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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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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: SEP 02 2009  
LIN 08 036 52672

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).

John F. Grissom  
Acting Chief, Administrative Appeals Office

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

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel submits a brief and resubmits all previously submitted documentation, which was already part of the record of proceeding. For the reasons discussed below, we uphold the director’s ultimate conclusion that the petitioner has not established his eligibility for the exclusive classification sought. We reach this conclusion by considering the evidence under the individual regulatory criteria 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.

While USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

According to Part 6 of the petition, this petition seeks to classify the petitioner as an alien with extraordinary ability as a senior scientist. In characterizing the petitioner's field of endeavor, the director stated that the petitioner was a researcher. On appeal, counsel asserts that the director should have narrowed the petitioner's field of endeavor to experimental biophysics. Subsequently in his brief, **counsel cites *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994.)** 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. Nevertheless, it is worth noting that *Buletini*, a decision on which counsel relies later in his brief, criticized legacy Immigration and Naturalization Service (INS), now USCIS, for unnecessarily narrowing that alien's field to nephrology research. *Buletini*, 860 F. Supp. at 1230. Even if we limit the petitioner's field to experimental biophysics, however, we concur with the director that the petitioner has not demonstrated the necessary sustained national or international acclaim.

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. On appeal, counsel relies on *Buletini*, 860 F. Supp. at 1234 for the proposition that once the petitioner demonstrates that he meets three criteria he has met his burden. As discussed in the previous paragraph, district court decisions are not binding on us. That said, we do not contest this principle. We note, however, that the court in *Buletini* acknowledged that "the examiner must evaluate the quality, including the credibility, of the evidence presented to determine if it, in fact, satisfies the criteria." *Buletini*, 860 F. Supp. at 1234.

Consistent with the above, we find that if the statutory standard of national or international acclaim is to have any meaning, the evidence submitted to meet a given criterion must be indicative of or consistent with such acclaim in that field. *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). We disagree with counsel that such a careful analysis causes us to "deviate" from the regulatory criteria, which concerned the *Buletini* court. Instead, such an analysis is necessary to comply with congressional intent in enacting this exclusive classification.

Counsel also expresses the concern that no weight was given to the reference letters in this matter, which were from those with "extensive expertise in the field of Experimental Biophysics." The mere submission of expert letters, however, is insufficient. It would be absurd to suggest that USCIS may not review the content of those letters. As will be explained in our detailed analysis of the letters below, most of the authors provide little or no support for their broad generalizations that are repeated nearly verbatim in most of the letters.

The petitioner has submitted evidence that, he claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).<sup>1</sup>

*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.*

At the outset, we note that the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien," relating to his work. Compare 8 C.F.R. § 204.5(i)(3)(i)(C) (requiring published material about the alien's work). Counsel cites *Buletini*, 860 F. Supp. at 1234, for the proposition that we cannot deviate from the plain language of the regulatory criteria. The plain language of this criterion, however, requires that the published material be about the alien relating to his work rather than simply about his work. As will be seen below in our analysis of the evidence under this criterion, the distinction in this case is important.

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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.

The petitioner relies on citations of his work to meet this criterion. The petitioner initially submitted evidence that his articles are consistently cited, with one article garnering 60 citations. He also submitted a six-page article by [REDACTED], the petitioner's Ph.D. advisor, that discusses the petitioner's work in two paragraphs. Both of the petitioner's articles discussed by [REDACTED], one of which is ranked as "of outstanding interest," are coauthored by [REDACTED].

On April 14, 2008, the director issued a request for additional evidence (RFE), advising that citations cannot serve to meet this criterion. In response, the petitioner submitted a 66-page review article that, while focusing on "10 different teams who provide shining examples of how to properly implement, as well as report, biosensor analysis," lists over 1000 cited references. The 66-page article spends half of a page on the petitioner's work. The petitioner also submitted an unpublished manuscript that cites the petitioner and thanks him for "interesting discussions."

