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



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

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FILE: [REDACTED]  
LIN 08 083 50620

Office: NEBRASKA SERVICE CENTER

Date: FEB 20 2010

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

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, on March 23, 2009, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined that the petitioner did not demonstrate the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate the receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on January 18, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a molecular biologist.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3)<sup>1</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 claims eligibility for this criterion based on his "Award for Best Poster Presentation - Postdoctoral" for his presentation, *Computational cis-regulatory Transcriptional Grammar and Developing Predictive Mathematical Models*, at the Midwest Quantitative Biology Conference (MQBC) at Mackinaw Island, Michigan from September 29, 2006 to October 1, 2006. In addition to submitting a copy of his award, the petitioner also submitted background information from MQBC's website which stated:

In the past four years, the Department of Mathematics and the Quantitative Biology and Modeling Initiative (QBMI) at Michigan State University [MSU] have identified mathematical biology as a research area of focus. Our mathematical biology program emphasizes collaborations between the mathematical scientists and appropriate biological scientists. We feel strongly that the time has come to reach out beyond MSU by sponsoring a meeting to bring together researchers from mathematics and biological science to exchange ideas and to foster collaborations.

The petitioner also submitted a letter, dated November 15, 2006, from [REDACTED] and Professor from [REDACTED] stating that "[t]wenty-nine posters were presented during the conference." According to the participant's list from MQBC, there were a total of 81 participants with 48 of them coming from MSU. In addition, 77 of the 81 participants were from universities and other educational institutions.

The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's award be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, while the petitioner submitted information regarding MQBC, the petitioner failed to submit any documentary evidence regarding

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

the poster award itself such as the nature and stature of this award to demonstrate its recognition beyond the awarding entity. Furthermore, we note that the award appears to indicate that the petitioner won it in a classification reserved for postdoctoral individuals. However, awards that are limited to postdoctoral students are not tantamount to nationally or internationally recognized prizes or awards for excellence in the petitioner's field of endeavor as the award was not open to all in the field but limited in scope to those just beginning in the field. The petitioner failed to establish that his best poster award is a nationally or internationally recognized award and not an award that is only recognized within MQBC.

We also note that while the petitioner did not specifically address another award, the record also contains an uncertified English translation from the German Academic Exchange Service reflecting the petitioner's scholarship award to further academic study and training in Germany. However, academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships and student awards cannot be considered prizes or awards in the petitioner's field of endeavor. Moreover, competition for scholarships is limited to other students. Experienced experts in the field are not seeking scholarships. Thus, they cannot establish that a petitioner is one of the very few at the top of his field.

Furthermore, we cannot conclude that an award won by the petitioner at a student level competition "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.<sup>2</sup> Likewise, it does not follow that a student researcher who has had success in student level competitions should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

In this case, there is no evidence showing that the petitioner's poster award commanded a significant level of recognition beyond the context of the event where it was presented. Accordingly, the petitioner has not established that the poster competition resulted in his receipt of a nationally or internationally recognized prize or award. In addition, the petitioner's receipt of a scholarship award

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<sup>2</sup> While we acknowledge that a district court's decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at \*4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

offers no meaningful comparison between him and experienced professionals in the field who have long since completed their educational training.

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 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.

The petitioner claims eligibility for this criterion based on his membership with the American Society for Microbiology (ASM). The petitioner submitted a letter, dated July 17, 2007, from [REDACTED], who stated that "[the petitioner] has been a member in good standing since 2007." The petitioner also submitted ASM's Constitution and Bylaws which reflects four classifications for membership: full member, emeritus member, student member, and honorary member. We highlight the qualifications for full membership and honorary membership below:

1. Full Member – A person who endorses the objectives of the Society and who holds a bachelor's degree in microbiology or a related field, or who has had essentially equivalent experience, shall be eligible to become a Full Member. A person who has been nominated in writing in due form by a Full Member, who has paid dues for the first year of membership, and who has been endorsed by the chair of the Membership Board shall become a Full Member. Each Full Member in good standing shall be entitled to the privileges so listed in the Constitution and may subscribe to publications as specified by the Council.
2. Honorary Member – A person who has made outstanding contributions to microbiology shall be eligible for nomination and election as an Honorary Member. Honorary status is the highest membership recognition given by the Society. A person may be proposed in writing to the Secretary together with the following information:
  - (i) A complete curriculum vitae with a condensed summary;
  - (ii) A bibliography of scientific publications;
  - (iii) A statement summarizing the nominee's major contributions to microbiology together with information attesting to the high personal and professional standards of conduct of the candidate.

