes receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner's response to the director's request for evidence included a certificate stating that he received a Charley Schultz Resident Scholar Scientific Research Award at the 108th Annual Session of the American Association of Orthodontists in May 2008. On appeal, the petitioner submits a document from the 108th Annual Session of the American Association of Orthodontists stating: "Six individuals were selected as recipients of the 2008 Charley Schultz Resident Scholar Award. This award . . . is designed to promote clinical and scientific research by orthodontic residents/students." The petitioner received this award subsequent to the petition's filing date. As discussed, 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 award in this proceeding. Nevertheless, we cannot conclude that selection for an award limited to "students" or to "orthodontic residents" (those participating in an advanced training program) is an indication that its recipient "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 award offers no meaningful comparison between its recipient and experienced professionals in the field who had long since completed their educational studies and advanced orthodontics training.

Finally, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, there is no evidence showing that the petitioner's awards had a significant level of recognition beyond the presenting organizations. 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.³

The April 21, 2005 article in *Uweek* included five sentences about the petitioner, but it was primarily about the Magnuson scholar program rather than the petitioner and his work in the field. Further, there is no evidence showing that this university newspaper 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.⁴ 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 initially submitted a January 16, 2007 letter from [REDACTED] Department of Orthodontics, University of Washington, and Editor-in-Chief of the *American Journal of Orthodontics and Dentofacial Orthopedics*, stating:

I have known [the petitioner] for the past two years as a post-graduate student in orthodontics at the University of Washington. He has distinguished himself during his residency and even become a reviewer for the *American Journal of Orthodontics and Dentofacial Orthopedics* ... for which I am the Editor-in-Chief.

letter further states that the petitioner reviewed one manuscript in 2006 and that the petitioner was his student at Washington State University. The petitioner has not established that performing a single manuscript review delegated to him by his professor at the University of Washington is indicative of sustained national or international acclaim at the very top of his field. The petitioner also submitted a June 2, 2007 e-mail inviting him to review a manuscript for *The Cleft Palate-Craniofacial Journal*, but there is no evidence showing that he actually completed the review. The plain language of this regulatory criterion specifically requires “[e]vidence of the alien’s

³ 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.

⁴ 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); *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005).

participation . . . as a judge of the work of others.” An invitation to perform a manuscript review is not tantamount to evidence of one’s participation as a judge of others’ work.

In response to the director’s request for evidence, the petitioner submitted additional e-mails from February, May, July, and August of 2008 inviting him to review manuscripts for *Osteoarthritis and Cartilage*, *Cells Tissues Organs*, and *American Journal of Orthodontics and Dentofacial Orthopedics*. As discussed, an invitation to review is not tantamount to evidence of actual participation. The petitioner also submitted a second letter from [REDACTED] dated October 2, 2008 stating that the petitioner has now completed a total of “five excellent reviews” for the latter journal and that he plans to appoint the petitioner “to serve as an associate editor.” The petitioner was requested to perform the 2008 reviews subsequent to the petition’s filing date and there is no evidence showing that he had served as an associate editor for *American Journal of Orthodontics and Dentofacial Orthopedics* as of that 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. at 49. Accordingly, the AAO will not consider the 2008 review requests or the associate editor appointment in this proceeding.

In this case, the record includes evidence demonstrating the petitioner’s actual participation in only one manuscript review (at the request of [REDACTED] as of the petition’s filing date. We note here that peer review is a routine element of the process by which articles are selected for publication in scientific journals. Occasional participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his field. Reviewing manuscripts is recognized as a professional obligation of researchers who publish themselves in scientific journals. Normally a journal’s editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication to ask several reviewers to review a manuscript and to offer comments. The publication’s editorial staff may accept or reject any reviewer’s comments in determining whether to publish or reject submitted papers. Without evidence pre-dating the filing of the petition that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received and completed independent requests for review from a substantial number of journals (as opposed to a request originating from his professor), or served in an editorial position for a distinguished journal in the same manner as [REDACTED] we cannot conclude that he meets this criterion.

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

The petitioner submitted several letters of support. We cite representative examples here. In evaluating the reference letters, we note that letters containing mere assertions regarding the petitioner’s talent and potential are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. For example, many of the individuals offering letters of support focus on the petitioner’s educational qualifications, the general importance of his specialty, or the shortage of qualified faculty in dentistry and orthodontics programs rather than how his original research findings equate to

scientific contributions of major significance in his field. 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 v. USCIS*, 2009 WL 2836453, *5 (9th Cir. 2009).