The director concluded that the citations were not "commensurate with published material about the [petitioner] in professional or major trade publications or other major media." On appeal, counsel asserts that the petitioner's research has been "discussed in great detail in annual reviews of research having major significance in the field of Experimental Biophysics and in at least one scientific treatise/book chapter." Counsel concludes that these discussions are more than "mere citations referencing" the petitioner's work. Counsel specifically references two articles that were published in 2008, after the petition was filed. These articles cannot be considered evidence of the petitioner's eligibility as of the filing date, the date as of which the petitioner must establish 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). Finally, counsel asserts that there is no requirement that the published material be "limited to *only* discussions of one scientist's research."

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be about the alien relating to his work. We do not interpret "published material" to include a single endnote or paragraph. Rather, the phrase "published material" refers to the entire article.

The article by [REDACTED] may contain a discussion of the petitioner's work but it cannot be credibly asserted that this article is primarily about the petitioner relating to his work. Moreover, we are not persuaded that a review by the petitioner's own Ph.D. advisor of work coauthored with that advisor is indicative of or consistent with national or international acclaim. We note that the regulation at 8 C.F.R. § 204.5(h)(3)(iii) specifically requires that the petitioner provide the author of the material, revealing that the author of the material is relevant information.

It is not clear whether or not the 66-page article postdates the filing of the petition. Assuming it was already published as of that date, it cannot be concluded that the half-page discussion of the petitioner's work in this 66-page article with over 1000 citations is primarily about the petitioner relating to his work.

In light of the above, the evidence submitted does not meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Specifically, the review articles submitted are not published material about the petitioner relating to his work. Thus, the petitioner has not established that he meets this criterion.

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

Initially, counsel relied on the petitioner's service as a peer reviewer for the *Journal of Molecular Biology* from 2004 through 2006 to meet this criterion. The petitioner submitted a letter from Dr. [REDACTED] stating that, as a member of the editorial board for this journal, he can confirm the petitioner's work reviewing manuscripts for the journal. The petitioner also submitted an unsigned letter from [REDACTED], advising that the journal sends each manuscript "to a scientist who is an expert in the field of the manuscript." As this letter is unsigned, it has no evidentiary value.

The director's RFE requested evidence that the petitioner's peer review responsibilities set him apart from others in the field and garnered acclaim. In response, the petitioner submits a new letter from Dr. [REDACTED] confirming that the *Journal of Molecular Biology* is the "premier journal covering the areas of molecular biology and biophysics" and the importance of the peer review process in maintaining the high quality of papers in the journal. [REDACTED] further asserts that serving as a regular reviewer for the journal is a "mark of esteem" for a scientist and is "not shared by many scientists." The petitioner also submitted a review request from [REDACTED] addressed to the petitioner. The request states that the journal relies on the voluntary efforts of referees to ensure the integrity of the scientific literature and values the petitioner's advice "as an expert in this field." The request also asks for recommendations of other potential reviewers if the petitioner is unable to complete the review.

The director concluded that the large number of peer-reviewed scientific journals rely on numerous scientists to review manuscripts, that published authors are expected to reciprocate by serving as a reviewer and, thus, that peer review is routine in the field and cannot set the petitioner apart from others in his field.

On appeal, counsel reiterates the statements in [REDACTED] letter and notes the prestige of the journal's editorial board. Counsel concludes that as a "gatekeeper" of the selection process, the petitioner's role as a peer reviewer "is even more noteworthy." The petitioner submits materials from [www.elsevier.com](http://www.elsevier.com) regarding the *Journal of Molecular Biology* stating that manuscripts are initially reviewed by the editors and that "only those papers that meet the scientific and editorial standards of the *Journal* will be sent for outside review." If a manuscript is found to meet those standards by an editor, the editor will then "seek advice" from "two or more expert reviewers about the scientific content and clarity of presentation." Authors are requested to suggest the names of up to six potential reviewers, who should be "established scientists with expertise in the field of the paper."

We do not find it violates the reasoning in *Buletini*, 860 F. Supp. at 1231, to examine the evidence submitted as to whether it is indicative of or inconsistent with national or international acclaim. The

court in *Buletini* was concerned that an alien would need to first demonstrate “extraordinary ability” in order to meet this criterion. We are not following this “circular exercise” that troubled the court. Rather, we are looking at the type of review responsibilities inherent to the field and what review responsibilities might be indicative of or at least consistent with sustained national or international acclaim. *Accord Yasar*, 2006 WL 778623 at \*9; *All Pro Cleaning Services.*, 2005 WL 4045866 at \*11.