Nominations can be made by any ASM member. The Council of Past Presidents shall review the qualifications of each nominee and transmit to the Secretary the names of up to eight nominees who have made outstanding contributions to microbiology. Candidates who are recommended by the Council of Past Presidents and who receive approval by a two-thirds vote of the Council Policy Committee and Council members under the procedures set forth in the Bylaws shall be declared nominated, and their names shall be placed on the annual ballot. A nominee receiving approval of the members on the annual ballot shall be declared an Honorary Member.

The petitioner failed to establish the type or classification of membership he has with ASM. The letter from Ms. [REDACTED] only confirms that his membership is in good standing and not his membership status. Nevertheless, the record fails to reflect that full membership requires outstanding achievement as an essential condition to membership with ASM. As evidenced above, full membership requires at least a bachelor's degree in microbiology or related field or related experience, nomination by a full member, endorsement by the chair of the membership board, and payment of dues for the first year. As such, these requirements fail to reflect outstanding achievement in the petitioner's field of microbiology.

Regarding honorary membership, the record reflects that outstanding achievement is an essential condition for this membership status. For example, the individual's curriculum vitae, publication history, and major contributions to microbiology are major factors for consideration for honorary membership. However, while honorary membership requires recommendation of past presidents of the committee and two-thirds vote of the policy committee, the record reflects that all members of ASM vote for the honorary member on the annual ballot. Thus, we are not persuaded that honorary membership with ASM meets the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ii) which requires membership to be "judged by recognized national or international experts." Regardless, the petitioner failed to establish his specific membership status with ASM.

The petitioner also claims eligibility for this criterion based on his membership with the Society for Developmental Biology (SDB). The petitioner submitted a letter, dated July 17, 2007, from [REDACTED] Ph.D., Executive Officer, stating that the petitioner is a "current postdoctoral member" with SDB. The petitioner also submitted background information from SDB's website. The petitioner failed to submit any documentary evidence reflecting membership requirements with SDB. According to SDB's membership application,<sup>3</sup> obtained from the link noted on the petitioner's SDB certificate, the applicant chooses the type of membership: full member, postdoctoral, and student, and then submits the appropriate fee. Other than submitting the membership application and paying the appropriate fee, the petitioner failed to establish that outstanding achievement is a prerequisite for membership with SDB. Further, the petitioner failed to establish that membership with SDB is judge by recognized national or international experts.

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<sup>3</sup> See <https://mercury.faseb.org/membership/sdb/NewMember/Default.aspx>, accessed on February 2, 2010, and incorporated into the record of proceeding.

Moreover, we note that in response to the director's request for evidence pursuant to 8 C.F.R. § 103.2(b)(8), the petitioner submitted a certificate from Sigma Xi indicating that the petitioner was granted full membership on November 6, 2008. However, the petition was filed on January 18, 2008. As this membership occurred after the filing of the petition, we cannot consider this evidence in this proceeding. Therefore, we will not consider this item as evidence to establish the petitioner's eligibility. 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. Regardless, the materials submitted by the petitioner about Sigma Xi reveal that Sigma Xi invites to full membership "those who have demonstrated noteworthy achievements in research." These achievements must be evidenced by "publications, patents, written reports or a thesis or dissertation, which must be available to the Committee on Admission if requested." We do not find that mere experience, maturity, undefined significant professional achievements or publication of two first-authored articles, one of which could be a dissertation or thesis, are outstanding achievements.