Department of Orthodontics and Pediatric Dentistry, University of Michigan, states:

I am . . . conversant with [the petitioner's] area of research and the strong research reputation of his current mentor and collaborator [redacted] who I believe provided [the petitioner] with a strong research foundation.

* * *

considers [the petitioner] to be a superb researcher who is thorough, conscientious, and productive. In the relatively short time of his academic training, [the petitioner] has already published three first-authored publications and has submitted two others. Together with the three published articles, [the petitioner] has 9 manuscripts published or in press. . . . I believe that [the petitioner] has a bright future in academic dentistry and research in craniofacial research.

[The petitioner's] specific research area on examining the link between craniofacial function and abnormal development of the craniofacial structures is likely to have implications to the treatment of patients with these disorders. His research background together with his clinical training makes [the petitioner] a uniquely qualified individual who will help to advance our field. Additionally, it should be noted that there is and has been a severe national shortage of faculty in U.S. dental schools over the past several years. Thus, it is an imperative that we recruit and retain individuals like [the petitioner] who have the training to perform competitive research and teach for our research and profession to be sustained in the long run.

With regard to the petitioner's publication record as discussed by [redacted], 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. 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. *Kazarian v. USCIS*, at *6 (publications and presentations are insufficient absent evidence that they constitute contributions of *major* significance). We will fully address the petitioner's published work under the next criterion.

[redacted] of Orthodontics and Professor of Oral Biology, University of Washington, states:

In his work thus far, [the petitioner] has already made a number of important research contributions. His work has been especially important in the area of distraction osteogenesis. This method, when applied to the bones of the jaws, allows the regeneration of bony tissues that have been lost due to trauma, surgery, or as a sequelae of the loss of teeth. It also helps in the reformation of facial structures in those with congenial craniofacial deformations. [The petitioner's] continued presence in the United States is much needed to further these advances as they show much promise for the treatment of patients that suffer from the loss of craniofacial bone.

With regard to the witnesses of record, many of them they discuss the promise of the petitioner's work and his potential as researcher, rather than how his past research achievements already qualify as original contributions of major significance in the field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *Matter of Katigbak*, 14 I&N Dec. at 49.

In response to the director's request for evidence, the petitioner submitted an October 8, 2008 letter from [REDACTED] Section of Orthodontics, Ohio State University (OSU) College of Dentistry, stating:

Last December [the petitioner] completed his MSD in Orthodontics and his Ph.D. in Oral Biology at the University of Washington in Seattle. His research focused on craniofacial hard tissue biology under the direction of his dissertation advisor, [REDACTED]. This background has well prepared him for the faculty position at OSU and made him critical to our ability to build a hard tissue group along with two other Division faculty members. Because of his qualifications, we were able to have funds allocated for his position.

* * *

[The petitioner's] past research has made great contribution to the understanding of how functional loading affects bone adaptation in cranial sutures and the mandibular distraction site, two important growth surfaces in the craniofacial region. Since his employment at OSU, [the petitioner] has quickly expanded his research to the areas of mandibular periosteum and the alveolar bone. We expect [the petitioner], together with his colleagues at OSU, to make significant progress in the field of craniofacial hard tissue biology and its application to clinical dentistry. This is an area that underpins much of what we do clinically and has many unsolved issues that remain at the basic level.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the evidence indicates that the petitioner performed admirably on the research projects to which he was assigned at the University of Washington and that he is a talented researcher with potential, the submitted documentation does not establish that he has already made original scientific contributions of major significance in his field. For example, the petitioner's evidence does not establish that his work has had a substantial national

or international impact, nor does it show that his field has significantly changed as a result of his work.

In this case, the letters of recommendation are not sufficient to meet this regulatory criterion. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a researcher who has sustained national or international acclaim. Without evidence showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

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

The petitioner submitted evidence of his co-authorship of articles in publications such as *Journal of Oral and Maxillofacial Surgery*, *The Anatomical Record*, and *Archives of Oral Biology*. The petitioner also submitted evidence of articles that cite to his work. Accordingly, we concur with the director's finding that the petitioner meets this regulatory criterion.

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

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.