We do not contest that reviewers must be scientists with “expertise in the field” in that their area of specialty should cover the subject matter of the manuscript. We would not expect a chemist to review a mechanical engineering manuscript. Nothing in the record, however, suggests that peer review is more than a professional responsibility of published researchers. It is an editor who makes the initial and final review of the manuscripts, seeking only advice from reviewers. We also cannot ignore that the petitioner was requested to review for the *Journal of Molecular Biology* by his own Ph.D. advisor. This request is not indicative of any recognition beyond the laboratory where the petitioner performed his doctoral research.

Ultimately, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, while we do not question [REDACTED]’s expertise or sincerity that peer review for a prestigious journal is a “mark of esteem,” peer review, by itself, is not indicative of or consistent with sustained national or international acclaim. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed manuscripts for a journal that boasts and credits a small number of elite reviewers, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner meets this criterion.

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

Initially, counsel relied on letters from experts in the field, the petitioner’s publication and citation record and his student fellowship to meet this criterion. In the RFE, the director requested corroboration of the petitioner’s role in collaborative projects. In response, counsel noted the positive reviews of the petitioner’s research, invitations to join a research group and present his work, expert letters and the petitioner’s citation record. The director concluded that the experts and reviews confirmed the originality and significance of the petitioner’s research but did not demonstrate the type of wide implementation of the petitioner’s work that can be expected of a contribution of major significance. The director also noted the collaborative nature of the petitioner’s research and questioned the petitioner’s role in relation to the other members of his team.

On appeal, counsel asserts that the expert letters, some of which are from “some of the world’s most respected scientist[s],” explain the complex subject matter and support the other objective evidence in the record, including the review of the petitioner’s articles and his publication record. Counsel notes that the petitioner is the first listed author for most of his articles. The petitioner submits a report

discussing the order of authors for collaborative research stating that “first authorship is the gold standard.”

At the outset, we note that the regulations contain a separate criterion for authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). The director concluded that the petitioner in this matter meets that criterion and, for the reasons discussed below, we concur with that finding. We cannot conclude, however, that meeting that criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the statutory requirement for extensive evidence and the regulatory requirement that a petitioner meet three separate criteria.

The petitioner’s field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien’s contributions must be not only original but of major significance. We must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult for USCIS to gauge the impact of the petitioner’s work.

We concur with counsel that reference letters are important and we will consider the letters submitted in this matter below. The opinions of experts in the field, however, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l. Comm’r. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner’s curriculum vitae and work and provide an opinion based solely on this review. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An

individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

The petitioner obtained his Ph.D. in 2002 from University College London under the direction of Dr. [REDACTED]. He performed his postdoctoral research at the University of California, San Diego (UCSD) in the laboratory of [REDACTED]. In 2006, the petitioner began working for Pfizer Global Research as a senior research scientist.

At the outset, we note that all but two of the reference letters end with a nearly identical paragraph asserting that it is “critically important” to retain the petitioner’s services in the United States to maintain “global leadership” based on the petitioner’s “exemplary contributions.” Similarly, several letters include a nearly identical paragraph about the petitioner’s doctoral research beginning with the sentence: “I came to know [the petitioner] through his doctoral research, which he carried out in the laboratory of [REDACTED] at University College London.” Even [REDACTED] includes this paragraph, poorly modifying the first sentence to read: “I came to know of [the petitioner] through his doctoral research, which he carried out in my [REDACTED] [sic] at University College London.” While the letters are signed, indicating that the references affirm the information in the letters, the use of nearly identical language suggests that the language is not their own.

[REDACTED] asserts generally that the petitioner has presented work on the biophysics of the TATA-binding protein transcription factor and the NF- $\kappa$ B transcription factor and has been published in prestigious journals. [REDACTED] continues, using nearly identical language to several other letters:

[The petitioner’s] research has helped push the forefront of understanding of the biophysical properties [of] transcription factor interactions with DNA. In particular, [the petitioner’s] application of new techniques such as microcalorimetry and surface plasmon resonance, to characterize the thermodynamic binding properties of these interactions has lead to major advances in the understanding of their function. I consider him to be one of the leaders in my field.

