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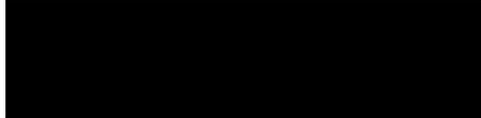
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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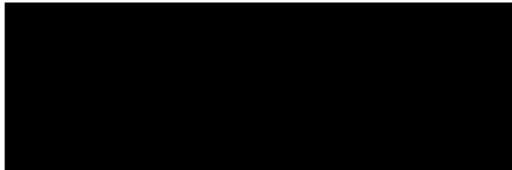
Petitioner:

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied 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 \$630. 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,

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Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on July 13, 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 biostatistician.¹ 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 "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, the petitioner claims to meet 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

¹ Although Part 1 of the Form I-140 lists [REDACTED] as the petitioner, however, the petition was signed by the alien and he is therefore considered a self-petitioner.

(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 101st 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 criteria.

- (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. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. March 4, 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.² 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 (9th 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

² 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).

A. Evidentiary Criteria

This petition, filed on July 13, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a biostatistician. The petitioner has submitted evidence pertaining to the criteria under 8 C.F.R. § 204.5(h)(3)(i), (ii), (v), (vi), and (viii). In his October 8, 2009 decision, the director discussed 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), and (x). On appeal, the petitioner did not address all of the criteria discussed in the director's decision. The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision. We, therefore, consider those issues to be waived. This decision will only discuss the criteria argued on appeal.

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

At the time of filing, the petitioner claimed eligibility for this criterion based upon his postdoctoral research fellowship. He submitted a letter from [REDACTED]

[REDACTED] dated May 19, 2009, offering the petitioner a postdoctoral research fellowship in the department of biomedical informatics from September 1, 2009 to August 31, 2012. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." Accordingly, we concur with the director that the petitioner failed to establish that his employment by the [REDACTED] through a postdoctoral fellowship, equates to a lesser nationally or internationally recognized prize or award for excellence. Furthermore, academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships, postdoctoral fellowships, student awards, and financial aid awards cannot be considered nationally or internationally recognized prizes or awards in the petitioner's field of endeavor.

The record of proceeding also contains evidence that the petitioner co-authored a research paper entitled [REDACTED] which was chosen as a "Symposium Quality Award Finalist." The record contains no information about the symposium or the significance of such an award to demonstrate its national or international recognition other than counsel's statement in the October 7, 2009 response to the director's request for evidence [REDACTED]. In her response to the [REDACTED] counsel states that the petitioner "represented NYU at a statewide symposium of hospitals where each hospital through its nominated representatives presented their clinical research studies." Although the petitioner submitted some evidence that he was selected as a finalist, there is no evidence in the record of proceeding indicating that the petitioner actually received the symposium quality award. Further, according to counsel's statement this award is a statewide award and not one that is recognized nationally or internationally beyond the awarding entity.

Finally, the record contains a photograph of the petitioner with a plaque from the [REDACTED] presented to the [REDACTED]. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.” Moreover, it is the petitioner’s burden to establish eligibility for every element of this criterion. The petitioner has not demonstrated that he is the recipient of this award or prize, nor has he demonstrated that this award or prize is nationally or internationally recognized for excellence.

On appeal, counsel relies on the petitioner’s receipt of the 2005 [REDACTED] award by the [REDACTED] to demonstrate eligibility for this criterion. In his decision, the director stated that although the petitioner received the 2005 Best Exhibit award, the record contained no evidence regarding the “significance of the award” or “evidence of how many such awards were issued.” Counsel submitted a letter from [REDACTED] on [REDACTED] letterhead dated December 11 – 15, 2009 stating that the “Residents Research Contest offers young investigators an opportunity to present their work to a conclave of their peers at a major international forum.” [REDACTED] also states that only one award is given in the category of best clinical application per year. On appeal, counsel also submitted a copy of the newsletter *Sphere* dated January – March 2006.³ The newsletter contains a picture of the recipients of the 2005 [REDACTED] award and a two sentence description. In his brief on appeal, counsel explains that the petitioner is not pictured because he was ill on that day. The AAO notes that the newsletter is published by the awarding organization and that the petitioner is not mentioned in the description next to the photograph. As a local organization, awards given by the [REDACTED] are not a nationally or internationally recognized prizes or awards and record of proceeding contains no evidence indicating otherwise. Further, even if we found this award qualifying, which we do not, the regulation requires “prizes or awards” and one award is not sufficient to meet the plain language requirements for this criterion.

