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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **AUG 19 2010**  
LIN 09 039 50936

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, on August 14, 2009, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability as a chemistry researcher. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her 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 “sustained national or international acclaim” and present “extensive documentation” of his or her 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, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific 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 claims that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

## **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 the petitioner demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under 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 [REDACTED]. 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.

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).

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<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).

## II. Analysis

### A. Evidentiary Criteria

This petition, filed on November 26, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a chemistry researcher. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).<sup>2</sup>

*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 director determined that the petitioner's documentary evidence reflecting her peer reviews for three journals failed to establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence 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." [REDACTED] 596 F.3d at 1121-22, the petitioner submitted sufficient documentation establishing that she meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Therefore, we withdraw the findings of the director for this criterion.

Accordingly, the petitioner established that she meets this criterion.

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

At the time of the original filing of the petition, counsel claimed the petitioner's eligibility for this criterion by stating:

[The petitioner] has carried out highly important research in chemistry that has focused on two principal areas, phosphorous chemistry and carbon nanotubes. Phosphorous chemistry addresses the development of phosphorous compounds, which are important to the development of new drugs, herbicides, and pesticides. Carbon nanotubes are used in materials science and nanotechnology.

In support of the petitioner's eligibility, the petitioner submitted numerous recommendation letters. We cite representative examples below.

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

[The petitioner] has developed a selective method for converting 2(5H)-furanones to phosphorylated biologically active compounds, which is of interest to the pharmaceutical and agrochemical industries. I also would highly rate her extensive work in the design and synthesis of new fluorinated phosphorous compounds. This work has increased the availability of fluorine-containing and has sparked the attention of drug, agrochemical and polymer producers.

\* \* \*

In 2005 she reported the discovery of an intramolecular hydrophosphination reaction of a phosphirene ring. The chiral heterocyclic phosphorous compounds play a pivotal role as ligands and organocatalysts in asymmetric reactions. The constant search for more efficient ligands led transition metal chemists to investigate the potential of phosphorous heterocycles in coordination chemistry and catalysis. [The petitioner] reported the synthesis of a novel rigid chelating phosphorous ligand by trapping transient terminal phosphinidene molybdenum pentacarbonyl complex with an acetylenic alcohol. This research shed light into the molecular mechanism of this reaction and explored a new reaction in the chemistry of phosphirenes. The intramolecular hydrophosphination reaction of a phosphirene ring was demonstrated for the first time in the literature. These achievements open many avenues for research, including the investigation of the *cis*-1,2-bis-(phosphino)ethenes, which are good ligands in catalysis. Before the discovery of hydrophosphination reaction of phosphirenes there was no other convenient methods available to synthesize such type of rigid ligands in practical terms. A more widespread use of these original structures is likely in the near future.

In 2006 [the petitioner] published in *Organometallics* a paper, which made significant contribution to the chemistry of monovalent phosphorous P(I) oxidation state. For phosphorous chemists this was a highlight of the year. This work extends her previous studies on traditionally, organophosphorous chemistry organized around the interconversion between the P(III) and P(V) oxidation states. The proposed synthetic approach [is] simple and versatile and it has many interesting synthetic applications around P(I) species. The ability to generate free phosphinidenes will enable fundamental studies to explore molecular structure, bonding and reactivity. This made possible to study the chemistry of the elusive P(I), which was a longstanding issue in the organophosphorus chemistry.

During my research stay at [University of California], I had the opportunity to appreciate that [the petitioner] is one of the most brilliant and successful scientist[s] I have met and worked with. She works intelligently and actively with very original and bright ideas that she able to develop. She has a strong background, a wide research experience and has been active in many scientific areas. She started her career in the chemistry of phosphorus-carbon heterocycles and did the fundamental work in the design, synthesis and characterization of new materials. Currently, [the petitioner] is working on the chemical functionalization of carbon nanotubes, studies of their processability and their incorporation in polymers. All these works have been extraordinary and have made invaluable contributions, such as bioactive polyfunctional phosphorylated heterocycles for catalysis and medicine; the functionalized carbon based nanomaterials in sensor technology and biomedicine.