While counsel asserts that the purpose of the letters is to explain the complex subject matter of the petitioner’s research, [REDACTED], and most of the other references who use this language, provide no explanation as to the significance of the petitioner’s doctoral research or how it has impacted the field by defining the “major advances” referenced in this paragraph.

[REDACTED] provides more detail into the significance of the petitioner’s research. She explains that the petitioner was “one of” the first scientists to conduct a thorough thermodynamic characterization of a macromolecular interaction, the TATA-binding protein transcription factor, giving new insights into the role of solvent water in macromolecular interactions. [REDACTED] asserts that these results are now “widely recognized” and that they “inspired the computer scientists to make algorithms that also considered the solvent water molecules because experimental evidence showed how important they were.” According to [REDACTED], this area is now a “huge area of computational biology.”

explains that she recruited the petitioner to her laboratory based on his expertise in the emerging microcalorimetry and surface Plasmon resonance techniques as well as his experience in thermodynamics and kinetics of transcription factors. In laboratory, the petitioner focused on NF- $\kappa$ B, a family of transcription factors that plays a pivotal role in many disease states such as cancer, HIV and chronic inflammation. explains that despite the importance of this transcription family, little was known about the basic process of how these factors recognize DNA and are controlled. According to the petitioner generated critically important information on this pathway, such as revealing which parts of the inhibitor protein are folded in solution, quantitative binding data regarding sequestration and the dissociative properties of the inhibitor protein.

asserts that this area of research is critical but underrepresented. The issue of whether similarly-trained workers are available in the United States, however, is an issue under the jurisdiction of the Department of Labor. *New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 (Comm'r. 1998). provides no examples of how the petitioner's revelations are being applied in the field beyond her own laboratory.

, a faculty member at Johns Hopkins University, asserts that he is familiar with the petitioner's published work and met the petitioner at a recent conference. first addresses the petitioner's work with the inhibitor protein for NF- $\kappa$ B, asserting that the petitioner "applied an arsenal of biophysical methods, including a very innovative hydrogen exchange-mass spectroscopy method" to demonstrate that the protein is highly variable in its stability distribution, showing unique signs of heterogeneity, plasticity and partial unfolding. explains that these results are important, because the plasticity must be "frozen out" when binding to NF- $\kappa$ B. concludes that this work "set the stage for understanding this critical binding reaction" but the only examples he provides of work building on these results are the petitioner's own studies. concludes that the original nature of the petitioner's work "suggests that many others have tried and failed." We are not persuaded that this assertion is relevant to the petitioner's eligibility for the exclusive classification sought. The vast majority of articles appearing in peer-reviewed publications are original in that journals rarely publish work that is not original. We are not persuaded that the original nature of the work alone demonstrates that it is any more significant than the vast amounts of new science being reported in the numerous scientific journals.

The most detailed letter is from , a professor at the University of Maryland. Dr. asserts that she has "reviewed [the petitioner's] work and background" and is capable of assessing the petitioner's credentials. She does not indicate that she was aware of the petitioner or his work prior to being contacted for a reference letter. begins by asserting in general that the petitioner's work is unique and "has already inspired the next generation of computational efforts as well as future research in other laboratories." does not provide any examples of this next generation research or identify the laboratories in which it is occurring.

