

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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



**U.S. Citizenship  
and Immigration  
Services**

B2

[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

**AUG 05 2010**

IN RE:

Petitioner:

[REDACTED]

Beneficiary:

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

2 Perry Rhew

Chief, Administrative Appeals Office

U.S. DEPARTMENT OF AGRICULTURE  
BUREAU OF PLANT INDUSTRY  
WASHINGTON, D. C.

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and 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 that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel argues that the petitioner meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, we uphold the director’s decision.

## **I. Law**

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* H.R. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term “extraordinary ability” refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten categories of evidence.

- (i) Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) 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;
- (iv) 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 specialization for which classification is sought;
- (v) Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.



In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification, *See Kazarian v. USCIS*, 596 F.3d 1115 (9<sup>th</sup> Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.<sup>1</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

*Id.* at 1119-1120.

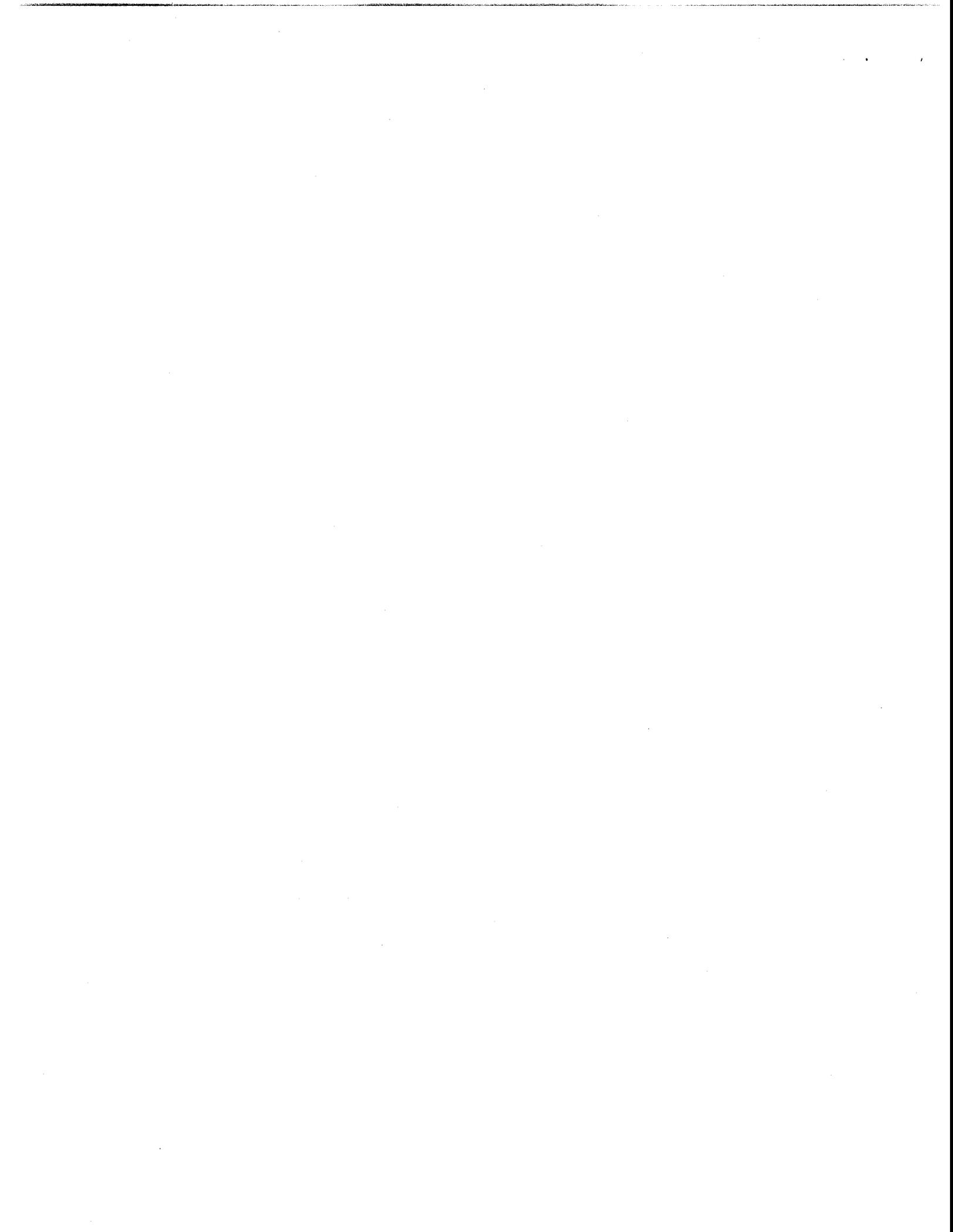
Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

## II. Analysis

### A. Evidentiary Criteria

---

<sup>1</sup> Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).