In recent years [the petitioner] has worked in two distinct areas: (1) phosphorous chemistry; (2) carbon nanotubes. Her work in phosphorus chemistry, in particular new chelating phosphorous ligands, and modified oligonucleotides and natural phosphates, is outstanding and has been published in the premier peer reviewed chemical journals. Such novel phosphorous compounds are of importance in the pharmaceutical and agrochemical industries for the preparation of drugs, herbicides and pesticides.

Engineering at the University of California, Riverside, stated:

[The petitioner] is a talented scientist and by [2006] she already had made significant contributions. Her research work, which is situated at the interface between biochemistry, organophosphorus and transition metal chemistry, is extremely important and substantially benefits the United States. [The petitioner] has provided highly significant insights in the chemistry of free phosphinidenes and her approach could extend the scope of phosphinidene chemistry and can generate numerous synthetic applications in organophosphorus chemistry.

\* \* \*

[The petitioner's] main contributions in my research group lie in the development of novel chemically functionalized single-walled carbon nanotubes, which are amenable to processing, purification and separation. The use of traditional chemical and physical techniques for the characterization of these novel materials and the assessment of their quality, properties and performance is a challenging task. She demonstrated her chemistry expertise by the development of a novel technique for preparation of new water soluble functionalized carbon nanotubes

with polymers and biomolecules, which have potentials for application in biology and medicine. Because of the commercial interest in these novel materials, a patent has been prepared, and [the petitioner] is the main contributor to this patent.

\* \* \*

[The petitioner] has contributed to the research in my group in many ways. She has worked with a number of group members, collaborating and advising my graduate students and postdoctoral researchers to achieve the goals of our research. She also has made significant contributions to the preparation of several research proposals, and some of them have already been recommended for funding.

[The petitioner] is a high ranking world expert in chemistry of biologically active compounds. Her research involvement in my group led her to design and synthesize a modified nucleotide, a task she mastered in a very short period of time. She embarked on the synthesis of difluorophosphonates as analogues of the ubiquitous phosphate function and developed a multi-gram synthesis of the modified nucleotide in only nine steps and a 19% overall yield, demonstrating the viability of the synthetic path. I would like to point out that the chemistry of the difluorophosphonates is particularly difficult, because of the tendency of these species to decompose into carbenes. [The petitioner], with her strong background in synthetic organic chemistry and tremendous experimental techniques, succeeded and gathered crucial results. She was also able to crystallize an intermediate compound, which ascertained the unprecedented stereoselectivity of a key step of the process. This was the first X-Ray structure of a fluorinated phosphonothioate reported in literature. Her research in this area was thus seminal and influential, and, additionally, initiated new studies on the conformational behavior of the analogues. These results turned out to demonstrate that the analogues possess the required C-3' *endo* conformation needed to achieve optimal duplexes formation with the *m*-RNA.

The chemical functionalization and solubilization of carbon nanotubes represent an emerging area in the research of nanotube-based materials. [The petitioner] has an extensive experience in the synthesis and has pioneered a range of chemically functionalized carbon nanotubes. She has also developed a new efficient approach to the dispersion of nanotubes in water. The studies that she

has published on synthesis and characterization of water soluble carbon nanotubes are of specific interest to the research community because the techniques developed have potential for separation of the nanotubes by type and length. In addition, there is strong interest in the marketplace for the development of water soluble nanotubes for use in biology and medicine. The importance of her work is best demonstrated in the development of sensor materials with high sensitivity to biological and chemical molecules. Her work, which is published in the *Journal of the American Chemical Society*, illustrates that chemically functionalized carbon nanotubes show enhanced sensitivity for the detection of ammonia. The results of this research are promising and may lead to the development of novel techniques for the detection and identification of toxic chemicals, explosives, chemical and biological agents, and would greatly advance the capabilities of the Department of Homeland Security and the Department of Defense.