For the reasons set forth above, the petitioner failed to establish his specific membership status with ASM and failed to establish that membership with ASM or SDB requires outstanding achievement as an essential condition for membership as judged by national or international experts. As such, the petitioner failed to establish that his memberships meet the regulatory criterion under 8 C.F.R. § 204.5(h)(3)(ii).

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

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

At the time of original filing of the petition, the petitioner claimed eligibility for this criterion based on his review of manuscripts for the Journal of Plant Diseases and Protection (JPDP). The petitioner submitted a letter from Dr. [REDACTED], Editor-in-Chief from 1997 to 2005, JPDP, who stated:

From 1999-2002, [the petitioner] reviewed several manuscripts submitted to the Journal. [The petitioner] was asked to review manuscripts, because of his scientific knowledge in the field of biological control.

However, Dr. [REDACTED] not only failed to indicate the specific names of the manuscripts the petitioner reviewed but even how many were reviewed. The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." The evidence submitted to meet this criterion, or any criterion,

must be indicative of or consistent with sustained national or international acclaim.<sup>4</sup> 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). We do not find that a single letter that generally indicates that the petitioner has “reviewed several manuscripts” is sufficient to establish eligibility for this criterion. Furthermore, while the Dr. ██████████ states that JPDP “is a well known journal in the field of agricultural science and plant diseases in Germany and Europe,” the petitioner failed to submit any documentary evidence supporting Dr. Buchenauer’s statement.

In addition, in response to the director’s request for additional evidence, the petitioner claimed eligibility for this criterion based on his review of a manuscript for the Journal of Agricultural and Food Chemistry (JAFC). The petitioner submitted an email, dated June 1, 2006, from the petitioner in response to Professor Elizabeth Waters, Associate Editor, (JAFC), stating that he would review the manuscript based on her request. However, the petitioner failed to submit any documentary evidence confirming that he actually reviewed the manuscript. The plain language of this regulatory criterion specifically requires “[e]vidence of the alien’s participation . . . as a judge of the work of others.” An invitation or acceptance to perform a manuscript review is not tantamount to evidence of one’s participation as a judge of others’ work.

Finally, in response to the director’s request for evidence, the petitioner submitted a letter, dated January 29, 2009, from ██████████ University, who thanked the petitioner “for being an esteemed reviewer for Tissue Engineering.” However, Mr. ██████████ failed to indicate the number of manuscripts, dates reviewed, and specific names of manuscripts. We note that the petitioner failed to claim his eligibility as a reviewer of manuscripts for Tissue Engineering at the time of filing of the original petition. As the record fails to reflect when the petitioner reviewed the manuscripts, we are unable to determine if his review occurred after the filing of the petition, and therefore, can be considered as evidence. *Matter of Katigbak*, 14 I&N Dec. at 49.

Notwithstanding, we note here that peer review is a routine element of the process by which articles are selected for publication in scientific journals. Occasional participation (in this case, the petitioner being requested to review three manuscripts) in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his field. Reviewing manuscripts is recognized as a professional obligation of researchers who publish themselves in scientific journals. Normally a journal’s editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication to ask several reviewers to review a manuscript and to offer comments. The publication’s editorial staff may accept or reject any reviewer’s comments in determining whether to publish or reject submitted papers. Without evidence pre-dating the filing of the petition that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received and completed independent requests for review from a

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<sup>4</sup> We note that although not binding precedent, this interpretation has been upheld in *Yasar v. DHS*, 2006 WL 778623 \*9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 \*11 (S.D. Tex. Aug. 26, 2005).

substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that he meets this criterion.