This petition, filed on October 6, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. At the time of filing, the petitioner was working as a postdoctoral research associate in the laboratory of [REDACTED] Professor of [REDACTED]. From 2002 to 2006, the petitioner worked as a postdoctoral researcher under the supervision of [REDACTED] in the [REDACTED] and in the [REDACTED]. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).<sup>4</sup>

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

The petitioner initially submitted a June 6, 2008 letter from [REDACTED] Professor of [REDACTED] stating that the petitioner received an "Award for The Progress of Science and Technology [REDACTED]". In response to the director's request for evidence, the petitioner states: "I was granted the award of Scientific and Technology [REDACTED] on December 30th, 1995 when I was 25 years old. . . . There were only two research teams were granted this award in all the range of [REDACTED]. The petitioner's response included a photocopy of an award certificate and a medal issued by the [REDACTED]. The submitted evidence does not indicate how many individuals were on the petitioner's research team and were similarly recognized and whether the petitioner played an integral role in the project.<sup>3</sup> Nevertheless, the petitioner's second class award from the Committee of Science and Technology Development of [REDACTED] equates to regional recognition rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor. The petitioner's response also included information about the [REDACTED] of China, but there is no evidence demonstrating that the petitioner's [REDACTED] Science and Technology Award of [REDACTED] of China are one and the same. Moreover, the statute requires the submission of extensive evidence. Section 203(b)(1)(A)(i) of the Act; 8 U.S.C. § 1153(b)(1)(A)(i). Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires the submission of evidence of more than one nationally or internationally recognized prize or award. Accordingly, the petitioner has not established that he meets this criterion.

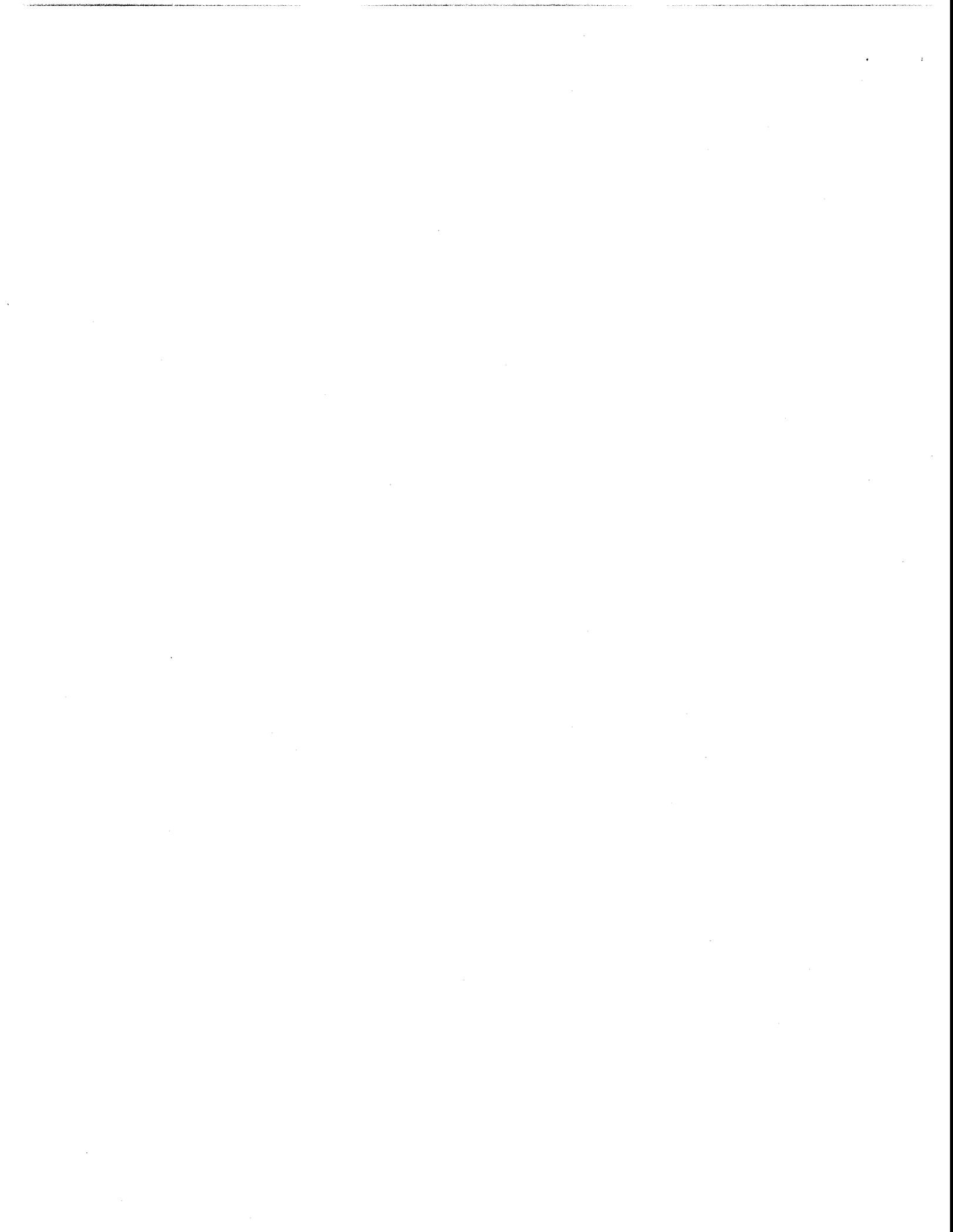
*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