The petitioner submitted letters of support discussing his work at the University of Washington. While the petitioner performed admirably on the research projects to which he was assigned, there is no evidence showing that his temporary roles as a graduate student and a research assistant were leading or critical for the university. The petitioner's evidence does not demonstrate how his subordinate positions differentiated him from the other researchers employed at the university, let alone its tenured faculty and principal investigators. For example, there is no indication that the petitioner served as a principal investigator at the University of Washington and initiated his own research projects. A comparison of the petitioner's positions with those of his superiors (such as [REDACTED] and of the other individuals offering letters of support indicates that the very top of the petitioner's 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 university's success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

In response to the director's request for evidence, the petitioner submitted letters from [REDACTED] and [REDACTED] of Oral Biology, OSU indicating that the petitioner began working at OSU as an assistant professor in January 2008. The petitioner's work at OSU post-dates the filing of the petition and therefore his role as an assistant professor will not be considered in this proceeding. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

In this case, we find that the petitioner meets only one regulatory criterion, three of which are required to establish eligibility. 8 C.F.R. § 204.5(h)(3). 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).

On appeal, counsel states: "*Matter of Katigbak* is NOT applicable to the instant case, because the further evidence we provided on October 27, 2008 did not constitute NEW EDUCATION OR EXPERIENCE acquired subsequent to the filing date (June 11, 2007)." Contrary to counsel's argument, the applicability of *Matter of Katigbak* is not limited solely to instances involving new education or experience. Rather, this standing precedent is also applicable in any circumstance in which an alien seeks qualification under a "new set of facts" that post-date the filing of the petition. *Id.* at 49. By law, the director does not have the discretion to reject published precedent. *See* 8 C.F.R. § 103.3(c), which indicates that precedent decisions are binding on all USCIS officers. To date, neither Congress nor any other competent authority has overturned the precedent decision, and counsel's disagreement with that decision does not invalidate or overturn it. Therefore, the director's reliance on relevant, published, standing precedent does not constitute error. Further, *Matter of Katigbak* has been incorporated into USCIS regulations, 8 C.F.R. § 103.2(b)(12), which requires that evidence submitted in response to a request for evidence establish "filing eligibility at the time the application or petition was filed." *Matter of Katigbak* provides:

If the petition is approved, he has established a priority date for visa number assignment as of the date that petition was filed. A petition may not be approved for a profession for which the beneficiary is not qualified at the time of its filing. The beneficiary cannot expect to qualify subsequently by taking additional courses and then still claim a priority date as of the date the petition was filed, a date on which he was not qualified.

Section 204 of the Act requires the filing of a visa petition for classification under section 203(a)(3). The latter section states, in pertinent part: "Visas shall next be made available to *qualified immigrants who are members* of the professions." (Emphasis added.) It is clear that

it was the intent of Congress that an alien be a recognized and fully qualified member of the professions at the time the petition is filed. Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts. To do otherwise would make a farce of the preference system and priorities set up by statute and regulation.

Id. The Regional Commissioner continued this reasoning in *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg. Comm. 1977). That decision reemphasizes the importance of not obtaining a priority date prior to being eligible based on future experience. In fact, despite counsel's assertion to the contrary, this principle has been extended beyond the alien's eligibility for the classification sought. For example, an employer must establish its ability to pay the proffered wage as of the date of filing. *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Act. Reg. Comm. 1977). That decision provides that a petition should not become approvable under a new set of facts. Recognizing that *Matter of Katigbak* was not "foursquare with the instant case" in that it dealt with the beneficiary's eligibility, *Matter of Great Wall* still applies the reasoning. The decision provides:

In sixth-preference visa petition proceedings the Service must consider the merits of the petitioner's job offer, so that a determination can be made whether the job offer is realistic and whether the wage offer can be met, as well as determine whether the alien meets the minimum requirements to perform the offered job satisfactorily. It follows that such consideration by the Service would necessarily be focused on the circumstances at the *time of filing* of the petition. The petitioner in the instant case cannot expect to establish a priority date for visa issuance for the beneficiary when at the time of making the job offer and the filing of the petition with this Service he could not, in all reality, pay the salary as stated in the job offer.

Id. (Emphasis in original.) Finally, when evaluating revisions to a partnership agreement submitted in support of a petition seeking classification as an alien entrepreneur pursuant to section 203(b)(5) of the Act, this office relied on *Matter of Katigbak* for the proposition that "a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts." *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

While an award received after the filing date may be based on research conducted prior to the filing date, the attention resulting from the award was not indicative of the recipient's acclaim in the field as of the date of filing. Further, citations published after the date of filing may serve as evidence of the continued relevance of an alien's work that had already been well cited as of the filing date, but they cannot be considered evidence that the alien was already nationally or internationally acclaimed as of that date. Moreover, articles by the alien that were not published as of the date of filing and, thus, had not been subject to peer review and disseminated in the field as of that date, cannot establish national or international acclaim as of the date of filing. To hold otherwise would have the

untenable result of an alien securing a priority date based on the speculation that his work might prove influential while the petition is pending.

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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.