Accordingly, 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.*

At the time of the original filing of the petition, the petitioner claimed eligibility for this criterion based on six recommendation letters. We cite representative examples here:

██████████ Professor, MSU, stated:

In 2005, [the petitioner] agreed to join my lab to lead a new interdisciplinary project that involved the development of novel quantitative methods to measure gene expression in the *Drosophila* embryo. This multi-investigator Strategic Partnership Grant, which is supported both by the Michigan State University Foundation and an NIH grant, has brought us together with colleagues in Mathematics to model the activity of defined molecular switches in the fly, to better understand the so-called "cis-regulatory transcriptional grammar" that underlies the regulation of genes. [The petitioner's] participation has been on three levels. First, he established the technically difficult measurements of gene expression data from embryos, using confocal laser scanning technology that required him to seek training and become expert in this methodology. This work is providing the core of the data set that we are using for our modeling efforts. Second, after training himself in methods of molecular biology and *Drosophila* transformation, he has supervised a team of one undergraduate and one graduate student to introduce the gene elements into *Drosophila*. Third, to coordinate the disparate aspects of the project, he has organized regular meetings with the experimental group and the modeling group, at which time our mathematician colleagues [sic] and we discuss the technical details that are important for model building, and identify critical points in the experimental work that is required for the work to proceed.

Dr. ██████████, New York University, stated:

In particular, his work on N-mercapto-4-formylcarbostyryl, an antibiotic produced by *Pseudomonas* is extremely important because it represents how natural compounds produced by microbes might be beneficial to humans.

\* \* \*

In a very creative series of studies, he used the fungal strain *Sclerotinia* to identify the GHRH receptor, as a specific molecule on the surface of cells that makes them susceptible to damage by atrazine. This work shows how model systems can be used to identify important molecules that are involved in human disease.

[REDACTED], Assistant Professor, University of Illinois, stated:

[The petitioner's] current research is very close to my own area of expertise. He is studying one of the most important biological processes, called "transcriptional gene regulation," which plays a crucial role in every organism's development and survival. [The petitioner] has developed mathematical models for this complex biological process, in order for scientists to understand and predict the effects of various environmental and genetic conditions on an organism. Such work is of tremendous benefit to fundamental science as well as medical science. As a result of his research, [the petitioner] is one of the leading scientists in his field.

Dr. [REDACTED], Senior Scientist, European Molecular Biology Laboratory, stated:

Since 2005, [the petitioner] has been doing a cutting-edge research to understand gene regulation during development of *Drosophila* embryos. *Drosophila* embryogenesis provides a fantastic model system to understand fundamental principles of gene regulation applicable to other organisms. This understanding is crucial because defects in gene regulation are at the heart of many human diseases. [The petitioner's] approach is unique. He is using well-characterized regulatory elements and systematically altering their number and spacing, and measuring the gene expression output quantitatively. In parallel, he is building a computational model of the gene expression output, and modifying the model as experimental data is obtained, in hopes of building a powerful tool to predict the gene expression output based on many parameters that dictate gene regulation. [The petitioner's] cutting-edge research offers a substantial benefit to the prevention of genetic and developmental diseases.

Dr. [REDACTED], Professor, University of Nebraska Medical Center, stated:

For the past four years, [the petitioner] has been performing cutting-edge research to understand the molecular mechanisms that control gene regulation during development of a model organism, *Drosophila*. *Drosophila* embryogenesis provides an excellent system for understanding fundamental principles of gene regulation, which will undoubtedly be applicable to other organisms. This understanding is crucial because defects in gene regulation are central to many human diseases, especially cancer. [The petitioner's] approach is very important. He is using well-characterized regulatory elements and systematically altering their number, binding affinity and spacing, and measuring the gene expression output quantitatively. In parallel, he is building a computational model of the gene expression output, and modifying the model as experimental data is obtained, with the exception of building a powerful tool to predict the gene expression output based on a wide range parameters that dictate gene expression. [The petitioner's] research offers a substantial benefit to the prevention of genetic and developmental diseases.

Dr. [REDACTED], Dartmouth College, stated:

[The petitioner's] work to analyze how the bacteria have this biocontrol effect resulted in the isolation and identification of a novel antibiotic compound, a significant breakthrough since bacterial resistance to known antibiotics is increasing.