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

---

<sup>2</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

<sup>3</sup> It cannot suffice that the petitioner played an insignificant role in a large research group that earned collective recognition.



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.

In response to the director's request for evidence, the petitioner asserts that he is a member of the American Society of Human Genetics, the American Association for Cancer Research, the Epigenetics Society, and the American Society for Biochemistry and Molecular Biology. The petitioner, however, did not submit evidence of his membership in the preceding associations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). Moreover, there is no evidence of the membership requirements (such as bylaws or rules of admission) for the preceding associations showing that they 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>4</sup>

In response to the director's request for evidence, the petitioner submitted an April 8, 2007 article he wrote for [REDACTED]

[REDACTED] The preceding article equates to an article authored by the petitioner rather than published material about him. The regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). The petitioner also submitted photocopies of what appear to be the covers and title pages of a book that he claims to have edited entitled [REDACTED] and a book that he claims to have coauthored entitled [REDACTED]

<sup>4</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.



[REDACTED] The preceding book covers and title pages were unaccompanied by certified English language translations. Pursuant to the regulation at 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. Nevertheless, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) 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." None of the documentation submitted for this regulatory criterion meets these requirements.

In light of the above, 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 petitioner submitted incomplete, non-certified English language translations of two "grant review" e-mail notices from the [REDACTED] dated February 25, 2008 and May 4, 2008. The e-mail greetings reference the petitioner's name, but the messages were actually sent to [REDACTED] the e-mail address for [REDACTED] listed at the conclusion of his June 6, 2008 letter. We acknowledge that the petitioner previously worked at [REDACTED] Agricultural University from August 2006 to September 2007 and that [REDACTED] has identified himself as the petitioner's "former advisor and colleague." However, the petitioner has been working at the [REDACTED] University School of Medicine since September 2007 and the e-mail address listed on his resume is [REDACTED]. Therefore, it is unclear as to why grant review assignments intended for the petitioner would have been sent to [REDACTED] in 2008. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Further, there is no evidence from the [REDACTED] of China establishing that the petitioner actually completed the grant reviews. The February 25, 2008 e-mail states: "We will send you the grants for review in April of 2008." The May 4, 2008 e-mail states: "It is our honor to ask you to evaluate 11 grant applications . . ." The preceding "Notice[s] of grant review" equate to requests for review rather than evidence of the petitioner's actual "participation" as a reviewer. Finally, the English language translations accompanying the preceding e-mail notices were not certified by the translator as complete and accurate as required by the regulation at 8 C.F.R. § 103.2(b)(3).

The petitioner submitted an August 15, 2008 letter from the [REDACTED] stating: "This letter is written to confirm the status of journal reviewer of [the petitioner] for the journal of [REDACTED] [The petitioner] has reviewed many papers for our journal in the field of veterinary epidemiology, molecular genetics and veterinary medicine . . ." The petitioner also submitted an August 25, 2008 letter from the [REDACTED] stating: "This letter is written to certify that



[the petitioner] has been a reviewer for the [The petitioner] has reviewed many articles related on veterinary epidemiology, molecular genetics and veterinary medicine for our journal . . .” The vague information provided in the preceding letters does not specifically identify the articles and papers reviewed by the petitioner, their dates of submission, and their authors. Further, the letters do not specify the nature of the petitioner’s activities as a reviewer. Accordingly, the petitioner has not established that his review activities for these journals equates to his “participation, either individually or on a panel, as a judge of the work of others.” Additional deficiencies pertaining to the petitioner’s evidence will be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with sustained national or international acclaim, or being among that small percentage at the very top of the field of endeavor.

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

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

The petitioner submitted several letters of support discussing his work.

states:

[The petitioner] has been a Research Associate in my laboratory in the University School of Medicine since the middle of September, 2007. [The petitioner] is a lead researcher studying the epigenetics of FSH Muscular Dystrophy (facioscapulohumeral muscular dystrophy).