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

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

In his decision, the director determined that the petitioner’s membership in the [REDACTED] and the [REDACTED] are not sufficient to meet this criterion. On appeal, counsel does not provide additional information or address the director’s statements. We, therefore, will not address this criterion any further on appeal.

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

³ The [REDACTED] website at www.nyssa-pga.org states that the *Sphere* is the “official quarterly publication of the [REDACTED]”

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 the impact of his research. On appeal, counsel argues that the "evidence submitted by the petitioner outlines the various research projects that the petitioner has undertaken to develop new and innovative medical techniques that aim to cure and treat various ailments." Counsel describes the work that the petitioner is doing with [REDACTED] as "original" and "groundbreaking." We cite representative examples of the letters here.

The record of proceeding contains two letters from [REDACTED]

In his July 14, 2009 letter, [REDACTED]

states:

I was directly involved with [the petitioner] when he volunteered to work with me on the brain tumor project during the academic year 2007-2008. We were involved in analyzing the results of recurrent, as well as primary gliomas that were treated with an antiangiogenic agent, Avastin. [The petitioner] helped in collection of the data, aggregation, analysis of the data, preparation of graphics and analyzing the results. During the project, I found that [the petitioner] has a keen intellect for scientific studies and a sharp analytical mind. He is a hardworking individual that could be counted on to finish tasks in a timely fashion. His unique combination of being a physician, epidemiologist and a statistician has given him an excellent grasp of analysis, which in turn, grants him the ability to design quality research studies.

Similarly, the record contains a letter from [REDACTED]

[REDACTED] In his August 1, 2007 letter, [REDACTED] states:

[The petitioner] worked for me for a short period of time as a research/data analyst from June to October 2006. His main task was to collect and analyze data from a large NYC-wide hepatitis B screening vaccination and treatment program. It was exceedingly difficult to find someone who not only had a strong background in advanced statistics but also was a doctor by training. [The petitioner] was well qualified for this project having just completed a post doctoral fellowship in the [REDACTED] during which time he provided the statistical analysis for a project on early patient recovery and pain management. Prior to that time, he had completed a [REDACTED] with a focus on epidemiology and biostatistics after completing his medical training in India.

[The petitioner] did a superb job. He was extremely reliable, diligent and trustworthy. His work was always of the highest professional quality. He is a very

personable, well-mannered young man who was always eager to assist everyone. He is bright, ambitious, well-disciplined and focused. In the short amount of time that he worked with me we were able to finish the main statistical analysis which was quite complex and involved.

describe the petitioner as intelligent, reliable, hard-working, and professional. The petitioner's characteristics such as his "keen intellect" and his ability to complete his work in a "timely" manner do not distinguish him from other competent workers or demonstrate an original significant contribution. Although describes the petitioner's training as a physician, epidemiologist, and statistician as "unique" and states that it is "exceedingly difficult" to find someone with the petitioner's background, such training is not equivalent to an original scientific contribution of significance to the petitioner's field.

In his letter dated November 23, 2009, expands upon the brain tumor project and states:

This study is integral to the way that we understand high grade gliomas and its application is potentially ground breaking in the field of cancer research. Improved individualized therapy would be a marked shift in the standard of care for high grade gliomas in the United States. Since the U.S. leads the world in cancer care the potential benefits of new treatment options are far reaching. Toward this end [the petitioner's] input was invaluable. From the conception of the study and its design, to the execution of its aims[,] [the petitioner's] keen intellect and sharp analytical mind were essential. Without him this research would not have been the crowning achievement that [it] is turning out to be.

Although describes the research as "potentially ground breaking," does not describe the current impact that such research has had on the field. Additionally, while describes the research as a "crowning achievement," he provides no details as to why it is regarded as such and therefore, this statement is not sufficient to demonstrate that the petitioner has made original contributions of major significance.