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In the United States, [the petitioner] continued his postdoctoral research on the impact of pesticide usage on animals and plants. [The petitioner] discovered that atrazine binds to the growth hormone releasing hormone (GHRH) receptor and reduces expression of the growth hormone gene in mammalian cells. This work shows how model organism can be used to identify important molecules that are involved in human disease.

\* \* \*

He is using well-studied regulatory motifs and systematically changing their stoichiometry, binding affinity and spacing, and measuring the quantitative gene output. In collaboration with other mathematician, [the petitioner] is building a computational model of the gene expression output, in hopes of building a robust tool to predict the gene expression output during development at spatial and temporal levels.

In this case, the recommendation letters are not sufficient to meet this regulatory criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. 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, 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 any immigration petition are of less weight than preexisting, independent evidence or original contributions of major significance that one would expect of an individual who has sustained national or international acclaim at the very top of the field. We note that the letters from Dr. [REDACTED] and Dr. [REDACTED], as cited above, are almost verbatim and provide very little weight to establishing the petitioner's original contributions of major significance to microbiology.

Furthermore, the petitioner failed to submit preexisting, independent evidence of original contributions of major significance. While the letters highly praise the petitioner and provide examples of his research and work, they fail to establish that he has made original contributions of major significance in his field. The reference letters do not reflect that his work is original and has revolutionized or influenced the microbiology field at all.

We note here that the recommendation letters also discuss the petitioner's research in terms of possible implications that his work may lead to in the future. However, we will not consider evidence reflecting claims of future speculation. In addition, some of the content from the letters of Dr. [REDACTED], Dr. [REDACTED] and Dr. [REDACTED] referred to events occurring after the filing of the petition. For example, they indicated that the work they discussed in their letters was published in *Tissue Engineering*. However, the petitioner's article, *Image Processing and Analysis for Quantifying Gene Expression from Early Drosophila Embryos*, was published in September 2008, nine months after the filing of the petition. Furthermore, they indicated that the petitioner's work was "submitted for publication in the prestigious *Molecular Systems Biology* journal." The record fails to reflect that his work was ever published in this journal. Regardless, we cannot consider events occurring after the filing of the petition. *Matter of Katigbak*, 14 I&N Dec. at 49.

Letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. Vague, solicited letters from local colleagues or letters that do not specifically identify contributions or how those contributions have influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9<sup>th</sup> Cir. 2009).

Moreover, in response to the director's request for evidence, counsel submitted evidence claiming that the petitioner's "research has resulted in 297 DNA sequence fragments to be stored with NCBI [National Center for Biomedical Research]." On appeal, counsel states that he submitted updated information and this "clearly shows [the petitioner] has made major, original contributions in the field of molecular biology." However, a review of the documentary evidence reflects that the evidence that was submitted in response to the director's request for evidence was created on February 17, 2009, and the evidence that was submitted on appeal was created on April 2, 2009. As these events occurred after the filing of the petition, we cannot consider this evidence in this proceeding. *Matter of Katigbak*, 14 I&N Dec. at 49. Nevertheless, while the documentation submitted by counsel reflects that the petitioner submitted cells and tissues to NCBI, the documentation fails to support counsel's claim of the petitioner's discovery of 297 DNA sequence fragments. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Further, in response to the director's request for evidence, the petitioner submitted citation history from [www.scopus.com](http://www.scopus.com). According to the website, the petitioner's article, *Isolation and Identification of N-Mercapto-4-Formylcarbostyryl, an Antibiotic Produced by Pseudomonas Fluorescens*, was cited in 13 articles. However, the information from the website was based on the number of citations as of February 25, 2009. A review of the information reflects that 4 of the articles were published after the filing of the petition. Therefore, we will only consider 9 of the articles citing the petitioner's work. In addition, the petitioner's article, *Detoxification of Fusaric Acid by a Nonpathogenic Colletotrichum*, was cited 2 times. Again, the information from the website was based on the number of citations as of February 25, 2009. A review of the information reflects that 1 article was published after the filing of the petition. Therefore, we will only consider 1 article citing the petitioner's work. We are not persuaded that the petitioner's 2 articles, having been cited a total of 10 times at the time of filing, is indicative of or consistent with original scientific contributions of major significance. See *Kazarian v. USCIS*, 580 F.3d at 1036 (publications and presentations are insufficient absent evidence that they constitute contributions of major significance).