research assistant chem

A major contribution of [the petitioner's research in laboratory at the University of California, Riverside,] was the experimental prove of the mechanism of detection of ammonia with functionalized carbon nanotubes; until then the mechanism of action of carbon nanotubes in response to small molecule gases was questionable and it was ascribed to the change of the electronic nature of metal contact – carbon nanotube interface, presence of humidity or a charge transfer between the gas molecule and nanotubes. The research work, in which [the petitioner] played [a] very important role, clearly resolved this fundamental question. The key achievements of the study were summarized in a paper published in the *Journal of the American Chemical Society*. These findings are now broadly utilized by other research groups in academia and industry for the development of carbon nanotube sensors.

\* \* \*

Another important contribution of [the petitioner] in the carbon nanotube filed [sic] is the synthesis and characterization of water soluble singled-walled carbon nanotubes. Carbon nanotubes have inert chemical structure and therefore they are difficult to process; this is a major challenge in the preparation of advanced devices and structures based on this material. Many applications, including composite materials, conductive and transparent thin films, electronics, sensors, and biomedicine, rely on the ability to disperse the nanotubes in solvents. [The petr] realized the potential of functionalized carbon nanotubes and devoted significant efforts to the synthesis of novel materials and understanding of their properties. She has recently achieved the synthesis of polyethylene functionalized carbon nanotubes and this material has shown very high solubility in water. The

process is also amenable to industrial scaling and a patent on this material is in preparation.

[The petitioner] has distinguished herself in the design and synthesis of fluorinated phosphorus compounds. Although the organic chemistry of phosphorous has been studied for over a century, the possibilities offered by the introduction of fluoroalkyl groups have only just begun to be realized, paralleling the huge and better-known field arising from carbon and hydrogen. When she started her work in 1990, the chemistry of fluorinated phosphorous compounds was very poorly developed and no other research group worked in this area. These newly discovered materials are of potential interest for agriculture and medicine, such as anti-cancer agents. At present, the study of fluorinated phosphorus compounds are of great interest and in progress by other researchers who have cited [the petitioner's] earlier articles.

\* \* \*

Besides her work developing new methodologies, she has made groundbreaking accomplishments in the investigation of new compounds and mechanism of their reactions. [The petitioner] was the first scientist to discover a new intramolecular hydrophosphination reaction of a phosphorus-carbon single bond in a phosphirene ring. This 2005 discovery has both academic and practical importance for catalysis and has already been cited four times by independent authors.

\* \* \*

[The petitioner] has also pioneered the investigation of a series of chemically functionalized water-soluble nanotubes and sensor materials with high sensitivity to gas analytes. These have potential benefits and uses in biomedicine and nanotechnology. In 2007, she focused her studies on the properties of functionalized carbon nanotubes, applying her expertise to the development of sensors capable of detecting very small concentrations of toxic gases. The mechanism of ammonia detection, which she resolved and published in the *Journal of American Chemical Society*, offers new possibilities for making sensors. Since that time, this article has been cited eight times by independent authors, indicating the topicality, importance and diverse technological development possibilities.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.” In compliance with *Kazarian*, the AAO must focus on the plain language of the regulatory criteria. 596 F.3d at 1121. Here, the evidence must be reviewed to see

whether it rises to the level of "original scientific, scholarly, or business-related contributions of major significance in the field."