The record of proceeding contains a letter from of and dated August 2, 2009. states:

[The petitioner] worked with me in 2003 on a difficult project involving identifying the differences between inflammatory breast cancer (IBC) and locally advanced breast cancer (LABC), two entities that are often difficult to distinguish in both clinical and epidemiologic studies. He was able to make this distinction through a careful review of medical records and his finding of a poorer survival in patients with IBC predated a paper we subsequently published in the Journal of the National Cancer Institute in 2005.

Although [REDACTED] states that the petitioner was able to distinguish between two types of cancer through "careful review of medical records," there is no evidence of further research, a subsequent paper, or of the impact that this project had on the field. In addition, there is no evidence that these findings have resulted in new techniques or strategies.

The record of proceeding contains a letter from [REDACTED] dated November 4, 2009. [REDACTED] states:

[The petitioner's] work supports patient safety and quality health care – a national health priority. [The petitioner's] work and research projects are revolutionizing the way patient care is administered in hospitals throughout the country. He is making significant contributions to the science of patient care and his proposals and conclusions are being emulated by health care professionals in facilities nationally.

Although [REDACTED] describes the petitioner's work as revolutionary and states that it is being emulated nationally, the letter provides no details regarding which projects are revolutionizing patient care or which proposals and conclusions are being emulated. Also, [REDACTED] does not specify which facilities are emulating the petitioner's work.

The preceding letters describe the petitioner as a dedicated and talented researcher in different scientific studies, but they do not specify exactly what his original contributions have been as a researcher or biostatistician, nor is there an explanation indicating how any such contributions were of major significance in his field of biostatistics. It is not enough to be talented and to have others attest to that talent. An alien must have demonstrably impacted his field in order to meet this regulatory criterion. 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. Moreover, the petitioner must demonstrate his contribution in the field rather than simply to an employer or collaborator. While the petitioner has earned the admiration of those offering letters of support, there is no evidence demonstrating that he has made original contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on the field of biostatistics, cancer research, or anesthesiology, nor does it show that these fields have somehow changed as a result of his work. Talent and success, however, are not necessarily indicative of original contributions of major significance in the field. The record lacks evidence showing that the beneficiary has made original contributions that have significantly influenced or impacted his field beyond the work that he does for his employer.

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether

they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of widespread recognition and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions have influenced the field. The petitioner also failed to submit supporting evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

We note that although the petitioner has documented citations to his published work which is reflective of the fact that the field has taken some notice of the petitioner's findings (as also indicated in his reference letters), the petitioner has failed to establish how those findings have significantly contributed to his field

The record reflects that the petitioner submitted documentary evidence reflecting that his 7 articles were cited 81 times by other researchers and scientists in their published works.

As it relates to the citations to the petitioner's published work, the record contains a letter from [REDACTED] of [REDACTED] dated August 2009. [REDACTED] states:

[The petitioner] has co[-]authored a study [entitled] [REDACTED] [REDACTED] which was published in *J Ultrasound Med*, in 2006. This study is a landmark study which showed that [a] success rate of 99.3% can be achieved with [the] use of ultrasound which is 10 - 60% higher than present gold standard nerve twitch technique.

The AAO notes that although [REDACTED] describes this as a "landmark study," the evidence submitted by the petitioner reflects that it was only cited 2 times since 2006. We are not persuaded that the moderate citations of the petitioner's articles are reflective of the significance of his work in the field. The petitioner failed to establish how the research findings or citations of his work by others have significantly contributed to his field.

Accordingly, the petitioner has not established that he meets this criterion.

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

In the director's decision, he concluded that the petitioner's "co-authorship" of 5 scholarly articles was insufficient to meet this criterion. However, as the petitioner established that he has authored scholarly articles, we find that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi). Therefore, we withdraw the findings of the director for this criterion.

Accordingly, the petitioner 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.

On appeal, counsel states that the beneficiary has performed in a critical role for [REDACTED]. On appeal, counsel states that the petitioner's "role and job assignment are critical to the success of [REDACTED] as a leading medical research institute. Counsel adds that the petitioner's "research and recommendations are changing the way care is administered not only at [REDACTED] but at other medical institutions that emulate and follow the practices employed at [REDACTED]."

The record of proceeding also contains reference letters addressing the petitioner's role for [REDACTED]. In his letter mentioned above, [REDACTED] states:

[The petitioner] has been instrumental in assisting the interdisciplinary team of clinicians at [REDACTED] in this initiative by providing the support needed to analyze and continually monitor appropriate process and outcome measures including CLAB infection rates, to further reduce these infections.