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

Moreover, the regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). We will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. 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.

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 business community. 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.

While the record includes numerous attestations of the potential impact of the petitioner's work and a description of his research and findings, none of the petitioner's references provide specific examples of how the petitioner's work is already influencing the field beyond the limited projects on which he has worked. While the evidence demonstrates that the petitioner is a talented researcher with potential, it falls short of establishing that the petitioner had already made contributions of major significance.

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.*

Counsel claims the petitioner's eligibility for this criterion based on the petitioner's "18 scholarly articles published in some of the most prestigious journals in the field." At the time of the initial filing of the petition, counsel submitted a list of 18 "scholarly articles." However, a review of the list along with the submitted samples reflects that the following 4 articles have never been published but rather were only submitted for publication:

1. *Atrazine Binds to GHRH-Receptor and Affects mRNA Level of Growth Hormone in Rat Pituitary Cells*, submitted for publication in *Science*;
2. *Cloning and Analysis of Up-Regulated Genes in Atrazine-Treated Apothecium of Sclerotinia Sclerotiorum*, submitted for publication in *Fungal Genetics and Biology*;
3. *Deciphering a Cis-Regulatory Grammar Using a "Bottom-Up" Approach in the Drosophila Embryo*, awaiting for an unspecified publication; and
4. *A "Bottoms-Up" Approach to Deciphering Transcriptional Cis-Regulatory Grammar in the Drosophila Embryo*, awaiting for an unspecified publication.

The plain language of this regulatory criterion requires the authorship of scholarly articles "in professional or major trade publications or other major media." As these articles have never been published but only submitted for publication, they do not meet the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vi).

Furthermore, while counsel claimed that that the following 2 articles were published, counsel failed to submit copies or any other documentary evidence establishing their authorship and publication:

1. *Genetic Effects of the Endocrine Disruptor Atrazine on the Sexual Development of the Filamentous fungus Sclerotinia Sclerotiorum*; and
2. *Effect of Benzothiazole on the Colonization of the Phyllosphere, Rhizosphere and Endospore of Tomato by Fluorescent Pseudomonads Containing the GFP Marker Gene*.

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The petitioner failed to establish the authorship and publication of these articles.

The petitioner submitted the following articles establishing that they were authored by him and published or presented at conferences:

1. *Application of Fluorescent Pseudomonads in Combination with Acibenzolar-S-Methyl Induces Synergistic Disease Resistance in Tomato and Tobacco*, (JPDP), 2004;
2. *Detoxification of Fusaric Acid by a Nonpathogenic Colletotrichum Sp.*, Physiology and Molecular Plant Pathology (PMPP), 2004;
3. *Characteristics of Fluorescent Pseudomonad Isolates Towards Controlling of Tomato Wilt Disease Caused by Fusarium Oxysporum F. Sp. Lycopersici*, JPDP, 2002;
4. *Enhancement of Population Densities of Fluorescent Pseudomonads in the Rhizosphere of Tomato Plants by Addition of Acibenzolar-S-Methyl*, Canadian Journal of Microbiology (CJM), 2003;
5. *Isolation and Identification of N-Mercapto-4-Formylcarbostyryl, an Antibiotic Produced by Pseudomonas Fluorescens*, Phytochemistry, 2001;
6. *Ultrastructural Studies on the Mode of Actions of Fluorescent Pseudomonads Alone and in Combination with Acibenzolar-S-Methyl Effective Against Fusarium Oxysporum F. Sp. Lycopersici in Tomato Plants*, JPDP, 2001;
7. *Histological Studies in Stem and Root Cross Sections of Tomato Seedlings Artificially Inoculated with Agrobacterium Tumefaciens*, Advanced Horticulture Science (AHS), 1996;
8. *Interaction Between Meloidogyne Javanica and Agrobacterium Tumefaciens on Tomato Plants*, Pakistan Journal of Nematology (PJM), 1996;
9. *Biocontrol of Crown Gall Disease in Jordan*, Agricultural Sciences (AS), 1996;
10. *Computational Analysis of Transcriptional Cis-Regulatory Grammar and Developing Predictive Mathematical Model in Drosophila* at MQBC;
11. *Effect of Atrazine on the Sexual Development of Apothecia of the Filamentous Fungus Sclerotinia Sclerotiorum* at 11<sup>th</sup> Annual Midwest Microbial Pathogenesis Conference; and
12. *Establishment in Tomato Plants and Mechanisms of Action of Fluorescent Pseudomonads Antagonistic to the Fusarium Wilt Pathogen* at IOBC/WPRS.