\* \* \*

Although [the petitioner] has been working in my lab less than a year, we are writing a manuscript about some of his exciting findings describing unusual DNA structures and human disease. The manuscript is about a very unusual shape of DNA (guanine quadruplexes) in the region on chromosome 4 linked to FSH muscular dystrophy.

\* \* \*

Moreover, [the petitioner] has made an important new discovery that will go to a second manuscript shortly. He found to our surprise when replicating DNA containing guanine quadruplexes, very unusual DNA structures, that the structure got precisely excised from the rest of the DNA sequence by naturally occurring enzymes. We will shortly be writing another manuscript on these findings and they will be presented at an upcoming international meeting on FSH muscular dystrophy.

opines that the petitioner has made exciting and important findings while working in her laboratory, but there is no evidence showing that these findings which they expect to publish at some unspecified future date equate to original scientific contributions of major significance in the field.



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. 45, 49 (Regl. Commr. 1971).

Professor in at the University of states:

Although I have never worked with [the petitioner], I know that he is a research associate in lab in the University School of Medicine. is one of a small number of experts on research into the molecular genetic mechanism of facioscapulohumeral muscular dystrophy (FSH muscular dystrophy).

[The petitioner] is a lead researcher in program on “Epigenetic Approaches for FSH Muscular Dystrophy,” which involves very complicated analysis of unusual structures in a DNA region linked to FSH muscular dystrophy. I met him and discussed his research with him at an international meeting of the New Orleans, April 27, 2008. At this meeting, [the petitioner] first reported his exciting findings describing the relationship to human disease of a very unusual DNA structure (guanine quadruplexes) in the region on chromosome 4 linked to FSH muscular dystrophy. [The petitioner’s] research is at the cutting-edge of molecular genetics research for understanding human genes and diseases and has possible applications in cancer treatment. The approach of group is very novel and exciting and [the petitioner’s] experience and technical skills contribute enormously to its development.

Moreover, [the petitioner] has subsequently made another important new discovery. He found that, surprisingly, during replication of DNA containing this very unusual structure that it is excised from the rest of the DNA sequence by naturally occurring enzymes.

Professor of University Medical School, states:

[The petitioner] has exciting findings about the relationship between human DNA structures and inherited disease. Using methods like circular dichroism (CD), polyacrylamide gel electrophoresis (PAGE), and in vitro DNA recombination, he found there are very unusual non-B structures of DNA, called guanine quadruplexes, in the DNA repeat region (D4Z4) linked to this disease. He found to our surprise when replicating with DNA containing this very unusual structure that the structure got excised from the rest of the DNA sequence by naturally occurring enzymes. It is attractive to propose that G-quadruplexes help organize D4Z4 chromatin structure as part of special changes in D4Z4’s conformation accounting for the near-threshold effect of D4Z4 size on FSHD status.

The record, however, does not include evidence showing that the petitioner’s facioscapulohumeral muscular dystrophy research is widely cited by independent researchers or otherwise equates to an original contribution of major significance in the field.



██████████ Associate Professor at the ██████████  
██████████ University, states:

[The petitioner] worked as postdoctoral researcher in my laboratories at University of ██████████ and ██████████ University from 2002 to 2006. I was his postdoctoral mentor and worked closely with him on several projects . . . .

\* \* \*

[The petitioner] . . . initiated several research projects to investigate the recovery mechanism of phototransduction, which is a canonical heterotrimeric G-protein signaling pathway found in retinal photoreceptors. In one project [the petitioner] used various ectopic expression systems to compare and contrast the in vitro activities of GRK1 and GRK7, the two G-protein coupled receptor kinases found in human photoreceptors. He then employed transgenesis and gene targeting techniques to express human GRK7 in mouse photoreceptors lacking endogenous GRK1, and demonstrated that GRK7 is a superior enzyme to GRK1 in vivo. . . . [The petitioner] found that with a better kinase in the system, the overall rate of phototransduction recovery remains unaltered, suggesting that accelerated rhodopsin phosphorylation has no impact on recovery kinetics. This led to his second project, which was to unequivocally identify the rate-limiting step of photoreceptor recovery, a puzzle that stayed unsolved for decades in the field. Using transgenesis again he discovered that a separate reaction which involves the hydrolysis of GTP by transducin rate-limits the recovery process. This finding drew a lot of attention after its publication in NEURON in 2006 because it implies that controlling the timing and duration of G-protein signaling by RGS (Regulators of Gprotein Signaling) may be central to the control of various integrating neural circuits in the central nervous system. It was a breakthrough and leading progress of the field in the world. . . . [The petitioner's] contribution went beyond this, he was also responsible for our success in producing a transgenic mouse line called iCre75, which enables us to use the Cre/Lox system to inactivate genes in a photoreceptor-specific manner. Furthermore, he demonstrated that when the expression of Cre recombinase in photoreceptors went too high, photoreceptor degeneration ensued. To circumvent this problem he engineered a self-excised transgenic construct and made a mouse line called SEiCre. We are currently using the SEiCre mouse line he generated to advance our attack on the degenerative mechanism of retinal photoreceptors, a leading cause of human blindness in our country.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication, presentation, 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.