In this case, while the recommendation letters praise the petitioner for her work as a chemical researcher and indicate her original findings, they fail to indicate that her contributions are of *major significance* to the field. The letters provide only general statements without offering any specific information to establish how the petitioner's work has been of major significance. For example, [REDACTED] described the petitioner's "achievements open[ing] many avenues for research," however, he failed to indicate what avenues of research have been opened based on the petitioner's achievements. In addition, while [REDACTED] indicated that the petitioner is a "brilliant and successful scientist" and described her contributions and research, she failed to provide sufficient examples of the petitioner's influence in the field as a whole. Further, [REDACTED] generally referred to some of the petitioner's work but failed to indicate how her work has been of major significance. Moreover, [REDACTED] and [REDACTED] discussed the petitioner's contributions to their groups, but the record fails to reflect that the petitioner's research and findings have been significant beyond the research groups in which she has worked. This regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those contributions to be of major significance. While the petitioner's research demonstrates original findings, the petitioner failed to demonstrate that those findings are consistent with the plain language of the regulation requiring original contributions of major significance. [REDACTED] asserts that the petitioner's work is broadly used by other universities and in industry, but fails to provide a single example of a university or industry that is doing so.

Moreover, while describing the petitioner's research and generally referring to the importance of her research, the letters fail to provide specific details to explain how her research has currently impacted her field so as to be considered contributions of major significance. For instance, as cited above, [REDACTED] stated that "[a] more widespread use of these original structures is *likely in the near future* [emphasis added] and "[t]he ability to generate free phosphinidenes *will* enable fundamental studies [emphasis added]." Further, [REDACTED] described the petitioner's work as "with *potential* biological and medicinal applications [emphasis added]." In addition, [REDACTED] stated that the petitioner's "approach *could* extend the scope of phosphinidene chemistry and *can* generate numerous synthetic applications [emphasis added]." Moreover, [REDACTED] Hahn stated that the petitioner's "techniques developed have *potential* for separation of the nanotubes by type and length [emphasis added]" and "[t]he results of this research are *promising* and *may* lead to the development of novel technologies [emphasis added]." Furthermore, [REDACTED] stated that "a patent on this material is in *preparation* [emphasis added]." Also, [REDACTED] stated that "[t]hese newly discovered materials are of *potential* interest for agriculture and medicine [emphasis added]," "are of great interest and *in progress* by other researchers who have cited [the petitioner's] earlier articles [emphasis added]," and "[t]hese have *potential* benefits and uses in biomedicine and nanotechnology [emphasis added]." Finally, [REDACTED] stated that "a patent on this material is in *preparation* [emphasis added]."

Given the descriptions in terms of future applicability and determinations that may occur at a later date, it appears that the petitioner's research, while original, is still ongoing and that the findings she has made are not currently being implemented in her field. Again, while we acknowledge the originality of the petitioner's findings, the letters do not indicate that anyone is currently applying the petitioner's research findings so as to establish that these findings have already impacted the field in a significant manner. Accordingly, while we do not dispute the originality of the petitioner's research and findings, as well as the fact that the field has taken some notice of her work, the actual present impact of the petitioner's work has not been established. Rather, the petitioner's references appear to speculate about how the petitioner's findings may affect the field at some point in the future. Eligibility must be established 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). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Many of the letters proffered do in fact discuss far more persuasively the future promise of the petitioner's research and the impact that may result from her work, rather than how her past research already qualifies as a contribution of major significance in the field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. The assertion that the beneficiary's research results are likely to be influential is not adequate to establish that her findings are already recognized as major contributions in the field. While the experts praise the petitioner's research and work as both novel and of great potential interest, the fact remains that any measurable impact that results from the petitioner's research will likely occur in the future.

While those familiar with her work generally describe it as "significant," "valuable," having "broad impact," and consistent with "outstanding contributions and extraordinary abilities," there is insufficient documentary evidence demonstrating that the petitioner's work is of major significance. This regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those contributions to be significant. We are not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.<sup>3</sup> The lack of supporting evidence gives the AAO no basis to gauge the significance of the petitioner's present contributions.

The phrase "major significance" is not defined in the statute or regulations. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. Looking to the applicable dictionary definition, the word "major" is defined as "greater in importance or rank." Webster's New World College Dictionary 867 (4th Ed. 2008). The word "significance" is defined as "importance, consequence, moment." *Id.* at 1334. While these letters

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<sup>3</sup> *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

discuss the petitioner's personal achievements, there is no evidence that they constitute original contributions of "major significance" in her field.