* * *

[The petitioner] plays an important role as the professional responsible for aggregating the data needed to monitor improvements through the rapid response system.

* * *

[The petitioner's] expertise allows him to play a unique and essential role in supporting and working with clinicians to improve the quality of care and enhance patient safety in NYC.

The record contains a letter from [REDACTED] dated August 3, 2009. [REDACTED] states:

[The petitioner] joined [REDACTED] in October of 2006. He has been assigned as the data analyst to support the safety initiatives since he started employment. He is the primary analyst working on safety initiative. His position carries a tremendous responsibility that is of critical importance in executing the safety mission of the organization. [The petitioner] is responsible for assigning data

entry of clinical information, analyzing it and organizing it in a manner that allows clinicians to understand and act upon the information.

In his letter dated July 21, 2009, [REDACTED] of [REDACTED] states that the petitioner's "work supports patient safety and quality health care – a national health priority."

In her letter dated July 31, 2007, [REDACTED] states:

[The petitioner] has an essential role in supporting and working with clinicians to improve the quality of care and enhance patient safety. His ability to aggregate, analyze, and consistently monitor data to support quality improvement initiatives at [REDACTED] is critical to understand more about the outcomes of these endeavors and areas in need of future focus.

At issue for this criterion, according to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii), is the nature of the role the petitioner was hired to fill and the reputation of the entity that hired him.

The letters submitted speak highly of the petitioner's intelligence and work ethic. Several of the letters describe the petitioner's duties in detail and often state that the work that the petitioner does is critical to the institution. However, the petitioner's role is repeatedly described as a supporting role. The petitioner's ability to secure employment and contribute to the overall quality of patient care and safety does not equate to a leading or critical role for [REDACTED]. Further, the petitioner has not established how his position fits within the overall hierarchy such that his role could be considered "leading or critical role." Nor has he distinguished himself from those with whom he works or those who appear to be in higher and more critical positions than the petitioner, such as [REDACTED] the petitioner's supervisor.

Accordingly, the petitioner has not established that the beneficiary meets this criterion.

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 specifically in his current field, or that he meets at least three of the ten categories of evidence specifically in his current field 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).

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.” 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*, 2010 596 F.3d 1115 at 1119 - 1120. The petitioner established eligibility for one of the criteria, in which 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).

Regarding the regulation at 8 C.F.R. § 204.5(h)(3)(i), experienced experts in the field do not compete for fellowships or competitive postdoctoral appointments. Therefore, such awards are not indicative of someone who is at the top of his or her field. Moreover, there is no evidence in the record of proceeding that the award from the NYSSA is nationally or internationally recognized for excellence in the petitioner’s field. Finally, there is no evidence that the petitioner received the symposium quality award and even if he did receive the award, again there is no evidence to suggest that it is a nationally or internationally recognized for excellence in the petitioner’s field.

The petitioner has met the plain language of the criterion regarding authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi) and bases his claim of his substantial contributions under the regulation at 8 C.F.R. § 204.5(h)(3)(v), in part, on documentary evidence reflecting that his published material was cited 81 times by others. While the petitioner submitted evidence of moderate citation of his 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 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 his 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 his work has gone largely unnoticed by his field. While the petitioner’s citations demonstrate some interest in his published articles, they are not sufficient to demonstrate that his articles have attracted a level of interest in his field commensurate with sustained national or international acclaim.

The petitioner also claims eligibility for the regulation at 8 C.F.R. § 204.5(h)(3)(v) based 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 contributions or how those 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. 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 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.

The petitioner has not established the requirements of 8 C.F.R. § 204.5(h)(3)(viii). The record of proceeding contains no document explaining the beneficiary's position within the hierarchy of the various organizations listed. Moreover, when compared to the accomplishments of individuals who submitted recommendation letters on his behalf, it appears that the highest level of the petitioner's field is far above the level he has attained. For example, [REDACTED] at [REDACTED] and, as stated in her letter, has been the petitioner's supervisor for "nearly three years." In addition, [REDACTED] within the [REDACTED] and describes the petitioner's position as that of a "data analyst" supporting safety initiatives.

The conclusion we reach by considering the evidence to meet each criterion at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

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 or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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

ORDER: The appeal is dismissed.