Research Director,  
University, states:

[The petitioner] pioneered a conditional gene targeting technique that established a unique transgenic mouse line, iCre75, which only express Cre recombinase in retinal rod photoreceptors. This mouse model can modulate any retinal rod photoreceptor gene, and is vital for future genetic studies of essential genes in retinal photoreceptor. The strategy and method he used is both original and groundbreaking, and can be applied to any conditional gene targeting system. In particular, this gene targeting system is useful in deciphering the role of genes that cause severe blinding diseases in this country.

[The petitioner] has also published another extraordinary work in one of the most prestigious journals, *Neuron*. . . . Using transgenic and knockout mice model he created, his team deciphered the mechanism behind light signaling in mammalian rod cells, which is a model system for studying GPCR signaling. This study resolved a long-standing controversy in the field of neuroscience. This significance of this finding is evidenced by the fact that this result has been cited 33 times in just two years after it was published.

The record, however, does not include evidence indentifying the 33 cites to this article authored by the petitioner, and eight others. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. We agree with that cites to a journal article are a reliable measure of the level of significance attributable to a researcher's findings. For example, a large number of independent cites to an article authored by the petitioner would provide solid evidence that other researchers have been influenced by his work and are familiar with it. In this case, the petitioner claims that his body of work has been cited to 434 times. The petitioner submitted a "citation table" summarizing the number of cites to his English and Chinese research papers. For instance, according to the citation table, the petitioner's article in was cited to 33 times. The source of this information compiled by the petitioner is not identified and copies of the citing articles were not submitted or specifically identified with an accompanying index. The petitioner also submitted search results from Google.com, but again, copies of the citing articles were not submitted or specifically identified with an accompanying index. Rather, the petitioner simply searched for his own name at Google.com and for the term "retina," and submitted the results. The Google.com results pulled up articles coauthored by the petitioner but the links below the individual articles, which will list the number of citations when there are any, do not identify the citing articles. While the search results may include several hits for the petitioner's name and the term "retina," without submitting a list of all of the results, we cannot conclude that any of them represent citations of the petitioner's articles. Finally, even if the petitioner were to submit evidence of the 33 articles citing to his work in we cannot conclude that this moderate number of citations is sufficient to demonstrate that this work under the guidance equates to a contribution of "major significance" in the field.

states:



[The petitioner] was a Ph.D. graduate student in my laboratory in School of [redacted] University in China from 1997 to 2000. He joined my laboratory as a faculty member after he got his doctoral degree. . . . Obviously, I know him quite well and have been fortunate to keep in touch with him personally and scientifically.

\* \* \*

When [the petitioner] joined my laboratory, we were focused on the molecular genetic of avian infectious bronchitis virus (IBV). . . . The molecular characteristics of large RNA genomic size . . . made IBV one of the most difficult virus for gene clone and sequencing with the whole virus RNA genome as template. By numerous trials and fails, finally, [the petitioner] solved these problems successfully. Indeed, he was the first one in the country who made the breakthrough on IBV cloning and sequencing. Meanwhile, he isolated more than 60 IBV wild type virus strains from 22 provinces of the country. Parts of his IBV sequences were recorded by [redacted] of The United States.

\* \* \*

As the first author, or co-author, or correspondence author, he has published more th[a]n 60 peer reviewed academic Chinese articles. One of his first author paper, which about the molecular epidemiology of IBV, was published in June of 2003, in the [redacted] right before SARS [Severe Acute Respiratory Syndrome] national breakout. Because SARS pathogen and IBV belong to the same virus family (Coronavirus) and share many common characteristics his paper was one of the few papers can be referred in the research of SARS epidemiology, especially on mechanism of molecular genetics of virus gene variation at that critic[al] moment.

\* \* \*

Over past decade, many mouse models were generated to mimic inherited human retinal degeneration. [The petitioner] is the first one developed a conditional gene targeting system, iCre-75, in which a mouse rod opsin promoter drives the expression of Cre recombinase in photoreceptor specifically. Continuously, he made a series of transgenic and gene knockout mouse systems, including GRK1, R9AP, GT $\alpha$ , GT $\alpha$ Q200L and G38D. These animal models were the basis of the papers he published and have great impact on photo signal transduction field. Otherwise, some critical mechanisms would be very difficulty to elucidate.