More specifically, [REDACTED] explains that how strong and how fast proteins interact are two of the most important questions in the petitioner's field as this information is essential for the understanding of how diseases arise from mutation or mis-folding of proteins. [REDACTED] discusses the petitioner's TATA binding protein research in [REDACTED] laboratory, characterizing it as "pioneering" and the first study of an archaeal DNA binding protein with microcalorimetry. According to [REDACTED] the petitioner's results using this process were groundbreaking because the petitioner demonstrated that fewer changes in the amino acid sequence of the protein were required for a complete reversal of the binding character than previously anticipated. [REDACTED] opines that the results are significant in the pharmaceutical industry, making the drug development process more efficient. We acknowledge that the petitioner is now working for the pharmaceutical company Pfizer. [REDACTED], a senior principal scientist at Pfizer, however, notes the petitioner's work with TATA binding proteins but does indicate that the petitioner is now using this work at Pfizer to improve drug development efficiency. Rather, [REDACTED] repeats the claim contained verbatim in several letters that the petitioner's work "has already inspired the next generation of computational efforts." [REDACTED] Senior Director of Biochemical Pharmacology at Pfizer merely states that the petitioner is building on the work he performed at UCSD. [REDACTED] does not identify other pharmaceutical companies or academic laboratories using the petitioner's TATA binding protein results to improve drug development efficiency.

[REDACTED] then discusses the petitioner's investigation of the effect of water molecules at the interface of the protein-DNA complex. The petitioner's results in this area demonstrated that relatively small networks of water molecules could have large effects on the net thermodynamic properties. [REDACTED] concludes (emphasis removed):

[The petitioner's] work became the foundation for the key hypothesis that local effects of the disruption of water networks could be transmitted to surrounding side chains and water molecules. The significant result of [the petitioner's] work on water molecules makes an important impact on the future of computational design of pharmaceuticals, by increasing the accuracy and predictive capabilities of computational models, thus accelerating and reducing the overall cost of drug development.

Once again, [REDACTED] appears to be speculating as to the future significance of the petitioner's work and provides no examples of how the petitioner's work had already impacted the pharmaceutical industry.

Next, [REDACTED] discusses the petitioner's work with NF- $\kappa$ B. Specifically, [REDACTED] asserts that the petitioner used novel methods to "set the stage for the understanding of this critical binding reaction." In continuing to study this reaction, according to [REDACTED], the petitioner determined exactly which parts of the inhibitor protein contribute to binding, specifically, the unstructured regions. [REDACTED] explains that these results are important because two thirds of proteins include unstructured regions. [REDACTED] concludes that this work is the first quantitative measurements of their kind in this system. While [REDACTED] opines that this work has "wide ranging implications" and has "inspired the next

generation of computational modeling experiments,” she provides no examples of these next generation experiments.

██████████ and other references note that the petitioner’s work in the aggregate is highly cited. We acknowledge that the petitioner’s work is consistently cited, with one article having been cited 60 times. As discussed above, ██████████ in a review article, cites two articles coauthored with the petitioner, one of which ██████████ designated as of outstanding interest. ██████████ also includes his coauthored work with the petitioner in his review article discussing areas where isothermal titration calorimetry (ITC) is making a significant contribution. In the body of this article, ██████████ asserts that, rather than demonstrating previously unpredicted results, the petitioner’s work “enhances the previously published hypothesis that the inclusion of water molecules which interact in a macromolecular interface contributes to the negative  $\Delta C_p$ .” ██████████ also cites the petitioner’s work in an article designed to “highlight work of interest and impact.”

We acknowledge that an independent research team at the University of Utah also positively reviewed the petitioner’s work in the *Journal of Molecular Recognition*. In this 66-page article that includes over 1,000 citations, the petitioner’s work is characterized as one of ten research articles reviewed that describe “well-performed biosensor experiments.” While this article suggests that the petitioner demonstrated technical skill in this research, the impact of the petitioner’s results is not discussed.

asserts that at Pfizer, the petitioner has “provided key experimental data that has led to the discovery of a several [*sic*] potentially new mechanism for cancer and vital disease.” ██████████ does not explain the key data, the new mechanism or how Pfizer has advanced this research.

In response to the director’s request for additional evidence, the petitioner submits an invitation that predates the filing of the petition by five days to join the Molecular Interactions Research Group (MIRG), of the Association of Biomolecular Resource Facilities (ABRF). The petitioner submitted materials from [www.wikipedia.org](http://www.wikipedia.org) as to the significance of ABRF and its research groups. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.<sup>2</sup> See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909

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<sup>2</sup> Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

(8<sup>th</sup> Cir. 2008). While the invitation may reflect on the petitioner's skills, it is not clear that the invitation to join a research group is evidence of the petitioner's past contributions of major significance.