USCIS may, in its discretion, use as advisory opinion 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 of support from the petitioner's personal contacts 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. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance. Furthermore, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Finally, the record reflects that the petitioner submitted documentary evidence from Web of Science reflecting that her 24 articles were cited 75 times by other researchers and scientists in their published works. However, a further review of the documentary evidence reflects that her most cited article, *Preparation of New Triphenylphosphonium Salts Based on 2,3-Dichloro-4-Hydroxobutenic Acid and its Esters*, was cited only nine times. Furthermore, 20 of her articles were cited five times or less, with seven of her articles never having been cited by others. While we take into consideration the ranking of journals in which her articles have appeared, such as *Tetrahedron*, *Journal of the American Chemical Society*, and *Organometallics*, we are not persuaded that the moderate citations of the petitioner's articles are reflective of the significance of her work in the field. The petitioner failed to establish how those findings or citations of her work by others have significantly contributed to her field.

Without additional, specific evidence showing that the petitioner's work has been original, influential, or has otherwise risen to the level of contributions of major significance, we cannot conclude that she meets this criterion.

Accordingly, the petitioner failed to establish that she 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.*

In the director's decision, although he found that the petitioner published articles in scientific journals, he found that the petitioner failed to establish eligibility for this criterion as the petitioner's work was not cited extensively by others. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." Pursuant to *Kazarian*, 596 F.3d at 1122, the petitioner submitted sufficient documentation establishing that she

meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Therefore, we withdraw the findings of the director for this criterion.

Accordingly, the petitioner established that she meets this criterion.

### ***C. 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.” 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)(3). See also *Kazarian*, 596 F.3d at 1115. The petitioner established eligibility for two of the criteria, in which at least three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, 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).

While the petitioner established eligibility for the regulation at 8 C.F.R. § 204.5(h)(3)(iv) (judging), we note that the documentary evidence submitted by the petitioner reflects claims of serving as a reviewer for three journals. An evaluation of the significance of the petitioner’s judging experience is sanctioned [REDACTED]. In a letter from [REDACTED] [the petitioner] as a reviewer of manuscripts.” [REDACTED] failed to indicate how many or when the petitioner reviewed manuscripts. Furthermore, [REDACTED] of the *Journal of Physical Chemistry A/B/C*, stated that he “selected [the petitioner] to review papers,” but failed to indicate if she actually reviewed any papers for the journal. Finally, the petitioner submitted a letter from [REDACTED] stated that the petitioner served as a scientific referee in November 2008, the same month the petitioner filed her petition. This evidence related to the petitioner is in stark contrast to the experience of those who submitted letters on the petitioner’s behalf. The references include an Editor-in-Chief, Founding Editors, Editorial Board Members, Coordinating Editor, Co-Editor, Deputy Editors, Contributing Editors, and Reviewers for numerous journals. Specifically, the references have the following experiences as judges:

1. [REDACTED] Founding Regional Editor, Coordinating Editor, and Co-Editor for the *Journal of Organometallic*, Founding Editor of *Organometallics*, and Editorial Board Memberships for *Chemistry of Materials*, *Applied Organometallic Chemistry*, *Russian Chemical Bulletin*, and *CRC Press Handbook of Chemistry and Physics*;
2. [REDACTED] Editorial Board for *Synthesis*;

3. [REDACTED] – Editorial Board for the *Journal of the American Chemical Society*, *Molecular Crystals and Liquid Crystals*, *Advanced Materials*, *Chemical Physics Letters*, and *Materials Chemistry*;
4. [REDACTED] – Reviewer for 16 journals such as *Chemical Reviews* and *Journal of the American Chemical Society*;
5. [REDACTED], Editorial Board for *Journal of*
6. [REDACTED] – Editorial Board for *Inorganic Chemistry*, *Accounts of Chemical Research*, *Chemical Communications*, and *Heteroatom Chemistry*.