The record, however, does not include evidence showing that the petitioner's IBV cloning and sequencing work is frequently cited, that his iCre-75 gene targeting system is widely utilized in other laboratories, or that his work otherwise equates to original contributions of major significance in the field.

[redacted] Professor of [redacted] states:



I have known [the petitioner] since 2002 when he worked at the University of [redacted] as research associate in the laboratory of [redacted]. . . . The history of gene targeting is less than 20 years old, but has developed into an invaluable new tool to dissect the gene function in vivo. This technique was awarded the Nobel Prize for medicine at [redacted] to [redacted]. There are more than 500 human disorders can be modeled by laboratory mice since gene targeting was invented. [redacted] lab is very famous on the animal models for elucidating mechanisms of phototransduction and its regulation.

[The petitioner], while in [redacted] lab at the University of [redacted] uncovered the relationship between Cre recombinase expression levels and retina degeneration, a very important discovery and critical for establishing conditional knock-out mice in retina. [The petitioner] was a driving force in developing an Opsin-iCre transgenic mouse line, termed iCre-75, in which a photoreceptor-specific promoter drives the expression of bacteriophage P1 Cre recombinase in retinal rod photoreceptors, an important and pioneering work in the field. . . . This original and ground br[e]aking work was a great advance for gene targeting systems. Generally, the establishment of a new animal model needs three to five years, but by [the petitioner's] methods, it takes just a few months, another great advance.

\* \* \*

After moving to [redacted] University, [the petitioner] continued his work on gene targeting systems, and within one year, he published three papers in the most prestigious peer reviewed journals in our field. In [redacted] one of the primary research journals of Cell Press, using a series of transgenic and knockout mice models, [the petitioner] and his collaborators for first time confirmed the critical factors governing the overall recovery rate of the light response after phototransduction took place in rod photoreceptors.

A number of the petitioner's references such as [redacted] discuss the petitioner's publication record. The regulations contain a separate criterion regarding the authorship of scholarly 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. We will fully address the petitioner's scholarly articles under the next criterion.

[redacted] Chief Executive Officer Science Leader, [redacted] states:



[The petitioner] is the first scientist in China who systematically analyzed the evolutionary features of IBV based on gene sequence variation. His work is both original and groundbreaking. He isolated many IBV strains which covered the most provinces of China. By the single tube reverse transcript polymerase chain reaction (RT-PCR) method designed by himself, he cloned and sequenced IBV S1 gene – the most variable and virulent IBV gene, from many different IBV isolates. The gene sequence data was deposited into the U.S. [REDACTED] database. According to the S1 gene variation, he constructed the phylogenetic tree to elucidate genetic relationships among IBV strains variation and their correlation with spatial and temporal distribution and pathogen adaptation. The significance of this work was twofold. First, it was the first report of this important work in China. Second, the methods and data obtained from this work also proved to be of benefit to studies on other members of the coronavirus family. In addition, [the petitioner] and his colleagues, first in the world, cloned and sequenced all the structure genes of one specific IBV variation strain, QXIBV, which caused severe pathological changes in avian proventriculus and was prevalent in most parts of China.

\* \* \*

In addition to IBV, his research works contributed to the better understanding of several other viral pathogens, including Marek's disease virus (MDV), avian influenza virus (AIV), Japanese encephalitis virus (JEV), porcine reproductive and respiratory syndrome virus (PRRSV), and porcine circovirus (PCV).

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 gene sequencing work and research projects to which he was assigned, the submitted documentation does not establish that his work equates to original contributions of "major significance" in his field. For example, the record does not indicate the extent to which his findings have impacted others in the molecular genetics field, nor does it show that the field has significantly changed as a result of his work.

In this case, the letters of recommendation submitted by the petitioner 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 that one would expect of a research scientist who has made original contributions of major significance. Without supporting



evidence showing that the petitioner's work equates to original contributions of major significance in his field, 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 has documented his authorship of scholarly articles in professional journals and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the petitioner has 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.*

The petitioner submitted letters of support discussing his work at [REDACTED] University [REDACTED] [REDACTED] the University of [REDACTED] and [REDACTED] University. There is no supporting evidence showing that these institutions have a distinguished reputation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Further, while the petitioner has performed admirably on the research projects to which he was assigned, there is no evidence showing that his subordinate roles were leading or critical for the preceding institutions. For example, there is no organizational chart or other evidence documenting how the petitioner's position fell within the general hierarchy of his research institutions. We note that the petitioner's postdoctoral fellowships at [REDACTED] University [REDACTED] [REDACTED] University, and the University of [REDACTED] were designed to provide specialized research experience and training in his field of endeavor.<sup>5</sup> The petitioner's evidence does not demonstrate how his temporary appointments differentiated him from the other research scientists employed by the preceding institutions, let alone their tenured faculty and principal investigators. For instance, unlike [REDACTED] there is no evidence that the petitioner has frequently served as a principal investigator and initiated numerous research projects of his own. 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." Accordingly, the petitioner has not established that he meets this criterion.