We note here that in response to the director's request for evidence, the petitioner submitted another article, *Image Processing and Analysis for Quantifying Gene Expression from Early Drosophila Embryos*, published in September 2008, in Tissue Engineering Part A. However, as the article was published after the filing of the petition, we cannot consider this evidence in this proceeding. *Matter of Katigbak*, 14 I&N Dec. at 49.

Notwithstanding, a review of these articles reflects that the petitioner co-authored them while he was a postdoctoral research associate, postdoctoral fellowship, Ph.D. student, and graduate student at universities and institutions. According to the U.S. Department of Labor's Occupational Outlook

Handbook<sup>5</sup> (OOH), a solid record of published research is essential in obtaining a permanent position in basic biological research. As publishing research is inherent in the requirements of doctoral and postdoctoral research, and a researcher must demonstrate published research prior to even obtaining a permanent job in the petitioner's field, published research alone cannot serve to set the petitioner apart from others in his field.

While we acknowledge that we must avoid requiring acclaim within a given criterion, it is not a circular approach to require some evidence of the community's reaction to the petitioner's published articles in a field where publication is expected of those merely completing training in the field. *Kazarian v. USCIS*, 580 F.3d at 1036.

Regarding the previously mentioned 10 articles citations to the petitioner's work, this minimal number of citations is not evidence that the petitioner's work is widely cited. Thus, while these publications may attest to the originality of the petitioner's work, the record lacks evidence that his work has attracted a wide level of interest in his field commensurate with sustained national or international acclaim.

Accordingly, the petitioner has not 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 claims eligibility for this criterion based on his postdoctoral research associate position at MSU. The petitioner submitted the previously mentioned letter from [REDACTED] who stated:

In addition to his focused efforts in the laboratory, [the petitioner] has been active in the MSU Postdoctoral association as Secretary, and has served as the campus representative at national meetings. [The petitioner's] scientific accomplishments have already established him as a scientist of considerable talent, and his senior responsibilities as team leader in my laboratory have demonstrated his ability in a leadership position.

The petitioner also submitted documentation from the National Postdoctoral Association's (NPA) website indicating that the petitioner is a participant and documentation from MSU's website indicating that the petitioner is the secretary for the steering committee of MSU's Postdoctoral Association (MSUPA).

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim. While the petitioner submitted documentation from Newsweek on [www.msnbc.com](http://www.msnbc.com) reflecting that MSU was ranked the 62<sup>nd</sup> top global university and information from [www.about.com](http://www.about.com) reflecting

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<sup>5</sup> See <http://www.bls.gov/oco/ocos047.htm#training>, accessed on February 2, 2010, and incorporated into the record of proceeding.

that MSU had one of the top biology programs, the petitioner failed to establish that his position as a postdoctoral research associate, in performing daily routine duties of overseeing graduate students, is commensurate with the acclaim required by this highly restrictive classification, or how it differentiates him from other postdoctoral researchers and Dr. [REDACTED]

Furthermore, besides documentation reflecting that the petitioner is a participant and secretary, the petitioner failed to submit any documentary evidence establishing that the petitioner has performed in a leading or critical *role* for NPA or MSUPA. Without additional documentation, we cannot conclude that the mere act of simply participating in an organization or serving as a secretary is sufficient to demonstrate the petitioner's leading or critical role. Notwithstanding, the petitioner failed to submit any documentary evidence establishing that NPA or MSUPA has a distinguished reputation.