When compared to the petitioner, who has reviewed for at least two publications, the petitioner's references have considerably distinguished themselves based on their editorial experience. Moreover, while the petitioner demonstrated that she meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi), the record reflects that the petitioner submitted evidence of having authored 24 scholarly articles. Again, however, when compared to the authorship of those in her field, the record reflects:

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Similarly, the petitioner's claims of her substantial contributions under the regulation at 8 C.F.R. § 204.5(h)(3)(v), based in part on documentary evidence reflecting that her published material was cited 75 times by others. We noted that [REDACTED] published material was cited 15,018 times. While the petitioner's most cited article was cited 9 times by others, 46 of [REDACTED] articles were cited 50 or more times by others. While the petitioner submitted evidence of moderate citation of her work by others, we are not persuaded that such a citation rate demonstrates the sustained national or international acclaim required for this highly restrictive classification. As authoring scholarly articles is inherent to scientific research, we will evaluate a citation history or other evidence of the impact of the petitioner's articles when determining their significance to the field. For example, numerous independent citations for an article authored by the petitioner would provide solid evidence that other researchers have been influenced by her work and are familiar with it. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122. On the other hand, few or no citations of an article authored by the petitioner may indicate that her work has gone largely unnoticed by his field. The petitioner submitted evidence showing that her body of work has been independently

cited 75 times. As indicated previously, 20 of her articles were cited five times or less, while seven of her articles have never been cited by others. While these citations demonstrate some interest in her published articles, they are not sufficient to demonstrate that her articles have attracted a level of interest commensurate with sustained national or international acclaim.

The petitioner failed to establish that she “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). A comparison of the petitioner’s claim of reviewing manuscripts for three journals, authorship of 24 articles, and citation of her work by others with those of her references indicates that the very top of her field is a level far above her present level of achievement. The regulation at 8 C.F.R. § 204.5(h)(3) provides that “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” The weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). As evidenced above, the petitioner’s accomplishments falls far short of establishing her sustained national or international acclaim.

We also cannot ignore that the statute requires the petitioner to submit “extensive documentation” of her sustained national or international acclaim. See section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Further, the petitioner claims eligibility for the regulation at 8 C.F.R. § 204.5(h)(3)(v) based mostly on recommendation letters, which are not sufficient to meet this highly restrictive classification. We note that the letters were all from individuals who have worked or interacted with the petitioner. While such letters can provide important details about the petitioner’s role in various projects, they cannot form the cornerstone of a successful extraordinary ability claim. Vague, solicited letters from local colleagues or letters that do not specifically identify how her contributions have influenced the field are insufficient. The statutory requirement that an alien have “sustained national or international acclaim” necessitates evidence of recognition beyond the alien’s immediate acquaintances. 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)(3). Further, USCIS may, in its discretion, use as advisory opinion statements as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791 at 795. However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner’s personal contacts in 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. Thus, the content of the writers’ 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 any immigration petition are of less weight than preexisting, independent evidence that one would expect of an individual who has sustained national or international acclaim at the very top of the field.

Finally, when compared to the accomplishments of individuals who submitted recommendation letters on the petitioner's behalf, it appears that the highest level of the petitioner's field is far above the level she has attained. For example, [REDACTED] has received numerous awards and honors from over his 50 years of experience in the field including membership in the National Academy of Sciences in 2001. In addition, [REDACTED] has served as [REDACTED] Science, University of Utah, received a multitude of awards for his recognition in over 30 years of work, and is an elected member of the National Academy of Sciences in 2000. The petitioner failed to submit evidence demonstrating that she "is one of that small percentage who have risen to the very top of the field." In addition, the petitioner has not demonstrated her "career of acclaimed [REDACTED]

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. While the record reflects that the petitioner possesses talent as a research scientist, the record falls far short in classifying the petitioner as an alien or extraordinary ability pursuant to the requirements of the statute and regulations. 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.

### III. Conclusion

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.