### *Summary*

In this case, we concur with the director's determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). A final merits determination that considers all of the evidence follows.

---

<sup>5</sup> "Biological scientists with a Ph.D. often take temporary postdoctoral research positions that provide specialized research experience." See [REDACTED] accessed on July 22, 2010, copy incorporated into the record of proceeding.



**B. Final Merits Determination**

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2); and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-1120. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), (iii), (iv), (v), and (viii).

Regarding the documentation submitted for 8 C.F.R. § 204.5(h)(iv), we cannot conclude that the petitioner’s review of papers submitted to [REDACTED] demonstrates sustained national or international acclaim or a level of expertise indicating that he is among that small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. §§ 204.5(h)(2) and (3). Peer review of manuscripts 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 that sets the petitioner apart from others in his field, such as evidence that he has received and completed independent requests for review from a substantial number of journals or served in an editorial position for a distinguished journal as of the petition’s filing date, we cannot conclude that his level of peer review is commensurate with sustained national or international acclaim at the very top of the field of endeavor. For example, [REDACTED] states that she presently serves on the editorial board of two international journals, [REDACTED]

With regard to the documentation submitted for 8 C.F.R. § 204.5(h)(vi), we note that authoring scholarly articles is inherent to scientific research in a university setting.<sup>6</sup> For this reason, we will

---

<sup>6</sup> For [REDACTED] the Department of Labor’s Occupational Outlook Handbook, 2010-11 Edition (accessed at [REDACTED] states that a “solid record of published research is essential in obtaining a permanent position involving basic research.” *See* [REDACTED] accessed on July 7, 2010, copy incorporated into the record of proceeding. The handbook also provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See* [REDACTED] accessed on July 22, 2010, copy incorporated into the record of proceeding. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor’s



evaluate a citation history or other evidence of the influence of the petitioner's articles to determine the impact and recognition his work has had on the field and whether such influence has been sustained. As previously discussed, the "citation table" and search results from Google.com submitted by the petitioner did not include copies of the citing articles or an accompanying index specifically identifying those articles. In this case, the deficient citation information submitted by the petitioner is not sufficient to demonstrate that any of his research articles have attracted a level of interest in his field commensurate with sustained national or international acclaim at the very top of the field.

Ultimately, the evidence in the aggregate 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 is presently a postdoctoral fellow whose research position equates to a temporary training appointment. He relies primarily on an unspecified number of manuscript reviews in the widespread review process, his publications with his research supervisors, incomplete and unsupported citation records, the praise of members of his field, and the affirmation of his colleagues that he is important to the laboratory where he now works in an inherently temporary position.

We note that many of the petitioner's references' credentials are impressive. For example, [REDACTED] states:

I am a professor of [REDACTED] of [REDACTED] University in China, the director of [REDACTED] of China. I am a nationally and internationally recognized expert in animal virus genetics and molecular biology research. . . . I was a visiting professor of [REDACTED] College and [REDACTED] in University of Alabama. I received the Chinese Outstanding Scientist Award in [REDACTED] which awarded to only ten scientists per year. I am also editor for several journals, like [REDACTED] in China. I am vice chairman of [REDACTED]