While we acknowledge that the record contains some favorable evidence, positively reviewed and consistently cited articles that might support thoughtful reference letters from the petitioner's colleagues and more independent members of the field who have applied the petitioner's results or methods, the reference letters in this matter are highly general, do not adequately address the petitioner's impact or merely speculate as to how the petitioner's work may impact the pharmaceutical industry.

On appeal, counsel questions how far must a new scientific discovery be widely implemented, asserting that the petitioner's discovery of what conditions cause cancer cells to grow faster should constitute a contribution of major significance. 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 record contains no discussion of the petitioner's work on cancer cells. If this work postdates the filing of the petition, it cannot be considered. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance to the field as a whole.

In light of the above, we uphold the director's finding that the petitioner has not established that he meets this criterion. Even if we accepted that the petitioner's citation record, the positive reviews of his work and the MIRG invitation serve to meet this criterion, the petitioner would only meet a second criterion. For the reasons discussed above and below, the record falls far short of establishing that the petitioner meets the necessary third criterion.

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

The director concluded that the petitioner meets this criterion. Given the petitioner's authorship of consistently cited and positively reviewed scholarly articles, we affirm that conclusion.

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See [http://en.wikipedia.org/wiki/Wikipedia:General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on August 6, 2009, a copy of which is incorporated into the record of proceeding.

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

Initially, counsel relies on the letters from [REDACTED] and [REDACTED] praising the petitioner's contributions to his group at Pfizer. Specifically, [REDACTED] asserts that the petitioner has "elevated our group to be one of the finest biochemistry & biophysics laboratories in the United States." We note that the record also contains [REDACTED] 2004 grant application, which does not list the petitioner as one of the "key personnel." Where the petitioner is named as a postdoctoral fellow, reference is made to efforts "being made so that in as many cases as possible the trainees would work with more than one PI on the Program Project." Thus, the petitioner's role in this research was that of a "trainee."

In response to the director's request for additional evidence, counsel relies on the petitioner's invitation to join MIRG, where he was currently one of six members, and reiterates the assertions made by Dr. [REDACTED] and [REDACTED] asserting that the director erroneously discounted the opinions of two "senior supervisors" at Pfizer. The director concluded that the petitioner had not demonstrated his actual role with MIRG and that the record lacked objective evidence of his leading or critical role elsewhere.

On appeal, counsel reviews the previously submitted evidence. We have already considered the petitioner's contributions to the field above. At issue for this criterion are the role the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the nature of the role itself must be indicative of or consistent with national or international acclaim.

As stated above, the petitioner is not defined as key personnel at UCSD. While we acknowledge Pfizer's distinguished reputation, the record lacks sufficient information about the petitioner's role at Pfizer. While the petitioner lists the title "senior scientist" on the petition, neither [REDACTED] nor Dr. [REDACTED] provides the petitioner's actual title. Moreover, the record lacks an organizational chart revealing how many other scientists Pfizer employs. [REDACTED] indicates that his group includes 40 staff members including more than a dozen researchers with doctorate degrees. While Pfizer obviously must employ competent and creative scientists, the petitioner has not established that the petitioner's title at Pfizer represents a critical role at that company. As stressed by counsel, [REDACTED] is a senior principal scientist, and [REDACTED] is a senior director, both senior supervising positions.

The petitioner received his invitation to join MIRG days before the petition was filed. It is not known when he accepted this invitation. The record lacks evidence that he had already performed a leading or critical role for MIRG as of the date of filing, the date as of which he must establish his eligibility. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

In light of the above, the petitioner has not established that he 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, one of an unknown number of scientists at a major pharmaceutical company, relies on his coverage in review articles, his service as a manuscript reviewer and his publication and citation record. [REDACTED] serves on the editorial board of two journals and the nominating committee for the Protein Society. [REDACTED] is Secretary of the Biophysical Society. Another reference, [REDACTED], is Associate Dean for the Graduate program in Biophysics at the Universidad Autonoma del Estado de Morelos in Mexico. Other references have similar credentials. Thus, it appears that the top level of the petitioner's field is 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 scientist 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 scientist, 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.