In addition, the petitioner claims eligibility and submitted documentation for this criterion based on his participation and presentations at the following conferences:

1. 2007 Midwest Drosophila Conference from October 5-6, 2007;
2. Systems Biology: Global Regulation of Gene Expression from March 29-April 1, 2007;
3. 48<sup>th</sup> Annual Drosophila Research Conference from March 7-11, 2007;
4. MQBC from September 29-October 1, 2006;
5. Joint Meeting of the 3 Divisions of the International Union of Microbiological Societies of 2005 from July 23-28, 2005;
6. 6<sup>th</sup> IOBC/WPRS-EFPP Biocontrol Workshop from November 30-December 3, 2004;
7. 11<sup>th</sup> Annual Midwest Microbial Pathogenesis Conference from October 1-3, 2004;
8. 52<sup>nd</sup> German Plant Protection Conference from October 9-12, 2000.
9. 9th IOBC/WPRS-EFPP Biocontrol Workshop from November 30-December 4, 2000;
10. 14<sup>th</sup> International Plant Protection Congress from July 25-30, 1999; and
11. 51<sup>st</sup> German Plant Protection Conference from October 5-8, 1998.

While the petitioner has established that he made presentations at all of the conferences, the petitioner failed to establish that he performed in a leading or critical role at these conferences. As part of conferences in the scientific field, it is inherent for researchers and scientists to present their findings and research at conferences. We are not persuaded that where an individual makes a presentation, among several other presentations, such a fact is tantamount to meeting the eligibility requirements for this regulatory criterion. For example, regarding item 1, the record reflects that there were at least 14 other presenters at the conference. In addition, regarding item 4, the record reflects that there were 28 other presenters at this conference. The petitioner failed to submit evidence demonstrating how the petitioner's roles differentiated him from the other presenters. In this case, the documentation submitted by the petitioner does not establish that he was responsible for the success or standing of the conferences to which he presented to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. Further, the

petitioner failed to submit any documentary evidence demonstrating that any of the conferences have a distinguished reputation.

We note here that at the time of the original filing of the petition, the petitioner submitted a copy of an email, dated December 20, 2007, from ██████████ Professor, Institute for Mathematics and its Applications (IMA), requesting the petitioner to participate at the IMA Organization of Biological Networks from March 3-7, 2008. However, as the conference occurred after the filing of the petition, we cannot consider this evidence in this proceeding. *Matter of Katigbak*, 14 I&N Dec. at 49.

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

Finally, the conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. While the petitioner's accomplishments may distinguish him from other postdoctoral research associates, we will not narrow his field to others with his level of training and experience. For example, Dr. ██████████ claimed to have reviewed manuscripts for 17 different journals. In addition, Dr. ██████████ claimed to have reviewed manuscripts for 22 different journals and published 129 scholarly articles. When compared to the accomplishments of these individuals, it appears that the highest level of the petitioner's field is far above the level he has attained.

We note that on appeal, counsel claims that the director erred in his citation of *Matter of Chawathe*, USCIS Adopted Decision, January 11, 2006. A review of the director's decision reflects that in applying *Matter of Chawathe*, he stated that "the Service reaffirmed that 8 C.F.R. § 204.5(h)(3) requires 'specific objective evidence be submitted to demonstrate eligibility as an alien of extraordinary ability.'" We agree with counsel that *Matter of Chawathe* never specifically mentioned aliens of extraordinary ability, and the decision was based on eligibility under section 316(b) of the Act, 8 U.S.C. § 1427(b), relating to preservation of residence for naturalization proceedings. However, while the director cited language that does not exist in *Matter of Chawathe*, the decision's principle that an applicant must prove by a preponderance of the evidence that he or she is eligible for the benefit sought applies in this case.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor. Review of the record, however, does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a molecular biologist, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.