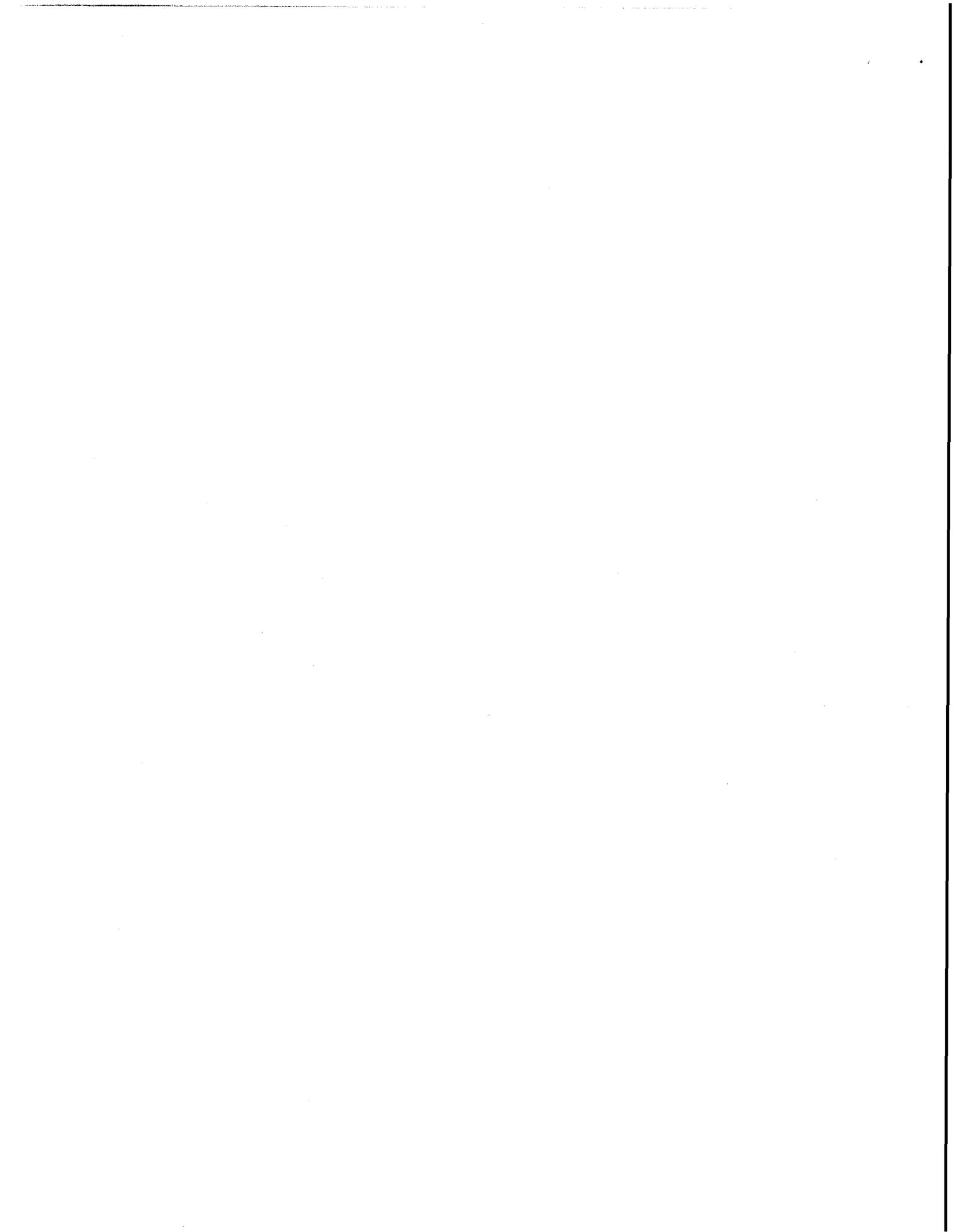
[REDACTED] states: "I am a full Professor and Co-Director of the [REDACTED] in England. . . . I have worked in the field of muscular dystrophy for the past 16 years, with over 50 primary research articles and invited reviews in this area."

[REDACTED] states:

I am a CEO Science Leader at the [REDACTED] which is part of the [REDACTED] I . . . have

---

research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reinforces USCIS' position that publication of scholarly articles is not automatically evidence of sustained national or international acclaim; we must consider the field's reaction to those articles.



published more than 150 papers in international journals, including [redacted] and served on numerous scientific committees, including the [redacted]

[redacted] states:

I am a [redacted] Professor of [redacted] I am also Director of [redacted] I serve as Senior Editor for [redacted] a leading journal for [redacted] and the visual sciences. I organized and co-organized many national and international meetings such as special symposia at the [redacted] summer conference, and [redacted] I also served many times since 1990 on national review panels and committees, such as the study section [redacted] study section, and as Biochemistry Chair at the annual meeting of [redacted] I have been honored with many awards such as [redacted]

[redacted] states:

I am a professor of [redacted] . . . I am the senior author of 119 referred journal articles, the founder, past-president, and current vice-president of an international scientific society [redacted] the organizer of several scientific conferences, and the principal investigator of 26 scientific grants totaling many millions of dollars. I am on the editorial board of two international journals, [redacted]

[redacted] states:

I am the Director of the [redacted] . . . . I am the President of the [redacted] holding membership of numerous national societies including the [redacted] I am the co-Chair of the [redacted] and a member of the [redacted]

While the petitioner need not demonstrate that there is no one more accomplished than himself to qualify for the classification sought, it appears that the very top of his field of endeavor is far above the level he has attained. In this case, the petitioner has not established that his achievements at the time of filing were commensurate with sustained national or international acclaim in molecular genetics, or being among that small percentage at the very top of the field of endeavor.



### III. Conclusion

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 and 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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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.

1944  
The  
1944  
1944